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KRYSTLE EYE
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JOHN CAYTON

SANDSTROM DEFENSE WITNESSES
WILLIS JONES
REUBEN TINDAL
TERESSA DAVIS
MELVIN CARTER
KENNETH ROBINSON

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APRIL 22, 2008 -DAY 1

THE COURT: Good morning, everyone. Welcome.

We are here to commence the trial of United States versus Gary Eye and Steven Sandstrom. For the record the case number is 05-344-01 and 02.

We scheduled this time to take up any last minute matters which we need to talk about before we begin to impanel a jury to try the case.

As you know, I think you know, we have scheduled the venire panel in groups of approximately 60. We will begin today with panel members 2 through 107. It is my expectation that we will bring in the entire group and I'll tell them who everyone is and give them some idea of what the trial schedule will be, at least, to the best of my knowledge. And then read an introductory instruction to them which will become Instruction No. 1 in the total instruction packet. Then ask the general questions submitted by the United States.

I suppose we need to identify everybody here.
Mr. Ketchmark, why don't you introduce the folks at your table.

MR. KETCHMARK: Thank you, Your Honor. David Ketchmark, Mike Green, Eric Gibson for the United States. We also have seated at counsel table Special Agents Arch Gothard and Heith Janke from the Federal Bureau of Investigation.

THE COURT: Okay. Let's start with Lance and John, you want to introduce?

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MR. SANDAGE: Good morning, Your Honor. Lance Sandage and John Osgood on behalf of Gary Eye, who appears in person.

MR. ROGERS: Charles Rogers and John Gromowsky, Your Honor, on behalf of Steven Sandstrom, who is here in person.

THE COURT: And we'll follow this same process when we have the panel in the room. I'll allow you to introduce yourselves to the jury.

My thought is that we would do the general questions submitted by the United States, which would be the questions in Part B, beginning on page 3 of the government's submission. And I'm not sure what your intention was, Mr. Ketchmark, but it seems to me that questions beginning at Section 3, I'm sorry, Section C and Section D would be held for the smaller panel. Was that your intention?

MR. KETCHMARK: Yes, Your Honor. This is voir dire that I brought or borrowed from Mr. Whitworth that we used in the Montgomery trial and that's what I understand.

THE COURT: All right. So I'll ask the general questions of the entire panel then we'll excuse two-thirds of that panel and begin with the individual questioning of the smaller groups which will consist of 18, 19 or 20, somewhere in that range.

We will seat the jury beginning with No. 1 in the first chair, the first row on the right. And there are 17

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chairs there. Following that, we'll seat them across, all the way across behind the rail. And that will take up probably two and perhaps part of the third row behind the rail. So that will be the organization as they come in.

My thought is that I would ask the general questions of the entire panel and then, again, break the panels up and start with the individual questions that the government has asked me to ask of the smaller group.

Following that, allow each side up to 45 minutes to ask specific questions of them from the questionnaires or any other source. There really are only three rules that I have in this process. One is that you don't use this time addressing the entire panel to make your opening statement, use it to commit the members of the panel to your theory of the case, or use it simply to ingratiate yourself with the panel. Follow those three rules and we'll have no difficulties with the individual questioning by the attorneys.

That means, of course, that your 45 minutes would need to be split however you folks agree upon it among the two defendants in the case.

I do have a couple of questions about the proposed voir dire. First, David, D2 says for jurors who gave specific examples in the questionnaire regarding when they would consider imposing the death penalty. I'm not sure, I haven't identified the members of the panel by that category. So what

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I may do is simply defer that question and allow you to ask it because you evidently have specific members of the panel in mind.

And then, John Osgood, I'm not sure what we're, what your intention is with respect to these questions about the Internet, blogs, My Space or Facebook. Can you help me understand that?

MR. OSGOOD: Yes, Your Honor. I obviously used a questionnaire that had been used for some time. I think over time there has been an evolution of people moving to the Internet. I'm concerned these people will run right home and start looking for everything they can possibly find on the Internet. If they're bloggers, they're engaging in editorial comment. I'm concerned and would like to identify people that, much like our question about radio talk shows, people that are very opinionated and like to express their opinion. I think that would be helpful in identifying some of these people particularly if they are running a blog or if they are a regular poster on the Internet.

THE COURT: I think what I'll do, John, is allow you to ask those questions during your individual voir dire.

MR. OSGOOD: That would be fine.

THE COURT: The jury, of course, will be instructed not to search for this case on the Internet or any other outside source. And they'll be instructed time and time and

time again not to discuss the case with anyone.

MR. OSGOOD: It wasn't as much that as it was, again, to identify people that are more aggressive in their opinions and that kind of thing.

THE COURT: All right. I'll just defer that question and allow you to ask it then during the small group session.

MR. OSGOOD: That's fine.

THE COURT: In one of the government's filings, I saw an estimate that said the most recent estimate that the case may require 9 to 14 days to try. And I assume that is through sentencing or through the punishment phase as well?

MR. KETCHMARK: What we were thinking, Your Honor, when we put the 9 to 14 days, that was anticipating, yes, the completion of that. What I can tell from our best guess right now is that we're looking at about probably 4 to 5 days for the government's case in chief to be submitted. And, obviously, that would depend on how fast we go with witnesses but that's our best guess with what we deem to be reasonable direct and reasonable cross-examination.

THE COURT: In that vein, I have looked at the trial plan submitted by the parties and those seem reasonable to me. So I'll allow examination of witnesses consistent with that plan.

What about the defense? How long do you think you will require to put on a defense during the first phase?

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Mr. Sandage?

MR. SANDAGE: Your Honor, I would anticipate on behalf of Mr. Eye, one to two days. Largely depends on whether or not Mr. Eye testifies.

THE COURT: All right. And Mr. Rogers?

MR. ROGERS: I think that's a good estimate from Mr. Sandage, one to two days.

THE COURT: Okay. For what it's worth, it's my observation that the trials go faster than what people anticipate and so I think those estimates are probably at the high end but nevertheless it gives me something to talk to the jury about.

Our normal workday will be 8:30 to 5. I want the jury in the jury box at 8:30 and we'll send them home at 5 unless keeping them for a few minutes later will enable us to finish up a witness and not require that witness to come back the next day.

You can anticipate a couple breaks, mid morning, mid afternoon about an hour for lunch. My present thought is that we will work Monday through Thursday on that schedule. On Friday, excluding this Friday, I expect this Friday to be a full day. But on Fridays following that, we'll work from 8:30 to 1. Skip lunch and send the jury out at 1:00 p.m. on Fridays. That gives them a little respite. Gives you also some time to breathe and allows us to schedule some other

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things which are important in the operation of the court. So that's kind of my working plan. And I'll be flexible but I want you to know what I had in mind.

MR. KETCHMARK: Your Honor, in that vein I just have a question. And I understand, obviously, what the Court's thoughts were with respect to this Friday and there's a couple things I wanted to point out from the government's perspective.

With respect to, obviously, the voir dire proceedings, I know the Court is intending and is planning on having that take place over three days. Obviously, we're hopeful that can happen as well. There are just a couple logistical things from our standpoint. We anticipate we have witnesses who are in custody that could potentially testify on the first day, assuming the openings go in the morning and the afternoon. So I need to make the marshals aware of that. I talked with Jack Hildebrandt and tentatively indicated we might need somebody on Friday. And I'm trying to give them as much forewarning on that.

We also have one of the initial witnesses on Friday who is a Spanish speaker and there is an issue with respect to getting an interpreter lined up. And I wanted to make the Court aware of that as well. We also have out of state witnesses who I anticipate would be needed on that first day, as well as several victim's family members who are traveling in from out of state. And so I wanted to, I guess, make another

renewed request to see if the Court might entertain allowing us to begin on Monday with the opening statements and the evidence in light of, kind of our thoughts, that we're going to be able to compress as much as possible the trial schedule because that would allow us to basically have that as a time and a start date that we could know would be firm. That way if there is bleed over in the voir dire process, we would obviously have the availability to address that on Friday and not have to potentially inconvenience and have witnesses come up from out of state and not get them on until Monday. I make that renewed request. I haven't talked to Mr. Osgood or Mr. Rogers about that request. I don't know what their positions are. And I just wanted to bring those up as logistical issues.

MR. ROGERS: On behalf of Mr. Sandstrom, Your Honor, we have no objection to that. And I understand the logistics for it. I think it would also be a good thing for the jurors when they learn Thursday afternoon or when ever that they have been selected that they have a day where they can go to work and say, hey, I'm not going to be here for the next two or three weeks and try and get things organized. That would be a courtesy to them.

MR. OSGOOD: That's fine with us, Your Honor.

THE COURT: Well, I had intended for Friday to be the start. But that's not chiseled in stone. If everyone wants to pick the jury this week and start the trial Monday, we'll do

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that.

MR. KETCHMARK: Thank you, Your Honor. Appreciate it.

MR. OSGOOD: Thank you.

THE COURT: Uh-huh.
To that end how much time will the government request

for opening statement?

Let me begin by apologizing to you all for sending out our standard rules of trial in this case. They're ill-suited for this case and I should have caught that before they went out. The standard opening statement is 30 minutes and that may or may not be sufficient.

MR. KETCHMARK: Your Honor, I think that we would probably be anticipating a need to have longer, that maybe somewhere in the neighborhood of an hour or hour and a half. I don't anticipate we would use all that time but I think an hour we would definitely use.

THE COURT: Lance?

MR. OSGOOD: We were in agreement. We would probably split an hour and a half, Your Honor.

THE COURT: All right. Each side will be given up to an hour and a half to make their opening statements.

Okay. What questions do you have?

MR. KETCHMARK: Just a couple, Your Honor, if I may. With respect to the voir dire procedure that the Court is

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wanting to handle with the --I know in the Court's rules that came out on how the Court was going to handle voir dire mentioned 30 minutes with the panel of 60 you would allow the parties to have for general questions I think.

THE COURT: Uh-huh.

MR. KETCHMARK: Then, obviously, we would breakdown and do smaller groups. What I had a question, I guess in terms of a 30-minute time frame looking at the questionnaires we identified some individual questions of jurors that do not relate to death penalty views, pretrial publicity views or race related views. So I was curious if the Court was okay with us inquiring in the 30-minute time frame of those general type questions that don't relate to those but relates to individual jurors in order to conserve, obviously, the time to deal with the more sensitive issues in a smaller group setting.

THE COURT: Any objection to that?

MR. OSGOOD: No.

MR. GROMOWSKY: No, Your Honor.

THE COURT: You may do so.

MR. KETCHMARK: Two other things and more for providing notice to everyone. One question, I guess, we have is more directed toward defense counsel. But they have both indicated last week that they had experts that they were going to be presenting in the second phase, assuming we get to that. And they both provided copies of the reports and some of the

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information that their experts relied on in arriving at those conclusions. And I have spoken with Mr. Whitworth and he is in the process of talking with a doctor on behalf of the government to try to have them, basically, evaluate the information and determine whether we would need to retain their services as a potential rebuttal type of witness. And to that end, I would request if we're able to get more complete data in terms of the raw data that was used in some of the tests that were performed with some of the defendants, I would make that request at this point. So we could have that information to also forward that on because what we're hoping to do is, obviously, to avoid any need to request a delay between the first phase and the second phase, if and when we get to that.

Then the other thing to make the parties aware of as well is I met with the ballistics expert, who I anticipate the government will be calling, Kevin Westland, yesterday afternoon. And Mr. Westland had, basically, in the pretrial process had given me information that was consistent, obviously, with what we had generated in the report, in terms of the distance the firearm was away from the victim's clothing was greater than 38 inches. One of the things Mr. Westland told me, however, that I was not aware of until I sat down and did the pretrial with him is the coat had been submitted to the trace department of the lab before and there were apparently some hinge lifts that were taken by trace. And, basically,

what he said is it's possible, he doesn't know that those hinge lifts could augment what he was looking for was burned or partially burned gun powder on the entry wound area. And so in light of that I had asked Mr. Westland how quickly, if he got the hinge lifts, could he look at that to determine if in fact that was something to suggest there was a change and the gun powder was removed and placed on the hinge lifts.

I felt like we needed to have that done in light of the issue of who is the shooter and so on so forth that, obviously, the Court is aware from the severance motions. So I had Agent Mark Colburn take those hinge lifts down to the lab this morning and asked him to, basically, and asked Mr. Westland if he could give us an expedited report by looking at the hinge lifts underneath the microscope. I'm hoping we'll have that during our first morning break. It's entirely possible that there's nothing on the hinge lifts and he'll report that. Then, obviously, it doesn't have any change in the circumstances. But this is the first we were aware of it, obviously, when I talked with him. And I wanted to take steps. I thought it was important. And I think that the parties would agree it's potentially important based on their divergent views of who is the shooter.

THE COURT: What is a hinge lift?

MR. KETCHMARK: A hinge lift, my understanding is, Your Honor, where they basically take sticky tape, for lack of

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a better term, and they pat the tape around an area to try to collect fibers, hairs, or anything that potentially would be of trace related evidence. And so as they're patting around that site, Mr. Westland, obviously, indicated if there were any gun powder, it's possible and, again, he couldn't say it's probable or likely, that would be removed.

I don't think, obviously, from my standpoint, another thing I can tell the Court and the parties is the lady who did the hinge lifts did indicate in her report that there was nothing of apparent note on the hinge lifts. We inquired of her late last night whether or not there would have been any gun powder, would she have noted that. She thought she probably would have noted that in her report. But all she had were her notes and there was nothing of note. It might be all for not. But, obviously, thought I needed to let the Court and the parties know as soon as we, basically, deemed it necessary to have that looked at.

MR. OSGOOD: Your Honor, I told them two years ago what the defense was going to be and the defense is Mr. Eye rolling around in the street with the victim. And the victim was shot by somebody else at a distance. I told them then that I wanted to know what the results of the stippling issues were. And they delayed and delayed and delayed even in giving me the lab report. I only got the lab report like six months ago. And it indicated negative on the stipplings where the shooter

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had to be at least 38 inches away. Now, on the morning of trial, they're doing something that directly effects our strategy and the way we're going to present our case in a death penalty case, that they've known for two years what our defense was, that he was not the shooter, that he was shot at a distance. Now they're sending down to the lab and going to hit us with potential evidence that we have no way to test. All kinds of issues that are just grossly unfair.

MR. KETCHMARK: Your Honor, if I might respond. A couple things. One, Mr. Osgood had suggested the lab test was never done on the clothing for determination of gun powder residue or partial burns. That had not been requested by the initial detectives who made the request. Mr. Osgood had informed me that he was hopeful to get the clothing checked out, to have that done back in November or December of last year. I had indicated that I agreed we probably should have that done. And that test was performed in December of last year when Mr. Osgood made the request. I got the reports and the reports confirmed or indicated that there was no gun powder particle burn at all on the site and I disclosed that to Mr. Osgood.

Now, with respect to the timing aspect, a couple things. One, they have retained their own ballistics expert, John Cayton, who used to run the Kansas City Crime Lab. They had all of the reports indicating what the evidence was and

that there were hinge lifts in the bag with the jacket. And so to suggest that we're trying to sandbag information when they have their own expert, there's nothing that would have stopped them from making a request to get the information. And, again, I think that this might be all for not because it's entirely possible that Westland is going to come back and say there's nothing on the hinge lifts. So I don't know if we need to get into a protracted discussion at this point.

I felt it was my obligation especially in light of Mr. Sandstrom and Mr. Rogers, I assume, would want to know whether or not there was, in fact, powder burn on that particular site. So it's not any situation where the government intentionally tried to withhold or sandbag information. It was when I sat down with my expert to try to get him ready, to educate myself, quite frankly, on what he did and what his tests were, that he informed me at 3:00 yesterday afternoon that the hinge lifts are reflected on the notes. And it's possible, again, not likely, not that it did, but it's possible that that could augment, basically, the test. And so that's where we felt we had an obligation, one, not only to report it but, two, to have it looked at.

MR. OSGOOD: If there are, we're going to want a delay and want an expert on it and a mass spec on it. Lot of things, Your Honor.

THE COURT: This may be a non-issue depending -

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MR. KETCHMARK: I agree.

THE COURT: --on the test results. Seems to me all I can say at this point is get those results to defendants as quickly as possible. I'll withhold any ruling on any motions that may result from that until such time as I know what the facts are.

Let me see if I can--I want to set the tone for this trial. The attorneys in this case are all excellent lawyers. Very skilled at their craft. These cases are inherently emotional. And I understand that. But I am not going to have one side impugning the motives of the other throughout the course of this trial. I expect all the comments to be professional and civil. And I expect them to relate to the issues and not, certainly no ad hominem attacks from one side to the other.

MR. OSGOOD: I'm not suggesting he did it on purpose.

THE COURT: Mr. Osgood, I'm speaking.

MR. OSGOOD: I'm sorry, Your Honor.

THE COURT: Now, I want you to know what my expectations are. And I expect this trial to flow as smoothly as possible. And if we have problems throughout the course of the trial, you can expect me to react to them quickly and sternly. But if everyone performs the way I expect them to, then this trial will be as easy and simple as a trial of this kind can be.

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Yes?

MR. OSGOOD: I'm not impugning, if it's directed at me, his integrity. We have worked together very well and gotten along through this trial. He's shaking his head yes. I anticipate it will be smooth. My frustration is more with the expert himself than Mr. Ketchmark and how it impacts my case. That's all I'm talking about.

THE COURT: I'll deal with the impact on the case when I know what the facts are.

MR. ROGERS: Your Honor, I'd like to respond to an earlier request for the raw data. Our expert, and I cannot speak for Mr. Eye's team because I don't know what kind of expert they have or what is disclosed and we haven't disclosed ours to them, but our expert is a neuropsychologist. And my understanding is that their professional rules of professional conduct preclude them from disclosing raw data to me, for example, or somebody who is not qualified to interpret. In other words, if they have an expert who is going to be looking at it, it would have to be disclosed directly to their expert rather than the prosecution team.

And I would also ask if we're going to do that that it be disclosed under a protective order which would preclude their expert from discussing it with them except to the extent of saying, well, I looked at it and I think they really screwed up and we need to do our own testing. File a motion.

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Something like that. But from discussing the actual data or the conclusions with them unless and until we get to the penalty phase.

MR. GIBSON: May I respond, Your Honor?

THE COURT: Uh-huh.

MR. GIBSON: With respect to the raw data. This is testing that was done in anticipation of this specific litigation. There is no privilege that is attached and by in terms of mental health professional or a physician type privilege, those are all waived in the circumstance. They have proposed the results of those tests as supporting their position on their mitigation strategy. The underlying data is not therefore privileged. If they want to turn it over directly to our expert, we have no problem with that. But at this point there is no reason to put it under seal or to prevent anyone from looking at it. It's not privileged. Specifically, because it was created in anticipation of this death penalty litigation and specifically because they're relying on the test results which they have already passed forward.

We're entitled to look beneath the results and examine the raw data to see if the tests were administered correctly, if the test results support what the expert says it supports. And that's the reason why we're requesting raw data at this point. This is routinely done in death penalty

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litigation, Your Honor. We're not asking for something unusual or unexpected or out of the norm.

THE COURT: Well, it seems to me that the interests of justice are best served by full and complete disclosure by all sides to the other. I, frankly, don't know whether there is a privilege or not. I will find out. And, but my initial thought is that regardless, the information, the government should give you the information you need to defend and you should give the government the information it needs to prepare its case. So I would like for the defendants' experts to reveal the raw data to the government's expert directly. The government's expert will not be prohibited from discussing that data with counsel for the United States.

Now, if that presents a problem for your expert then maybe I need to talk to your expert.

MR. ROGERS: I don't know that it does, Your Honor. My expert is out of the office this week but he is reachable by e-mail. I'll get hold of him.

THE COURT: Let me know.

MR. ROGERS: But I don't think that will be a problem. I do need to know the name and contact information of their expert so I can get my guy to forward that.

THE COURT: Mr. Ketchmark will provide you that when we break.

What else would you like to talk about?

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MR. GREEN: Your Honor, Mike Green for the United States. On the general voir dire there were a number of jurors who put down potential hardship based on either health or even things, not sure if employer would pay and would put financial burden on them, myself. Is that something the Court will inquire into as part of the general process?

THE COURT: I will ask a general hardship question. First, we have had a number of requests to be excused and I have dealt with those on a case by case basis. I don't mind telling you that as we approached the trial, I became more parsimonious with the concept of excusing jurors. So there will be jurors here for whom service will be a greater hardship than others. And I'm going to ask the hardship question, prefacing it by telling them that is not a reason to be excused. It's something that we want to know about and see what that gets. To the extent that you want to follow up, you may do so.

MR. GREEN: All right. Thank you.

MR. ROGERS: In that vein, Your Honor, I noted that you indicated that the first panel of 60 would be through Juror No. 107. But I counted up based upon the stipulated strikes, I got to 103. So I assume there are some people that have contacted you since the stipulation who have been excused.

THE COURT: That may be, Mr. Rogers. I was dealing with excuses up until yesterday, I think. Certainly Friday of

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last week. So it may be. But the list that I'm looking at indicates that Jurors 2 through 107 will be brought in today.

MR. ROGERS: I can figure out. I just need to know.

THE COURT: Do you have the same list, Eva? Why don't you share it with Mr. Rogers.

MR. ROGERS: That will solve that problem.

THE COURT: And, of course, all of these may not show up this morning. We'll see what we have. Anything else from the United States?

MR. KETCHMARK: Only thing we would ask, Your Honor, we are going to request the rule be invoked. And I note that Ms. Fabela slash Eye is in the courtroom and she's on the defense witness list.

THE COURT: The rule excluding witnesses from the courtroom has been invoked. And so anyone who is expected to testify should be asked to remain outside until such time as they are summoned in to testify.

There is often a question about whether or not a witness can remain in the courtroom after that witness testifies. And I express no opinion about that one way or another. But it seems to me that in cases such as this there will certainly be an appeal and there is always the likelihood that the case may come back for another trial. And if that happens there could be a challenge to that witness's testifying in the second trial if they sat in part of the first trial. So

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you folks will exercise your own independent judgment about that. But for now those who are expected to testify will be excluded.

MR. OSGOOD: I don't believe she's going to testify. We'll strike her from the list.

MR. KETCHMARK: Thank you, Your Honor.

Thank you, Mr. Osgood.

MR. OSGOOD: There was the remaining issue to be raised in front of the magistrate, two agents in the courtroom. They're both going to testify. And I believe judge ruled -

MR. KETCHMARK: I don't believe Judge Larsen made any ruling. I know he had asked at the pretrial conference on who was going to be at the counsel table. I indicated the agents, basically, did 50/50.

THE COURT: It would be unusual for Judge Larsen to make that ruling. That is normally reserved for the trial judge. And I will allow both agents.

Anything further from the United States?

MR. KETCHMARK: Not that I can think of at this time.

THE COURT: Mr. Osgood?

MR. OSGOOD: No, Your Honor.

THE COURT: Mr. Sandage? Mr. Gromowsky? Gibson?

MR. ROGERS: Rogers, Your Honor.

THE COURT: I'm sorry. What did I say? Well, I know who you are, Mr. Rogers. I saw you on T.V. this week.

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Anything further? Anyone?

If not, we'll take a break as we bring up the panel.

Okay. Been handed a note by Eva saying that 57 members of the panel did show up so far. Only one failed to appear and that was No. 5 Rebecca Andrew. That is the most recent update.

We'll be in recess.

(Recess)

(Voir dire was conducted by Court and counsel.)

(End of session)

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APRIL 28, 2008 -DAY 4

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Good morning.

David, you had a couple of things you wanted to take up?

MR. KETCHMARK: I did, Your Honor. First and foremost, I provided all parties, the Court included, a copy of what the government's captioned as its Second Amended List of Guilt Phase Exhibits. That will be ECFed this morning. It just had some corrections and minor additions, nothing of substance. I have given copies of that to the parties.

I also have provided to the parties, as well, and will give to the Court now, kind of our batting line-up or the order of the witnesses we have available today. And then on Mr. Deleon, I have --Ms. Burn is representing him. He's in custody. And put that down, that's the only in-custody and the only one.

THE COURT: Which one, again, David?

MR. KETCHMARK: Vincent Deleon, fourth from the bottom, Your Honor. I have Ms. Burns' name next to him. I anticipate it will be afternoon.

Then two other things just for kind of housekeeping. Number 1, one of the witnesses later in the week is a female named Kristina Chirino. I wanted to let defense counsel know

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when we met with her, she's represented by Ron Hall, by the way. When we met with her, she had an outstanding warrant in Kansas City Municipal Court on a domestic matter. And in order to get it cleared up so she could come into the courthouse, we called on her behalf and got the warrant set aside and got her a court date. I feel like we have an obligation, obviously, from a disclosure standpoint to make defense counsel aware of that.

Then the other thing is just more from a logistics issue. Mr. Deleon is one of the witnesses this afternoon, Your Honor. I had made the motion or had brought up in the government's original motion in limine regarding evidence of other bad acts by government witnesses. I note from the representation they weren't intending to get into it in opening statements. But I wanted to make the Court aware of that because that may be something that we would need to take up outside the presence of the jury before Mr. Deleon were to testify. I wanted to give the Court a heads up on that for scheduling, too.

THE COURT: Do you intend to offer any evidence of other bad acts?

MR. OSGOOD: By Mr. Deleon?

THE COURT: Yes.

MR. OSGOOD: We'll question him about the murder conviction he's serving right now and his--around the time of

this event, yes, other bad acts, impeach.

THE COURT: Well, the murder conviction, assuming it happened within the requisite period of time, would be admissible on the issue of impeachment.

MR. OSGOOD: It's actually post crime here, within a month or two. Actually, it's under five months removed. Well, the incident we're talking about with Mr. McCay occurred in March. Mr. Deleon testified in grand jury in May. Then the murder conviction stemmed from an event that occurred in October 15, 2005. Obviously, it's a conviction. I have no doubt Mr. Osgood has the right to get into the nature. He was convicted of murder. Was convicted of armed criminal action. He can do that from an impeachment standpoint. And he got a 20-year sentence. But to dive past that, I don't think it has any bearing, obviously, factually, on what happened. That's the subject of appeal that Mr. Deleon is appealing at the state level. I don't think it would be appropriate to dive into the facts of that because quite frankly I don't think there's any basis that he could articulate from an admissibility standpoint why he could get past more facts than to note the conviction and the time served.

MR. GROMOWSKY: By rights, I think we can get into a little more than that, Judge. He's also facing federal charges with these prosecutors in this courtroom with a plea agreement in place, talking about the potential for substantial

assistance. So I think that goes to his credibility as well And the shotgun he's charged with being a felon in possession of is the same shotgun used in the murder. So I think we can get into some details.

MR. KETCHMARK: Your Honor, obviously, as it relates to the felon in possession charge, they could get into that. That he's pled guilty. That was the gun used in connection. I'm not trying to suggest that. I just don't know how far they intend to probe. That's why I would like to get some clarification on that.

MR. OSGOOD: The date of --most of the offense is before he cut off his bracelet. And he testified that they asked him at the grand jury, I cut off my bracelet to get high. Say it again. I cut off because I wanted to get high. And so that would be within a week.

MR. KETCHMARK: And if I might, Mr. Osgood, what he's talking about is I agree the drug use and the fact that he was in custody and cut off his bracelet, all that is the time frame that we were talking about when we talked to the Court about the defendants' drug use. I agree they can get into that. In fact, I'm going to get into that with Mr. Deleon. I'm more concerned with the fact that in some of the discovery that the government provided and some of the reports that came back in reciprocal discovery reported that Mr. Deleon was present or the rumor in the hood was Mr. Deleon was present when certain

other things happened that, obviously, didn't result in charges and or convictions. And so clearly in my mind there is no basis of admissibility to get into those type of activities where the shooting of a gentleman whose street name is Black Raymond, I'm not certain what his actual name is. I don't know if they're intending to get into that. There is suspicion Mr. Deleon might have been present when another shooting happened of another individual Mr. Deleon wasn't charged with. That's the type of stuff I'm trying to keep from delving into.

THE COURT: Let me see if I can give you some guidance. It's very difficult to rule in advance before I hear the question.

MR. KETCHMARK: I understand.

THE COURT: But the convictions would be admissible, his felon in possession and plea agreement with the United States would be admissible. Drug use, if offered, that is integral to the time period of Mr. McCay's death would, I think, be admissible. Beyond that, I'm not sure. And so you'll just have to make your objection. I'll rule it.

MR. OSGOOD: I agree with what you just said. The only one maybe that is questionable is and it would be in the context of the relationships of the parties, who was a boyfriend and who was a girlfriend and how those relationships developed and changed, which is important in my defense. Mr. Deleon was dating a young lady, Ms. Rios, at one point.

She then was going with another young man named Stanley. And she and Mr. Deleon were going to get back together again. And they were at an apartment. And Mr. Stanley was so distraught that in their presence he shot himself in the head. I want to bring that out. I'm not going to say they killed him but I want to bring that out. It shows relationship.

THE COURT: When did that happen in relation -

MR. OSGOOD: Within two months before, I believe, Your Honor.

MR. KETCHMARK: Your Honor, this is also the subject when we talked last Friday, or last Thursday rather, Mr. Osgood was representing that that was the one that was under suspicious circumstances and the police thought it might be and they investigated it as a homicide. He wanted to probe into that aspect as well.

MR. OSGOOD: I concede that I don't have evidence of a homicide. He would be locked up for that if it was. That is a circumstance I do want to bring out.

MR. GROMOWSKY: And, Your Honor, related to that, not that specific incident, but the type of behavior we're talking about with Mr. Deleon, is the fact that government knows now, if they didn't before, about these shootings involved with Black Raymond, you know, the government knows about this information. If they didn't know about it before, they know about it because of reciprocal discovery and his drug use, his

drug dealing, these types of things all came out in the grand jury as well. And he's getting a walk on this. And they specifically told him in the grand jury, don't worry about testifying about this stuff. We're going to leave it alone. So I think when he's getting a walk in exchange for testimony, that's the type of thing that goes toward credibility. We should be able to get into it.

MR. KETCHMARK: And, Judge, if I might clarify. What we told him in grand jury is that because we believe the drug use surrounding the events in question is integral to telling the story, we told Mr. Deleon, as we told other witnesses, that we weren't going --this wasn't a drug case. We weren't looking at making a drug charge. So to the extent that he needs to testify about drug usage on the night in question when he's hanging with these defendants, he can feel free to do that. To the extent he's testifying about a drug deal that he is involved with, involving a vehicle, he can do that. There was nothing to suggest that we were giving him any type of walk on a shooting or anything of that nature. And, quite frankly, we provided that information to them based on information that witnesses provided to us. So it's not that it came to us the first time from reciprocal discovery.

As it relates to the drug charges and I disclosed as part of our obligation under Giglio and Brady, that we did talk to Jackson County and there is some pending drug charges that

are going to be dismissed at the time Mr. Deleon is sentenced on the federal FIP case here. Clearly, they can get into that. But I think the characterization Mr. Gromowsky is making isn't accurate, how it played out.

Now, I bring this all up though to tell the Court that this is an issue. I know we have the jury here. I don't think --Mr. Deleon will not hit the witness stand before this afternoon. So if the Court would like, we can probably provide the Court with some more information, if the Court needs it. Or we can take it up over the lunch time break, if the Court wants to get started. I didn't mean to necessarily turn into a hearing at this point on this particular issue. I just wanted to alert the Court this is an issue and sounds like it may be something that needs to be resolved before so we're not doing this at the bench with the white noise on.

THE COURT: Let's stop now and let's bring the jury in. Let's get started on time. If we want to talk about it during the lunch hour. I told you about all I can tell you in the abstract. Maybe these things just have to be raised contemporaneously with his testimony.

Let's go ahead and bring the jury in.

(The following proceedings were had IN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Good morning.

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Welcome back.

Let me remind you of some of the things I told you last week. First, our schedule is that we believe this trial will take approximately two weeks. There is no way we can say that with any certainty this morning but that is our best estimate. The jury will work from 8:30 till 5 daily. So we'll ask that you be in the jury room at 8:30 and ready to come into the courtroom at that time. I will endeavor to start on time each morning. That's not a promise because some times things come up that require attention. But we'll try to start at 8:30 each morning. And you can count on being released about five each afternoon. Again, if we can finish with a witness by a few more questions, we may ask you to stay a few minutes after five so that we can finish with that witness and the witness doesn't have to return. But as a general rule, we'll try to dismiss you about five each afternoon.

There will be a mid-morning break, mid-afternoon break of about 15 minutes. We'll try to break for lunch each day about 12:30. We'll take an hour for lunch. And that tends to make the afternoon just a little bit shorter. So those are the daily plans for Monday through Thursday of each week.

On Friday you can plan on beginning at 8:30 but being dismissed at 1:00 p.m. We'll work straight through from 8:30 to 1 then you'll have Friday afternoons to catch up on the things that you missed during the week.

We'll begin in just a moment with opening statements. I have allowed each side up to an hour and a half to present the opening statement. And I'll talk more about that in just a moment as I go through the initial instructions. I'll ask you now to stand and take your oath as jurors.

Ms. Fees?

(Jury sworn.)

(INSTRUCTIONS NOS. 1 THROUGH 7 WERE READ BY THE COURT.)

THE COURT: Is the United States ready?

MR. KETCHMARK: Yes, Your Honor.

THE COURT: Mr. Ketchmark.

MR. KETCHMARK: Thank you.

May it please the Court.

THE COURT: Go right ahead.

MR. KETCHMARK: March 9, 2005. William David McCay was a black man living in a homeless shelter in Kansas City, Missouri. Mr. McCay was in the process of getting his life back on track and he had a job. He worked every morning at Aeroform, a company near the intersection of 9th and Brighton

in the northeast section of Kansas City. Mr. McCay's workday would start typically at 7:00 in the morning but because he was a good employee he would always arrive at work between 6 and

6:30.

Now, on March 9 of 2005, Mr. McCay got up, like he did most mornings when he had to work in the early dawn hours.

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Mr. McCay gathered all of his worldly possessions, placed them in a backpack and headed out the door towards work.

To get to work on that morning he began walking down 9th Street, a street owned and maintained by the City of Kansas City, here in the State of Missouri, in the United States of America. A street maintained for the use and enjoyment of all citizens. And, unfortunately, for Mr. McCay that street happened to be in the northeast and it happened to be in the neighborhood of Defendant Eye and Defendant Sandstrom, because as he began walking to work that morning, it was the last few hours of his life.

Now, ladies and gentlemen, to understand why and how Mr. McCay ends up dead that morning, we need to go back to the day before. We need to go back to March 8th, in the early evening, and see what Defendant Eye and Defendant Sandstrom are doing. And you'll hear, ladies and gentlemen, that on that date, March 8th, in the early evening hours that these two individuals were together. You'll learn how they both grew up in the northeast part of Kansas City and that they were running around and at that time frame in March of 2005, they hung out pretty much 24/7 or all the time.

And you'll learn, ladies and gentlemen, that on March 8th they were with another friend, a female by the name of Regennia Rios. And Ms. Rios --we put some of the names up. I have already alluded to Mr. McCay, the victim in this matter.

Mr. Eye, Mr. Sandstrom, now I'm talking about Ms. Rios. And you'll learn that Ms. Rios was also with these two defendants on March 8th. You'll hear about at that time how Ms. Rios was romantically involved with Defendant Eye in a sexual relationship. And how she had obviously had, also, previously, had a similar relationship with Mr. Sandstrom.

And you'll learn that on March 8th of 2005, these three individuals, Defendant Eye, Defendant Sandstrom and Ms. Rios, are riding around the northeast side in a stolen Dodge Intrepid. And at some point that evening they make the decision to go north of the river. And for those of you not familiar with Kansas City, the northeast is a section of Kansas City, the river, the Missouri River runs along the border of downtown and what we in Kansas City refer to as north of the river is those people who reside north of that river. It's often times called north of the river or the Northland.

So the three of them set out in that stolen Intrepid and they leave the northeast. They head to a quiet neighborhood in Gladstone, Missouri, a suburb here in Kansas City. And they find a purple Jeep parked in the driveway of a home. And you'll hear how they proceed to steal that Jeep. And as they're leaving Gladstone, heading back to the northeast side where they grew up, where they hung out, Defendant Sandstrom is in the Intrepid going down the interstate with Defendant Eye and Ms. Rios following behind in the stolen Jeep.

And you'll hear as how they get ready to come back over the river, back to the northeast side, Eye and Rios exit quickly, effectively ditching Mr. Sandstrom.

And you'll hear that Defendant Eye and Ms. Rios go to an apartment complex and they have sex in the Jeep. And while they're doing that, Defendant Sandstrom is calling them repeatedly and they're ignoring his calls.

After Defendant Eye and Ms. Rios are done, they head back to the northeast section and receive another call from Defendant Sandstrom. It's at this point that they agreed to meet at the home of Jonnie Renee Chrisp, who you also see listed below Ms. Rios.

Now, ladies and gentlemen, you'll learn that Ms. Chrisp is the cousin of Ms. Rios. But back in March of 2005, they weren't on speaking terms. They weren't getting along. And you'll hear how Ms. Chrisp is not a friend of Eye or Sandstrom but an acquaintance. She knew them. And the agreement or understanding between Defendant Sandstrom, who at this time is by himself, and Defendant Eye and Ms. Rios is that they would meet back up at Ms. Chrisp's home and they do that.

Defendant Eye and Rios arrive first. And they're waiting when Defendant Sandstrom pulls up in the Intrepid. When he pulls up, he's mad. He's irritated. And he gets out and he proceeds to tell them that in the time that they had separated, he had been in a 7-Eleven, and that he shot at a

nigger. He's mad and irritated because Defendant Eye and Ms. Rios weren't with him when this happened.

The three of them leave Ms. Chrisp's house because Ms. Rios wasn't welcome inside and they head over to 1106 Ewing, which is the home of Mr. Sandstrom's parents. It's also there in the northeast side. They go to the Sandstrom residence and they hang out. You'll hear that while they're hanging out, Ms. Rios is using methamphetamine. And this wasn't the first time she had used methamphetamine. She had used it before. And while they're there at the Sandstrom residence, they're there for awhile, they get a call from an individual by the name of Vincent Deleon. And that's the last name you see listed in front of you. And you'll hear, ladies and gentlemen, how Mr. Deleon was not only friends with Defendant Eye and Defendant Sandstrom but he was Defendant Eye's best friend. Is Defendant Eye's best friend. And that they had grown up together. He had known him for years. Similarly, Mr. Deleon is a friend of Defendant Sandstrom. Had also known him for years and was close. Mr. Deleon also had previously dated Ms. Rios.

So around midnight the 8th, turning over into the morning of the 9th, Mr. Deleon calls Defendant Eye and tells him that he is over at Ms. Chrisp's house and asks Defendant Eye if they will give him a ride. You'll learn that Mr. Deleon at that time was dating a woman by the name of Christina

Stanley and that Mr. Deleon and Ms. Stanley had gone over to Ms. Chrisp's house because Mr. Deleon was on what is called house arrest. He had been released from jail and had a monitoring box that required him to stay at home. But Mr. Deleon had decided that he wasn't going to stay on house arrest so he cut the bracelet. And he and Ms. Stanley had gone over to Ms. Chrisp's house. And they went over there in search of methamphetamine.

And you'll learn that he did, in fact, get methamphetamine and he and Ms. Stanley and Ms. Chrisp used methamphetamine.

You'll also hear the reason why he is calling these defendants and Ms. Rios is because there is another gentleman at the house that Mr. Deleon is upset with. And he's upset because this gentleman has shorted him on a drug deal. And Mr. Deleon had wanted to go take this individual's truck and secure it as collateral or use it as payment for the drug debt. So he calls up his best friend, Defendant Eye, and asks him to come to Ms. Chrisp's house to pick him up and they agreed to do that. So these three individuals, Defendant Eye, Defendant Sandstrom and Ms. Rios, leave the Ewing address in the stolen Intrepid. They drive back to Ms. Chrisp's house which is also in the northeast and they pick up Mr. Deleon.

With the four of them, Defendant Eye, Defendant Sandstrom, Ms. Rios and Mr. Deleon, in the Intrepid, they drive

to an area by Sheffield Church, a church there in the northeast. And Mr. Deleon locates this individual's truck who shorted him on the drugs. Deleon gets out and with the assistance of one of these defendants steals the truck. And as Deleon is taking the truck, he realizes that it's almost out of gas. So instead of leaving the truck where it's parked, he moves the truck some four blocks so he can come back and retrieve it later.

Deleon then comes back into the Intrepid with these two defendants and Ms. Rios and asks about getting a ride back to Ms. Chrisp's house where he had left his girlfriend.

Now, at that point Defendant Sandstrom tells him that they're not taking him back there. That they have shit to do and tells him to get in. Deleon gets in the vehicle and they proceed to start with Mr. Sandstrom or Defendant Sandstrom driving the vehicle, heading out towards the sports complex, the Chiefs and Royals stadium, out on I-70.

As they're driving in the Intrepid with Defendant Sandstrom driving, Defendant Eye in the front, Ms. Rios and Mr. Deleon in the back, at some point in that trip towards the stadium Mr. Sandstrom removes a .22 caliber revolver. And he has it in what you'll hear witnesses describe as a black waistband. And it's what maybe somebody at Home Depot would wear around their waist to help support their back. You'll learn how Mr. Sandstrom would carry that .22 revolver tucked in

that bandage.

So as they're traveling in the car, the Intrepid, heading out toward the stadium, Mr. Sandstrom pulls the gun out. Mr. Deleon sees the gun and he asks about why does his friend Steven Sandstrom have a gun. And Sandstrom states, discussion about the incident that had happened before and says the gun is for protection. And then he makes the statement to the effect, "I'll kill a nigger quick".

Mr. Deleon in hearing that responds back, I'm not going to kill anybody. I might take their legs out but I'm not killing anybody. To which Defendant Eye then chimes in with statements to the effect that, I don't give a fuck. I'll kill a nigger quick, too.

You'll learn that when this conversation is going on Ms. Rios is present but she's not participating.

Now, the four of them head out towards the stadium. And at some point the plan is decided that they're going to steal another vehicle. They find and locate a Jeep Cherokee in a neighborhood by the stadium. And Defendant Sandstrom and Mr. Deleon get out and take that vehicle. When they exit the vehicle to steal, when they exit the Intrepid to steal the Jeep, Defendant Sandstrom leaves the gun in the vehicle with Defendant Eye. They're successful in stealing that Jeep and they take it to a gas station. And the Jeep is also running low on gas. Mr. Deleon has no money. None of them do. And

he's concerned that the attendant is watching them very closely. So instead of stealing gas, he elects to leave in the Jeep. And at that point Mr. Deleon is driving in that Jeep by himself and Defendant Sandstrom is now back in the stolen Intrepid with Defendant Eye and Ms. Rios.

And you'll hear how they are coming back in from the stadium back towards the northeast. Mr. Deleon wants no part of what they're doing. He's concerned about the statements in the car. He's concerned about seeing the gun. So he, in effect, separates from these two defendants and Ms. Rios who are in the Intrepid. Mr. Deleon leaves and takes the Jeep and drives back to Ms. Chrisp's house where he had left his girlfriend and he's gone for about an hour and a half or two hours.

So now it's around 2:00 in the morning. And you'll hear that these two defendants and Ms. Rios go back to the Sandstrom residence there on the northeast side and they stay there. And during that time frame Ms. Rios is using methamphetamine.

Now when Mr. Deleon gets back to Ms. Chrisp's house, he doesn't stay there long. He picks up his girlfriend, Christina Stanley, and Ms. Chrisp and the three of them get in a vehicle and drive over to a house in Kansas City, Kansas, a female by the name of Christina Carol, who is a friend or associate of Mr. Deleon and another person through which he was

getting methamphetamine. And you'll hear how Mr. Deleon goes over there with Ms. Chrisp and Christina Stanley. When they get over there Ms. Carol is not there. She has apparently left to go get the methamphetamine. So they wait for a period of time for her to get back. And they're over there for a couple of hours.

So now it's getting to be after 4:00 a.m. on the morning of the 9th. About the time Mr. McCay is probably getting up to begin his day.

And you'll hear, ladies and gentlemen, how they end up leaving the house in Kansas City, Kansas and start coming back to the northeast side. And as they're coming back Mr. Deleon is driving crazy, as Ms. Chrisp says. And Ms. Chrisp is concerned because she had previously been involved in a very serious car accident where a car flipped or rolled five times. She was hurt and scared so she's nervous.

So as they're coming back into the northeast side of Kansas City, Missouri, where these defendants lived and grew up, they pull into a gas station called Inner City Oil. It's at 8th and Prospect. And when they get to the gas station, Mr. Deleon stops. Ms. Chrisp gets out of the vehicle and places a phone call to these two defendants and Ms. Rios, calling these defendants at the Ewing address on the cell phone and asks if they'd come to the Inner City Oil location and pick her up.

These defendants and Ms. Rios are still at the Ewing address and they agree to come get her. And they leave from the Ewing address in the stolen Intrepid. The Jeep that they had taken earlier from north of the river, which is a different Jeep than the one Mr. Deleon had taken because he took that one from by the stadium. The Jeep they took from north of the river, the purple one, is left there at the Ewing address and they drive in the Intrepid, the three of them.

And as they are driving from the home there, the Sandstrom home there on Ewing, and they're coming down to Inner City Oil to get Ms. Chrisp, Mr. Sandstrom brings up the discussion of the shooting that had occurred earlier at the 7-Eleven. And he had talked about this at the Ewing address after they had gotten back there as well. And the subject comes up again by Defendant Sandstrom. And at some point in the car ride from the Ewing address to Inner City Oil, Defendant Eye responds, you get to do one, I get to do one.

Defendant Eye also says in the car ride, that the next nigger he sees is on-site. And you'll hear that by using the term on-site, it means that as soon as he sees the person he's upset with or in this case a nigger or a black man, he's going to shoot them.

You'll learn that they drive from the Ewing address and this conversation is going on and they arrive at Inner City where Ms. Chrisp is at. And you'll hear that when they get

there, there are a lot of people around because now it's starting to get more toward dawn and day is breaking. People are getting up, going to work. And as they get there, you'll hear that a lot of people are present, including some African-Americans. But there's too many witnesses and nothing happens at that point.

And you'll learn that Ms. Chrisp then gets into the Intrepid. And as she's getting into the Intrepid in the back seat with Ms. Rios, she sees that Defendant Sandstrom has the .22 caliber revolver with him in the car. Ms. Chrisp gets in the back and they proceed to leave Inner City Oil, heading toward her home there in the northeast.

And as they're driving toward her home, she gets concerned that they're not turning on the street that you would normally take to get to her house and she says as much. Hey, that's my street. That's the street. And they're going past it. And one of these defendants makes a statement that she's about to see something she doesn't want to see. And Ms. Chrisp says, what are you talking about? Or words to that effect. And one of these defendants says at that point, shit, you're about to witness a homicide.

Ms. Chrisp, being a strong-willed individual, says, I'm not witnessing anything. I want a ride. You're taking me home. And demands as much. And you'll hear that these defendants in the Intrepid with Ms. Rios do just that. They

take Ms. Chrisp home. And as Ms. Chrisp is getting out of the back of the Intrepid, she turns and looks at her cousin, Ms. Rios, who she wasn't on speaking terms with at the time, makes eye contact with her and tells her, be careful. Ms. Chrisp then goes inside. She lays down to rest. And these defendants and Ms. Rios leave in the Intrepid.

Ms. Rios realizes that she's almost out of cigarettes so she asks them to go back to Inner City Oil and they do and she gets cigarettes. Again, there are a lot of people around as there were just moments before, including African-Americans, but there's too many witnesses and nothing happens.

And you'll hear that from Inner City Oil they start to head toward a place called Leon's. It's an auto body store there in the northeast. And, apparently, there is a car with a radio system that they want to look at or take and so they leave Inner City Oil and they drive toward Leon's. And, ladies and gentlemen, they never reach Leon's.

Because as their driving toward Leon's with Mr. Sandstrom driving the vehicle, as he's ready to turn toward Leon's, Defendant Eye sees Mr. McCay walking down 9th Street by himself on his way to work. And he tells Defendant Sandstrom to hit the alley.

It's at this point, ladies and gentlemen, that these two stories, tragically for Mr. McCay, intersect. His day, beginning at the shelter, getting up for work, putting on his

backpack and setting out on foot on a public street here in Kansas City, State of Missouri, United States of America, and these defendants' day beginning some twelve hours before as I just described to you. It's about 6:00 in the morning on the morning of the 9th.

With Mr. Eye telling Mr. Sandstrom to hit the alley, Mr. Sandstrom does just that. He doesn't turn. He goes straight and there is an alleyway that he turns the Intrepid down. As he's driving down the alleyway, Defendant Eye looks at him and says, give me the strap. And you'll hear that strap is slang in the hood for gun. Defendant Sandstrom looks back at him and doesn't hand it over initially and says, you don't have the heart or words to that effect. And Eye responds back again, give me the gun. Give me the strap. And Sandstrom gives the gun over to Mr. Eye, who is in the front passenger seat. And as he's driving down that alleyway, coming up to 9th Street, Mr. McCay is walking towards work. And as the car comes up to the end of that alleyway, as it's about to come out onto 9th Street, Eye takes the gun that's been given to him by Sandstrom, points it out the window. And as McCay comes into view, he fires not once, but twice. It's a mere feet away from Mr. McCay. You'll hear, ladies and gentlemen, how they pull out in the vehicle. And that is the basis of Count 1 and 2, that shooting that occurred there at 9th and Spruce in the alleyway.

Now, you'll hear that after the shooting Sandstrom pulls the vehicle out and Mr. McCay is not there. Eye tells Sandstrom hit the block, meaning driving around the block and try to figure out where he went. And Sandstrom does just that. He circles around the block the way Mr. McCay would have gone. He comes back to the point of the alleyway, and McCay is not

there. Eye gets frantic and says, I can't believe he's not there. I shot him point blank in the face. How can he not be there? We need to find him.

Sandstrom, who's driving, turns and looks back at Ms. Rios, who is sitting behind Defendant Eye in the back seat, and Ms. Rios says, we need to find him. He's seen our faces. We could catch a case.

And you'll hear, ladies and gentlemen, how catch a case meant that they could get charged for the crime that was just committed.

At that point, ladies and gentlemen, with Defendant Sandstrom driving the vehicle, Defendant Eye in the front seat, Ms. Rios in the back, they begin driving and looking for Mr. McCay, so they can kill him, to silence him as a witness.

Defendant Sandstrom drives the streets of the northeast looking for Mr. McCay. Doesn't find him, initially. About a half mile to the east at the intersection of 9th and Brighton, as they're coming up there, Defendant Eye tells Sandstrom to hit the street, park the car. Because Mr. McCay

at that point, ladies and gentlemen, is at the intersection of 9th and Brighton, within yards of his work. And he's walking down the right-hand side of the street. They are on the other side on a side street so they would be on the left-hand side. He's on the right. Eye tells Sandstrom to pull over and Sandstrom does. Eye then, with Mr. Sandstrom's gun in the pouch of his hooded sweatshirt, exits that Dodge Intrepid and begins to approach Mr. McCay from the left side of the street with McCay being on the right.

McCay sees him coming. And at some point they end up in the middle of the street. Defendant Eye with Defendant Sandstrom's gun fires multiple shots as he's approaching. One of those shots strikes Mr. McCay in his side and that shot would prove fatal.

But Mr. McCay doesn't go down without a fight. He engages Mr. Eye and is fighting with him, struggling for his life in the middle of the street, shortly after 6:00 a.m. on a work day. And Defendant Sandstrom and Ms. Rios are sitting in the stolen Intrepid, feet or yards away, watching this play out in the middle of the street. Ms. Rios tells Defendant Sandstrom, what are you doing? Go get him. And the Defendant Sandstrom pulls the Intrepid out off of Brighton on to 9th Street, and stops the Intrepid briefly. Opens the door so Defendant Eye can disengage from Mr. McCay and jump in the Intrepid. And before they can speed off, heading east,

Mr. McCay stumbles in front of the Intrepid, falls on the sidewalk on a chain link fence in front of a residence there where he dies.

That, ladies and gentlemen, is the basis of Counts 3, 4, 5 and 6 of the indictment. The counts for interfering with his civil rights and the counts for silencing him as a witness and using a firearm to do so.

Now, you'll learn that as McCay stumbles and passes them with Defendant Eye now back in the Intrepid, Defendant Sandstrom takes off and they head back to the 1106 Ewing address, there in the northeast where they had left the stolen Jeep, the purple Jeep they had taken in Gladstone. And when they get to the Ewing address, they take their personal belongings out of the Intrepid and they move those items into the Jeep. They get another screw driver because that's what they're using to drive the cars to get them started. Ms. Rios gets that screw driver and they leave the Ewing address with Defendant Sandstrom driving the Intrepid. Defendant Eye and Ms. Rios following in the Jeep. And they drive down to an area at 23rd and Manchester by railroad tracks and bridge abutments and Defendant Sandstrom pulls the Intrepid back behind the bridge abutment. And Eye and Rios pull up not quite as far in the Jeep or SUV. Sandstrom gets out and they light the Intrepid on fire to destroy it.

Sandstrom, Eye and Rios then are back in the Jeep and

they leave that area. And you'll learn, ladies and gentlemen, that a gentleman by the name of Peter Paschetti was working that morning on a train that was on the tracks. And Mr. Paschetti sees this play out in front of him. Sees individuals pull up with two vehicles, a vehicle get torched then people leaving in an SUV.

As they are leaving that area, they get a phone call and it's Mr. Deleon again. Now Mr. Deleon at this point is at his girlfriend Christina Stanley's house and he needs a ride. Wants them to come get him and they agree to do so.

So Defendant Eye, Defendant Sandstrom and Ms. Rios leaving the burning Intrepid in the Jeep and go over to the Stanley residence, which you'll also learn is a house there in the northeast side. And when they get there Defendant Eye, Mr. Deleon and others are in the front room of the home, and the news comes on the T.V. And when the news comes on the T.V. there is a story about a homicide that happened at 9th and Brighton. And the story is reporting that the suspects are three black males. And Defendant Eye and Defendant Sandstrom hear that and begin to laugh.

You'll also hear that the news goes on to report that there is a vehicle that is burning underneath the bridge and it is being reported or believed that the two might be connected. And Defendant Sandstrom says, that's the car. And Deleon, knowing he had been in the Intrepid with these individuals

earlier and that statement prompts him to kind of look at his friend, Mr. Eye, and motions him to go outside. And Mr. Deleon and Mr. Eye on the front porch of the Stanley residence by themselves, Defendant Eye makes the statement to Deleon that he smoked that nigger.

And as this conversation is happening or Mr. Eye is telling Mr. Deleon because Deleon says, I'm not asking questions. I don't want to know. Defendant Sandstrom walks out and hears the end of the conversation and says, yep. Confirming Mr. Eye's statements. And then he adds in, like it, love it or leave it.

Defendant Eye, Defendant Sandstrom, Ms. Rios and Mr. Deleon leave in that purple Jeep from the Stanley residence. And as they're leaving, Defendant Sandstrom is driving. He drives right past the intersection of 9th and Brighton. There's police tape up. There's police vehicles. And as he's driving past that intersection, he points over to the activity and makes the statement, that's where Gary, Defendant Eye, shot that nigger. Deleon looks at Eye and Eye's response again is to laugh and say, here, nigger, nigger, nigger.

Ms. Rios is concerned. She describes it as the hood is on fire because there's so much police activity. Decides they need to get away from this vehicle, get away from this area. And the only place she can think to go is to call her

cousin, the one who she wasn't on speaking terms with, to see if they can go over there. So the four of them make that call. And Ms. Chrisp is at home. She had laid down for a period of time. She gets a call from these four, asking if they can come over to her house and she allows them to. She opens up the basement door, after a little hesitation because she's concerned how they come, that maybe the police are following or something. She didn't know but she was concerned. But she let's them in.

And when they come in, Defendant Eye immediately goes to the T.V. to turn on the news, to see the report of the homicide. And it's there. And as the news is on in Ms. Chrisp's basement, Defendant Eye and Defendant Sandstrom are talking and Ms. Chrisp doesn't hear all of the conversation between the two of them but she hears something about how Sandstrom did one earlier and Eye killed the one on the news, Defendant Eye.

These two defendants, Ms. Rios and Mr. Deleon stay for a period of time and then they head out. And at some point they go to a K-Mart, again, north of the river in the Northland. And it's at that K-Mart that they steal a white Dodge Stratus. Defendant Eye and Mr. Deleon leave in that Stratus. Defendant Sandstrom and Ms. Rios leave in the Jeep. Defendant Eye and Mr. Deleon go back to Defendant Eye's mother's house. They take showers. And at the time that

Defendant Eye and Mr. Deleon are at Eye's mother's home, Defendant Eye tells Deleon that the victim didn't die quick, he died slow. And he also tells Mr. Deleon that he, Defendant Eye, and Defendant Sandstrom had been playing a game they called, nigger, nigger, nigger.

Ladies and gentlemen, the government's evidence will also be that in the days following the homicide on March 9th of 2005 there were several conversations not only about the homicide but also about the reasons behind it. You will hear in particular about a conversation that occurs in Defendant Sandstrom's bedroom at the 1106 Ewing address where Defendant Eye makes a statement in the presence of Stephanie Sandstrom, Defendant Sandstrom's sister, and Eye says that he shot the nigger because he was walking down my street on my time.

You'll also hear, ladies and gentlemen, about a conversation that happens in front of the Stanley house. Stephanie Sandstrom will tell you that she was concerned about her brother so she set out on foot a couple days after the homicide looking for him. And as she's walking from her house in the northeast to the Stanley house in the northeast, as she comes up to the Stanley house there is a car parked in front and there is a group of people in that vehicle, including her brother Defendant Sandstrom, Defendant Eye and others. And as she comes up, she's trying to talk to her brother. And he's being dismissive and, basically, treating her poorly. And as

she walks up she is trying to focus on her brother, but she hears other conversations going on in the car. And as part of what she's hearing, she hears Defendant Eye make the statement that he would kill every nigger that walks down 9th Street on his block on his time.

You're also going to hear, ladies and gentlemen, about the Chirino family. And the Chirino family is Kristina Chirino, who is dating Defendant Sandstrom at this time, and her brother Jonathan. And they live in a house where the defendant and others would hang out. And in the basement of that home in the days after the homicide, several people were present including Ms. Chirino and her brother Jonathan. And, again, Defendant Eye made a statement that that nigger was walking in my hood on my time so I smoked his ass.

Ladies and gentlemen, you're going to hear about that revolver, that .22 that Defendant Sandstrom had in the back bandage that was given to Defendant Eye that was used in these shootings, that on St. Patrick's Day, March 17 of 2005, so 8 days after the homicide, Defendant Sandstrom was at his girlfriend's house, Ms. Chirino. The police were looking for him or they found him. They come to the house. Defendant Sandstrom has the gun as the police pull up. He knows they're out there. He panics. Doesn't want the gun on him when the police come. He's in the basement. He's looking around. He sees the closet in the basement. He takes the gun and puts the

gun in the closet moments before he's arrested by the police.

And you'll hear, ladies and gentlemen, about when he is then taken into custody. He makes a phone call that was recorded and you'll hear that recording. And calls his sister Stephanie and leaves her a message about the fact that he was arrested and tells her in so many words about the gun being at Kristina's house and she needs to get it for him and get rid of it.

And, ladies and gentlemen, you'll hear that Stephanie Sandstrom listens to that message and does exactly what her brother asks. She goes over to the Chirino house, has contact with Kristina and Jonathan, who were also there when Defendant Sandstrom hid that gun. And Stephanie Sandstrom gets that gun, she takes that gun, that revolver. She goes back to her parents' house on Ewing. She wraps the gun in diapers, tells her parents what she's going to do, and drives to a bridge at 17th and Manchester over the Little Blue River, throws the gun.

Now, you're going to hear, ladies and gentlemen, how Ms. Sandstrom was questioned about her involvement in the disposal of the gun and denied it. But, eventually, she did tell the FBI about her involvement in disposing of the gun.

Ladies and gentlemen, the government's evidence will come from several sources. You're going to hear evidence from these defendants', Eye and Sandstrom, family and friends. None of whom want to be here. Most of whom lied to the police when

they were initially questioned, lied to the FBI when initially questioned. One of those in particular you will hear from is Ms. Rios, who we talked about. And Ms. Rios had received immunity or did receive immunity from the government but she nonetheless lied initially to the FBI and to a federal grand jury about information that she withheld. And you'll learn that Ms. Rios was subsequently charged and convicted and is serving a five-year prison sentence for lying to these agents during the investigation.

In addition, ladies and gentlemen, you'll hear testimony about how these defendants used the term nigger as well as the term nigga, N-I-G-G-A. And you'll hear testimony from their family and friends that they knew the difference between the two and that when they used the term nigga, they were using hood slang to refer to a friend and associate. And when they used the term, N word or nigger, they were using it as a derogatory reference towards African-Americans or blacks.

In addition to their family and friends, ladies and gentlemen, you will also hear testimony from several witnesses, civilians who were in the area of these two shootings. You'll hear witnesses who heard shots and you'll also hear from two eyewitnesses to the second shooting at 9th and Brighton where Mr. McCay lost his life. Two gentleman, who were driving to work that morning, who saw this play out at about ten after six. One of whom calls 9-1-1.

In addition, ladies and gentlemen, to their family and friends, and to the civilians you will also hear testimony from experts with the Kansas City, Missouri Police Department Crime Laboratory. You will learn that genetic material recovered from the victim, Mr. McCay's fingernails, at the time of his autopsy was a mixture that was consistent with both Mr. McCay's DNA as well as the DNA of Defendant Eye, the man that he was struggling with at 9th and Brighton when he was fighting for his life.

You will also hear from divers, volunteer divers with the Lee's Summit Underwater Search and Recovery, a dive operation with volunteers in the community who go out to help when there is something water-related. And those divers went into the Little Blue River after Ms. Sandstrom started telling the FBI agents about where she disposed of the gun. And you'll learn that they retrieved a .22 caliber revolver from that location where Ms. Sandstrom said she pitched the gun.

And you will hear, ladies and gentlemen, that that gun was also submitted to the Kansas City Police Department Crime Lab and that a ballistics expert looked at that gun and compared test fired bullets from that .22 revolver to the bullet that took Mr. McCay's life that was recovered at his autopsy. And you'll learn that the bullet from the autopsy and the test fired bullets had similar class characteristics.

Finally, ladies and gentlemen, you'll hear testimony

and evidence about numerous threats made to have Ms. Rios and Mr. Deleon killed or harmed because it was believed that they were cooperating with federal authorities in this investigation. One of those threats, ladies and gentlemen, was contained in a letter written by Defendant Sandstrom sent to a Carolyn Galyean, who was probably the best friend or closest friend of Ms. Rios at the time. And that is the subject of Count 9 of the indictment.

Ladies and gentlemen, in conclusion the government's evidence will be that William David McCay was an African-American man who was walking to work in the early morning hours of March 9 of 2005. And that he was selected and killed by these two defendants because of the color of his skin, because of the fact that he was using a public street and because they wanted to silence him as a potential witness against them. Thank you.

THE COURT: Are you folks comfortable? Anyone need a break?

If at any time during the course of the trial, if you're not comfortable, will you let me know that?

Mr. Osgood.

MR. OSGOOD: Thank you, Your Honor.

Good morning, ladies and gentlemen.

I didn't talk to you at great length individually
during the selection process and I relied pretty much on the

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questioning of co-defendant's counsel because he asked, basically, the questions that I would have asked any way and I didn't spend a lot of time with you. Unfortunately, I'm going to spend, unfortunately for you, more time with you this morning and throughout the trial. I did not mean that I considered the case any less serious or important than my co-counsel. It simply didn't make sense to beat a dead horse, so to speak, on questioning. And we wanted to get our jury selected and get out of here.

One of the things I want to start out with is to tell you about the purpose of opening statement. Now, Mr. Ketchmark has just given you his opening statement. And it's merely what his view of what he thinks the evidence will show. An opening statement, the judge will tell you, and he did, is not evidence. It's merely what the lawyers believe the evidence will show during the course of the trial. And a lot of lawyers like to tell juries, and I'll tell you, hold the party that makes an opening statement to what he says his evidence is going to be and then look back during your deliberations and see, did he, in fact, present that evidence? Did that evidence, in fact, come from credible witnesses in that witness box under oath, sworn to tell the truth? That's where your evidence comes from. It doesn't come from me. It doesn't come from those lawyers over there. It doesn't come from any of this collage of people sitting here representing the

government. It comes from that witness box.

Now, what types of --No. 1, I want to tell you also that a criminal trial is just like, I like to analogize it to a jigsaw puzzle. You know, you buy a puzzle, one of these 500 piece puzzles. And if you like to do that, I like to do that some times, wife and I, we enjoy that. If you didn't have that picture on the front, it would be a nightmare. You turn all the pieces over and they're cut up and there's 500 of them and you start putting it together. As you put it together and plug each little piece in the jigsaw puzzle, the picture emerges. You have the benefit of the picture on the box, which is your opening statement for the puzzle. Gives you some idea of where the skyline is, where the flowers are in the puzzle and where the ground is and what not. So you have a starting map to look at there with the box cover. But you have to still work the puzzle and you have to put the pieces in the puzzle. And if you had a box with the wrong picture on it, it would probably drive you nuts as you're trying to put the puzzle together. Pieces of the puzzle are going to come from this witness box up here.

Now, what kind of testimony and evidence are you going to be confronted with? You're going to have what is called direct evidence of live witnesses. Now, there are, everything that Mr. Ketchmark told you in his opening statement, virtually, from, maybe with the exception of five

minutes worth of time he talked to you, that evidence comes from two people. Regennia Rios, the woman who was in the car with these defendants and from this Mr. Deleon, who less than a month after this crime, himself, committed a murder and is serving time in the penitentiary for the crime of murder. So the bulk of what he told you came from those two people.

Now, that's live testimony. You're going to be told how to evaluate that. And the judge told you in opening instructions you can believe all of a witness's testimony, part of a witness's testimony, or none of a witness's testimony, if you believe they lied to you and they have no credibility.

Now, before I go further, I'm going to tell you that the incident at 9th and Spruce, one half mile away from where Mr. McCay was killed, did not happen. The government's own evidence will be that according to this Ms. Rios, they drove quickly down to 9th and Spruce, parked, got out of the car just as Mr. McCay was crossing the intersection. Government's counsel told you it's a half mile. Anybody on this jury that's ever run track knows that a top high school athlete can run a half mile if he's really good, in about two minutes. It takes less than two minutes to drive from the first shooting location, the half mile down to 9th and Spruce and park and get out of the car and have the confrontation.

According to the government, Mr. McCay after being shot twice in the face was able to go a half a mile in top high

school athlete time, slow down and start walking after he'd apparently run a sub-two-minute-half-mile. And he's walking across the intersection and that's when he gets into the confrontation.

What's the other kind of evidence? Forensic evidence. There will be no forensic evidence. By forensic evidence I mean fingerprints, DNA, firearms expert testimony, based on recovered items and that kind of thing. There will be no forensic evidence about what supposedly occurred at 9th and Spruce, a half mile back up the road, the basis of all the first charges in this case.

There will be testimony that the FBI in an attempt to corroborate what Ms. Rios told them about the so-called first incidents, they looked all over these buildings. And as you looked out from this alley and, look, there's nothing but buildings. It's an area called the Island at 9th and Spruce. And there are buildings all over the place. They went all over. And the testimony will be through government witnesses they combed that area looking for bullet holes in the walls of these buildings. Or bullet holes, maybe the gunshot down on to the pavement. Found no evidence, whatsoever, to corroborate that.

Now, what's the other kind of evidence that you have? You have opinion evidence from people who are experts in a field. And there will be, first of all, evidence that, in

fact, Mr. Eye was in a fight, rolling around on the ground with the deceased when the deceased was shot. If you listened to Mr. Ketchmark's opening statement, he told you that Ms. Rios is going to claim that they were hunting, quote, for a nigger to kill. Listen to that testimony and evaluate it. If you're hunting for a nigger to kill, do you get out of the car and get in a fight with him first before you decide to kill him? Think about it.

I don't want to argue my case now but just throwing some things out I want you to think about. And I want you to listen to each and every one of these witnesses. And until you hear every one of these witnesses at the close of all the evidence, you don't have all the pieces of the puzzle out on the table. You can't put a jigsaw puzzle together if you leave half the pieces in the box. So you're not allowed, as jurors, and you took an oath, to make any decision until all the evidence is in.

Who is the defendant in this case, Gary Eye?
Mr. Ketchmark has told you a little bit about him already. Gary Eye was 18 years old when this happened. He had just turned 18. He's just barely 21 today. He grew up in the northeast side. His mother is an Ogallala Sioux, Native American. She's dark-complected. And part of the family, the Eye family, actually, is married to African-Americans. And Mr. Eye grew up around them and played with them and knew them.

Now, why is this important? We talked about during jury selection elements of the offense. In addition to the charge of murder of Mr. McCay, to have this case here in federal court instead of state court where it really belongs -

MR. KETCHMARK: Your Honor, may we approach?

THE COURT: You may.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. KETCHMARK: Your Honor, I'm going to object at this point. I gave him some latitude with his reference to if you're hunting, why are you going to get in a fight? I think at this point he's trying to get into his theory of the case. It's not time to argue that. The Court has made that abundantly clear. I think it's impermissible evidence. He can say what his evidence will be which he's doing with Mr. Eye. To say he's not a racist, that information is impermissible and I would object.

MR. OSGOOD: I can tie the elements to fact.

THE COURT: You're arguing your case, John.

Objection sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. OSGOOD: I'm not going to argue my case now.

There's a time for that later and this is not the proper time to argue my case. That's at the close of the case.

I'll tell you some more about what the evidence is

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going to be and where it's going to come from. Getting back to Mr. Eye, again, he's at least a quarter Sioux Indian although he probably doesn't happen to look like it. Dropped out at an early age out of school and took up the so-called hip hop culture.

Now, what's the hip hop culture? The evidence will be that the government seized a number of letters written by these inmates to each other and their friends or relatives and girlfriends, from the jail. Those --and they also seized a bunch of tape recordings made by these defendants from jail talking to their girlfriends and friends and associates. In those tapes, and those letters, there is replete use of the so-called hip hop culture terms. You will see nigga. You'll see cuz. Referring to cuz, even though it's not a cousin, referring to a close associate. You'll see ho. You'll see fam-fam for family. You'll see numerous what most of you would probably consider filthy four letter words replete in these tapes and these letters. You'll have some of those to listen to and some of those to see. You'll not see in any of those letters or any of those tapes the word nigger. It's nigga, cuz, ho, bitch. All the stuff that you will hear on a rap CD if you were inclined to buy one. The evidence will be one of the items seized from the vehicle after all this occurred was a rap CD by one of the more well known rappers, Trick Daddy, I believe was his name.

This is the kind of behavior, the evidence will show, that Mr. Eye routinely emulated, looked up to, lived, talked about and practiced.

Now, specifically, let's talk about Regennia Rios.

The government will sponsor her. And she will say they planned to hunt for a black person to shoot. She'll tell you that they left this Inner City Oil and they went down 8th Street, 8th Street. In Kansas City, the numbered streets run east and west. The named streets run north and south. We right now are facing south as you're sitting in the jury box. They leave and they go down 8th Street. According to Ms. Rios they go down 8th Street because 9th Street is copulated. Now, that's not a reference to any sexual act. Copulated was part of their slang for cops. There is, apparently there is a police department gas station not too far from the place. And 9th Street is a main street. And she'll explain they went and decided to go down 8th Street a block north because 9th Street was copulated.

They're driving down 8th Street which has got all houses. And it's difficult. You can't see through the houses over to 9th Street. They get to Spruce. Now, Spruce, again, is a half mile from where Mr. McCay was ultimately shot. They get to Spruce, and she'll testify that Mr. Sandstrom, driving the car, turned the wheel and started to pull on to Spruce. That's her testimony. She says that they saw Mr. McCay stepping across the street, a block down at 9th and Spruce.

And that's when she says that she said hit the alley and they drove down and turned into the alley and this shooting occurred at the first location.

Now, I'm going to actually tell you what she said here in a minute about all this and how many different versions of it she gave. But bear that scenario in mind. That's what the government says she says happened at that point. She then says they hit the block and went around the block and they drove immediately back up and down to Van Brunt and up Van Brunt, which is about three blocks down and turned back onto 8th Street and went from 8th Street down to Brighton. Remember the homicide occurred at 9th and Brighton. So they immediately drove down there. Again, less than two minutes. They turn on to Brighton and go south and that's when she says she saw Mr. McCay at the corner there.

Now, there will be forensic evidence in the case, again, that Mr. McCay had, underneath his fingernails, the DNA of a Gary Eye. That's evidence that is virtually indisputable and will be conceded. Mr. Eye was in a fight with Mr. McCay in the middle of 9th and Brighton. There will be two civilian witnesses to what happened at 9th and Brighton, what really happened. There's civilians, witnesses. Lugos, they live in the house right next to the fence where Mr. McCay died. Mr. McCay died on the fence. And there's even a cut on his ring finger where he's apparently hanging on the fence and

slides down. The Lugos will tell you, I think one of them will testify through an interpreter but Mrs. Lugo and Mr. Lugo will tell you, basically, that they heard three shots. That Mr. Lugo heard a shot and ran downstairs and they heard two more shots. And they looked out the window and Mr. McCay was hanging on the fence and the car sped away.

The coroner will come in here and testify about the cause of death. He will tell you that Mr. McCay was shot in the side and that the bullet went through and went up into the heart and that he expired very shortly thereafter.

Ms. Rios will tell you in one of her versions that Mr. Eye grabbed Mr. McCay around the neck, around the throat, jammed the gun into his chest or side and pulled --first she says chest then pulled the trigger several times. This is after, by the way she has testified previously that Mr. Eye had shot him twice in the face, a half mile away.

The doctor, the coroner will tell you that there was no strippling, which is a fancy word for powder burns on the body. The wound in the side was from a distance. The government's own firearms expert and the defense expert will tell you that there are no powder burns. Well, first of all, strike that. The government's witness, their expert witness who tested the clothing for powder burns will tell you, there are no powder burns on the clothing that Mr. McCay was wearing. The defense expert will explain to you his understanding about

powder burns. He did not examine the clothing. There wasn't any reason for him to because none was found.

The government's expert will tell you that the shot that killed Mr. McCay, to leave powder burns would had to have been closer than 38 inches. This is a 35-inch shirt so it would have had to have been closer than my arm's length to leave powder burns. He'll tell you there were no powder burns. That's forensic evidence.

There's only one bullet hole, of course, not three. The gun belonged to Steve Sandstrom. He carried it in an Ace bandage. When they stopped at 9th and Brighton, Mr. Eye had to urinate. He got out of the car and was urinating. It was a totally chance encounter with Mr. McCay. They saw Mr. McCay. Mr. McCay saw him, apparently. They got in a fight in the middle of the street. At that point Mr. Sandstrom or Ms. Rios, probably Mr. Sandstrom, got out of the car and shot Mr. McCay. Mr. Eye did not know it was going to happen. He was involved in a fight with him, rolling around on the ground.

As the government told you, the evidence will be that and Lugos will talk a little bit about this. That Sandstrom and Rios then pulled around the corner and picked up Mr. Eye. In fact, Mr. Eye, according to some of the testimony, was getting a thrashing or being thumped on the ground by this Mr. McCay who was getting the best of him. They drive off and leave the scene. There is a civilian witness who doesn't have

a murder conviction and hasn't pled guilty to perjury and doesn't have any baggage and will tell you he was on his way to work, driving down 9th Street. He drives through the intersection. And in his rear view mirror he sees two people fighting on the ground. And he looks back to --he's driving and he hears a shot shortly after that. He hears one shot. He calls the authorities ultimately.

Now, what else will Ms. Rios tell you? On 19 July of 2005 she testified in front of the grand jury, about 86 pages worth of testimony over a couple of hours. And they asked her as she was completing her testimony, well, how were you treated? I'm quoting now. I'm reading from transcripts here. Fine. Just, you guys are friendly, not rude. Since I lied to you the first three times, you guys probably should be mad. But you guys treated me with respect. That was on 19 July of

05. She then -By the way, she lied to the police department before this. First, saying she was not there at all, didn't know anything about it. That they had come back to the house and made admissions to her. By the time she testifies on 19 July, she's admitting that she's there. And she gives various statements to the FBI. Lies in those. Then they get her back in the grand jury on 28 September of 2005. All right. Almost three months to the day and she's in grand jury again. And she had been interviewed before that and they asked her about the

interview and she says, yes.

MR. KETCHMARK: Your Honor, may we approach again?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. KETCHMARK: Again, Your Honor, I'm going to object. If he wants to get into the fact Ms. Rios is giving inconsistent statements, he can do that. I think he can also ask her questions about what she said. Say I'm reading from a transcript. There's no --Ms. Rios hasn't denied --he reads and this is what she says. This is improper use of prior grand jury testimony because the only way you can use it is if she's asked about it and she denies it, then he can use the prior grand jury testimony to impeach her. If he wants to summarize, he can. But going, and I quote, as I read from the grand jury, that's clearly improper. And it's one thing to suggest that there's inconsistencies. He can bring that out. I have no problem with that. He has a right to do that. But to go to the next step he is, I would object.

MR. OSGOOD: It's substantive testimony under the federal rules of evidence.

MR. KETCHMARK: She denies it. It is substantive. Prior inconsistent grand jury or sworn testimony under oath given in a prior proceeding is relevant as substantive evidence if the person denies it. The foundation requires that the

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person be allowed an opportunity to, to basically testify. If it's not inconsistent, if she says it's consistent, Judge, we've also found that as part of one portion of the trial brief that we filed.

THE COURT: Rule 801D1, prior statement by a witness, I think supports the government's position. I'll let you summarize it at this point, if you choose to. But I don't think it's substantive evidence unless she denies it.

MR. OSGOOD: Very well.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. OSGOOD: I will ask Ms. Rios at length about her prior testimony. I'm not going to go through it in detail at this point. We'll shorten it a little bit. She admitted to lying in the second grand jury. About 15 times. She admitted in the grand jury to fabricating a story entirely at one point about an incident. The evidence will be that she repeatedly changed her testimony and gave them more as time went on and would flip flop back and forth about what happened, trying to protect this person or that person or herself. We'll spend a lot of time with her. When we hear her testimony, you'll see that she is not a friendly witness.

I'm done. Just about done. I want you to listen carefully to these witnesses, everything that they have to say. And put this thing together. Consider as you're listening to the testimony who had what motive to say what and why they said

it and when they said it and how it evolved over time. I think when you hear the evidence in this case, you will conclude that Mr. Eye and Mr. McCay were both, unfortunately, at a location that resulted in Mr. McCay's death. But that it was not premeditated and that it was, in fact, an unfortunate incident that escalated after a fight started. And that Mr. Eye is not a racist and there will be no direct evidence, credible evidence to support the allegation of race in this case. Thank you.

THE COURT: Mr. Gromowsky.

MR. GROMOWSKY: May it please the Court?

THE COURT: Go right ahead.

MR. GROMOWSKY: Counsel.

Ladies and gentlemen, in these coming weeks you're going to have to listen very carefully what goes on in this courtroom because already you've been provided with two accounts of what may have occurred out there on March 9, 2005. You've got the government's version of events and something happened at 9th and Spruce, turned around and happened again at 9th and Brighton. Got co-defendant Eye's statement now that nothing happened at 9th and Spruce. It all happened at 9th and Brighton. And not only did it happen only there, but now, all of a sudden, Mr. Sandstrom is the one who pulled the trigger.

What we're looking at here is we've got a situation where these people are trying to make you disbelieve reality.

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And the reality in this case is going to be spelled out throughout the course of the entire trial. You need, actually, to listen to all that very carefully because it's important to Mr. Sandstrom that you do that. It's important because we're looking at saving a gentleman's life. It's in your hands and so it's an important responsibility that you have. And we'll ask you to listen to everything along the way.

Now, with that in mind I've got to tell you the version of events that you're probably going to hear from Mr. Sandstrom's defense team will be similar to what the government is going to say. We think the occurrences that took place took place similar to what they're saying. The problem is they have left out key information that they know is available but they don't want you to hear because it takes away the motive that Mr. Sandstrom might have to be involved.

I'm going to talk to you a little bit about that now. Dude, you're crazy. You're tripping. You're acting stupid. You're taking this to a whole new level. You're going too far. Those are the words that Mr. Sandstrom said immediately after Mr. Eye shot at somebody at 9th and Spruce.

Dude, you're tripping. You're crazy. You're going too far. You've taken it to a new level.

Clearly the words of someone who did not know someone was going to be shot at 9th and Spruce on March 9, 2005.

Now, let's back up and see how Mr. Sandstrom even got

there. The evidence is going to be that Steve Sandstrom, Gary Eye, Vincent Deleon and Regennia Rios all grew up together in the northeast neighborhood of Kansas City. But they didn't grow up together. Mr. Eye and Mr. Deleon were best friends. You heard them talk about that. And I think that's what the evidence is going to be here when it's presented to you. Mr. Sandstrom was friends but not best friends with Ms. Rios. There is a connection then between all these groups because Ms. Rios at some point in time was dating Mr. Deleon. So once in awhile but not often they would all get together at some point, you know, hang out together, run around together. But at the best the evidence will support is that Mr. Eye and Mr. Sandstrom were simply acquaintances. They knew who each other were. But they didn't know much about each other and didn't hang out together on a regular basis.

You're going to hear that Ms. Rios, on the other hand, was very good friends with Mr. Deleon, was very good friends with Mr. Eye, became acquainted with Mr. Eye because she was dating Mr. Deleon and Mr. Eye was his best friend.

At some point she stops dating Mr. Deleon, starts dating Mr. Eye. And even up to the point of when all this occurred on March 9, continued to be infatuated with him. In fact, had sex with him the evening before in a parking lot.

Simply put Mr. Sandstrom knew Deleon and Rios, knew of Eye but they weren't best friends. The dynamics of that

however changed just a couple weeks before this came down. Just about a couple weeks before March 9, 2005 the relationship between them changed. The evidence is going to be that at the end of February 2005, again, just a few days before this took place, Mr. Eye got in touch with Ms. Rios and said, hey, can you get Steve Sandstrom in contact with me? I need him to steal a car for me. Can you get him in contact with me? Obviously, not a situation where they're so close he can feel free to call up Mr. Sandstrom. Doesn't even have his number. So he has to have Ms. Rios act as an intermediary and get him over there.

Now, I'm going to be honest with you. The testimony in this case is going to be Mr. Sandstrom is an exceptional car thief. That's what he does. Some people are good at sports. Some people are good at math. Some people are good at, you know, whatever hobby they have. Mr. Sandstrom is good at stealing cars. And Ms. Rios is going to tell you that. And in the end Ms. Rios ended up linking the two of them up. That's the point they started hanging out more frequently together but only for a few days up until March 9, 2005.

Now, let's fast forward to March 8th 2005. On that evening Mr. Sandstrom, Mr. Eye and Ms. Rios, as you heard, were altogether. They were hanging out. They were kicking it. They were smoking some dope, smoking meth, getting high. Running around town, you know, doing their thing. At some

point, like they said, drove up north of the river, up to Gladstone, Platte City, in this neck of woods. Started looking around for a car to steal. Eventually, steal one. When they're coming back to Kansas City, Ms. Rios starts out in the car with Mr. Sandstrom while Mr. Eye drove the other stolen car back downtown. Mr. Sandstrom gets on her nerves, starts irritating her. So she ends up changing vehicles. Getting in the car with Mr. Eye because Mr. Sandstrom is irritating her. And she's infatuated with Mr. Eye and wants to see if something can't happen there. Driving back down, she would testify that Mr. Sandstrom was irritated by all this. Didn't like the fact she was getting out of his car, jilting him, going over to Mr. Eye. He starts speeding up. Ends up ditching him just like the government said. They go over to a parking lot to have sex together, while he's calling on the phone, trying to get in touch, trying to figure out where they went, trying to get linked back up.

Later that night they did get linked back up. Smoked some more methamphetamine together. We expect that Ms. Rios will testify at some point during this evening, that time frame, that Steve Sandstrom tells the two of them, tells Gary Eye and Regennia Rios that he had to shoot somebody over at 7-Eleven. Shot him at 7-Eleven. According to Mr. Rios, Mr. Eye's response to this statement was if Mr. Sandstrom gets to shoot someone, then he does, too.

Here's another part of the story left out. When he says, if you get to do it, I get to, too, Mr. Sandstrom told him, no, dawg. It ain't like that. It's not a tit for tat. Just because I shot at someone doesn't mean you get to shoot at someone. In other words, Mr. Sandstrom specifically told him he didn't get to shoot anybody.

Now, the government mentioned earlier that they told or that some of this conversation about the 7-Eleven shooting took place in front of Mr. DeLeon. He had some sort of input on it and this was concerning to him. He wanted to get out of the car because of talking crazy and the shooting went down. That's not in Mr. DeLeon's grand jury testimony. We don't anticipate he'll come in and change his story. All of a sudden say there was some sort of conversation about 7-Eleven in front of him.

All right. At this point I think it's important that I probably try to clear a couple things up, first. The evidence is going to show that the 7-Eleven shooting never took place. It didn't happen. Government heard about it, they sent out their investigators. They sent out police officers from the Kansas City Police Department, checked the 7-Elevens. They know which one it supposedly occurred at. They talk to the people who were working that night as clerks, working over there. Didn't hear any gunshots in the parking lot. Didn't happen. Later on, they're going to expect you to believe the

same weapon used in the 7-Eleven shooting could be heard a couple blocks away but they couldn't hear it right there in the parking lot of the 7-Eleven. No evidence that the 7-Eleven shooting ever took place. This begs the question then, if the shooting didn't take place, why did Mr. Sandstrom say that it did?

Brings me to the second thing that needs to be explained. Maybe by now you can figure it out yourself. What you've got here is two guys and a girl in a car running around together. One of the guys, Mr. Sandstrom, used to have a relationship with Ms. Rios that was intimate. They used to be involved with each other, boyfriend-girlfriend. This is just a short time before all this came down. Now, she's spurned him and going with Mr. Eye. So, you've got two guys, basically, trying to one up each other all night long. And Ms. Rios will tell you that. They're in the car all night long talking who's badder, who's bigger, who's tougher. That's what is going on in the car. Basically, that they're trying to just impress her, impressing the girl. That male instinct's kicking in. Some of us might buy flowers. Some of us might try to stand on our hands to impress the girl. Romantic people might even go ahead and try to write poetry. But as it turns out, if you live in this neighborhood and you grow up poor in this neighborhood and from a bad family, and you're trying to impress a girl tougher than either one of you, you talk about

how bad you are. That's going to impress her. And that apparently works. That's going on in the car that night. That's why Mr. Sandstrom says he shot someone at 7-Eleven, even though it didn't occur. He's trying to make himself look bigger and badder than Mr. Eye.

MR. OSGOOD: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: Obviously, the government is not objecting to argument here because the argument is supporting their opening statement. This is blatant argument. Has been since he started.

THE COURT: Well, I didn't hear as much argument. Let's talk about what the evidence will be.

MR. GROMOWSKY: I will.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. GROMOWSKY: In any event, Mr. Sandstrom did come from a bad home. That's why he developed the way he did. That's why he's in the car talking the way he is. You're going to hear evidence that his parents are chronic drug users. They have been his entire life. They've been in and out of prison. He's been floating around to different places growing up.

Every time they're back in his life, they're doing drugs with him, sharing drugs with him, asking him for money so they can

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buy more drugs. When he steals cars, parks them in front of the house, they don't do anything to discipline him, tell him not to do that. That's the kind of environment he grew up in. That's why he's in there talking about he shot someone at 7-Eleven, even though it didn't happen.

In any event, around 6 a.m. on March 9th, Steve Sandstrom, Gary Eye, Regennia Rios, end up in an alley together at 9th and Spruce. Mr. Eye, as you heard, asked Mr. Sandstrom for his gun. A gun he's only had for a couple weeks. That will be the evidence. That he doesn't normally carry a gun. Doesn't have a history of carrying a gun. In this case, he has one. Mr. Eye says, let me have the gun.

He tells him no.

Let me have the gun.

You haven't got the heart to use it.

Let me have the gun.

Finally, gives it over to him thinking, truthfully, he doesn't have the heart to use it.

That's why a short time later when Mr. Eye sticks his hand out the window and shoots that someone at 9th and Spruce in the alley, you hear, dude, you're crazy. You're tripping. What are you doing? You're taking this too far. You're acting stupid. This is what is said in the car in response. Clearly, again, a response of someone who doesn't think a shooting is

about to occur or that he's going to be a part of it.

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Mr. Sandstrom, at this point, is freaking out. Still telling Mr. Eye that he's crazy. Mr. Eye is ordering him, go around the block. Hit the block. Still ringing in his ears, gunshots ringing in his ears. And he's upset and he's fired up. And he obeys the order. Goes around the block. Circles around one block is all. Less than a minute. Forty-five seconds to a minute is all it takes. Comes back around. No one is there. No shooting victim. Where did he go? Forty-five seconds. He was able to skedaddle all the way down the road to 9th Street completely out of sight.

At this point Ms. Rios, the instigator of much of what occurred on that evening, pipes in. We're going to catch a case. He saw our faces. We need to go find him.

The evidence will be from Ms. Rios, Steve Sandstrom looked back at her in disbelief. Couldn't believe what she was saying. Mr. Eye chimes in at this point, too, got to go find him.

Again, you're crazy. You're tripping. You're taking this too far. No.

That is going to be what Ms. Rios will tell you happened in the car. Mr. Sandstrom was ordered to go chase down whoever it was that just got shot at. He tells them, no, can't do it. But high, scared, sitting there just a few inches away from someone with a gun in their hands who just used it, he does eventually drive down 9th Street and follows their

directions on where to go. Drives down about three blocks, four blocks, Van Brunt. Hang a left. Circle around on 8th Street. Back down 9th on Brighton. Minute or two. That's all it takes to get around there.

At that point he parks the car on the side of the street, on the curb. Mr. Eye gets out. Moves out into 9th Street. Afraid he might get recognized, Ms. Rios, the government's star witness, the one with immunity, says, hey, give me your hat. He's got a hat, distinctive white baseball hat. Anybody sees that, they're going to recognize it. So she says, you're going to get seen, give me the hat. He takes it off, gives it to her. Puts it on her head and puts a hood over it and sinks down in the car.

Mr. Eye goes out there. And much of the story from there is going to be just like the government says as they explained it to you. But the bottom line is Mr. Sandstrom is not involved in it. Didn't know the first shooting was going to occur. Didn't have any involvement in the second shooting. And that's what the evidence is going to be.

The evidence is going to be pretty much as we described in the coming days. And you're going to have to listen to it carefully. But at the end of it, you'll see there is no motive, no race motive. There is no reason for a race motive. Didn't know the shooting was going to occur. If you didn't know it was going to occur, there is no intent. If

there's no intent, there's no motive to make it happen.
Without that, not guilty on it.

But you have to listen because there's going to be a lot of different witnesses in here. Some of them are, well, most of them, even ours, some of our witnesses are not going to be the greatest characters. You're going to hear from Mr. Sandstrom's own family coming in here. They're going to talk to you about how bad they made it for him growing up. They're going to talk to you about what occurred after the shooting that they didn't get into. But Mr. Sandstrom made some comments to them that made it clear to them that he was upset by what had occurred, that what had transpired bothered him, irritated him. Very upsetting to him.

You're going to hear from some people who knew Mr. Sandstrom growing up that were not family. You're going to hear from some friends that say, you know what, despite everything his family did to ruin him, one thing they did do right, they raised him right as far as getting along with everybody. Because in their neighborhood, they had to. It's a mixed neighborhood. There's African-Americans. There's Asians. There's Hispanics and whites. And they all live together. So he had to be able to grow up with these people and not have a problem with them because that's who he hung out with. Those were his friends.

In that regard you're going to hear from some people

from Family Court who knew Mr. Sandstrom when he was in this Family Court system with his own parents and his problems on top of it. They're going to say when he was there he was hanging with the African-American kids. He didn't hang out with the white kids. He sat there at the table and beat the table with them, made up rap songs with them. Actually hung out with all the African-Americans kids to the exclusion of the white kids. And those are going to be people who are completely neutral and unbiased in this case, that will come in and explain not only was there not racial motive that night but there wouldn't be racial motive because that's not the kind of kid he was.

Now, you have to look very carefully at the witnesses the government is going to bring in. A lot of the evidence you'll hear will be on cross-examination because this whole band of them coming in, bunch of murderers, dopers, you've got liars, admitted liars, people that have been convicted now by the government of lying to them and to the grand jury. And the evidence is going to show their story has changed over and over and over again to the point that really I don't think a lot of it, I don't think, me any way, really know what they're going to say when they come in here and take the stand because they just can't keep the story straight.

We do, however, know what Steven Sandstrom said the morning of March 9 in the immediate aftermath of the initial

shooting at 9th and Spruce. Dude, you're crazy. You're tripping. You're acting stupid. You're taking it too far. You've gone too far. Clearly, the words of someone who did not know a shooting was going to occur. And we're going, at the end of all this when you get the chance to deliberate, it's important that you go in there and think about those words because they're very telling. And they will tell you that Mr. Sandstrom is not guilty of these crimes with which he's charged. Thank you.

THE COURT: Instruction No. 8th. We are about to take our first recess. And I remind you of the instructions I gave you earlier. During this recess or any other recess you must not discuss this case with anyone including your fellow jurors, members of your family, people involved in the trial or anyone else. If anyone tries to talk with you about the case, please let me know that immediately.

Do not read, watch or listen to any news reports of the trial. And, finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

Now, I may not repeat this instruction to you before every recess so, please, keep it in mind throughout the trial.

We'll take about 15 minutes and then we'll resume.

We're in recess.

(Recess)

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(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

MR. OSGOOD: Your Honor, on the record? I think just, I know the ruling is going to be no but for the record I think that the Eighth Circuit requires that I grouse about my severance at each opportunity that I think there is grounds for it. And I renew it at this point based on the opening statements as totally antagonistic defense which is going to be very difficult, if not impossible, for us to get a fair trial.

THE COURT: Your grouse is overruled and I'll show it as continuing throughout the trial.

MR. OSGOOD: Thank you, Your Honor.

MR. ROGERS: And show it on behalf of Mr. Sandstrom as well, Your Honor?

THE COURT: Yes, I will.

MR. ROGERS: Thank you.

THE COURT: All right. Eva, let's see if our jury is ready.

(The following proceedings were had IN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Green, you may call your first witness.

MR. GREEN: Yes, Your Honor. The United States calls Estelle Lugo.

ESTELLE LUGO, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

MR. GREEN: May it please the Court.

THE COURT: Proceed.

BY MR. GREEN:

Q Would you, please, tell us your name?

A Estella Lugo.

Q And would you spell your first name.

A E-S-T-E-L-L-A.

Q And would you spell your last name?

A L-U-G-O.

Q And what city do you live in?

A Independence.

Q And when did you currently, when did you move to the house

you live in now?

A May of last year.

Q And where did you live before that?

A In Kansas City, 5006 East 9th Street.

Q And, ma'am, maybe you could lean closer to the microphone

if that's possible so the-So
you lived at 5006 East 9th Street, correct?

A Yes.

Q And what intersection is that near?

A 9th and Brighton.

Q Thank you. And how long did you live at that address?

A About five years.

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Q Now, are you currently employed?

A Yes, I am.

Q And where do you work?

A Anderson Metals.

Q And how long have you worked at Anderson Metals?

A Nine and a half years.

Q So on March 9, 2005, were you working at Anderson Metals?

A Yes.

Q What are the hours of your workday back in, let me focus you back on March 9 of 2005?

A 8 to 4:30.

Q And back on March 9 of 2005 what would have been your practice as far as what time you get up in the morning?

A I usually try to get up about 5:30 in the morning.

Q Now, I want, again, as I stated, to focus on the morning of March 9, 2005. At approximately 6:00 a.m. on that day, where were you?

A I was in my kitchen, in my home in my kitchen.

Q And does your kitchen have a window?

A Yes.

Q And where does the window face? What direction? As you look out your window, what direction are you looking out?

A I'm looking toward Brighton.

Q Now, I'm going to show you what is on your monitor as Plaintiff's Exhibit 16H. And I'm just going to show this to

you. It will come up in a second.

So do you recognize what 16H is a photograph of?

A Yes. The corner where my, where our house was.

Q And is that how your house appeared on the morning of March 9, 2005?

A Yes.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibit 16H into evidence.

THE COURT: Without objection, 16H will be admitted.

MR. GREEN: And if you could, Ms. Marko, if you could

just focus or kind of bring in the 9th and Brighton street sign.

BY MR. GREEN:

Q Do you see that, Ms. Lugo?

A Yes.

Q And, again, what direction from your house is that 9th and Brighton intersection? Would that be west of your residence?

A I'm not sure.

Q All right.

MR. GREEN: Well, then, again, display the whole picture. And then if you could just focus on her house, that residence there.

BY MR. GREEN:

Q And, again, is that a close up of your residence as it appeared on March 9 of 2005?

A Yes.

Q Now, I want to focus on, you said that around six in the morning you were in the kitchen, is that right?

A Yes.

Q And what were you doing in the kitchen?

A I was doing dishes and getting ready for the day.

Q And were you, did you have any type of a radio on?

A No.

Q Did you have a television on?

A No.

Q As you were doing the dishes in your kitchen, did a noise catch your attention?

A Yes.

Q And what type, what did you hear? Just describe what you heard?

A What sounded like a rock hitting our house.

Q And did you think when you heard that first noise, did you think anything of it?

A No, I did not.

Q And so what did you do?

A So I continued to do dishes.

Q And at a certain point did you hear another sound?

A Yes.

Q And what did you hear?

A Another two, what sounded like rocks hitting against our

house.

Q And at that point did that cause you, hearing these two sounds like rocks hitting your house, did that cause you to do anything?

A I stopped doing dishes and I like looked up through the window.

Q And as you were looking through the window, describe what you were looking at?

A I looked up and first thing I could see was a car driving off on 9th Street.

Q And to be clear for the jury, 9th Street which runs right in front of your house, correct?

A Yes.

Q 9th Street runs east west, is that correct?

A Yes.

Q And Brighton runs north south, correct?

A Yes, it does.

Q So did something then cause you to leave your kitchen?

A I was wondering what the noises were at that point and I walked away from the kitchen where the sink was and started walking towards the front door to the living room, towards the front door.

Q And then what happened?

A Before I could even reach the door my husband yelled from upstairs and said, don't go to the door. Comes upstairs and

grab the phone.

Q So what did you do?

A I went upstairs.

Q Did you grab the phone?

A Yes, I did. I grabbed the phone from the kitchen and I just ran upstairs.

Q And when you went upstairs, was your husband up there?

A Yes.

Q What is his name?

A Roberto.

Q And where, what room did you join your husband in?

A In our bedroom.

Q And your bedroom looks out on what vantage point? Do you have windows in your bedroom?

A Yes, we do.

Q What vantage points do these windows look out on?

A One onto 9th Street and the other one looks onto what would be the corner of 9th and Brighton.

Q Now, as you looked out the window that faces 9th Street that would be facing south, is that right?

A Yes.

Q As you looked out facing south, did you see anything?

A Yes.

Q What did you see?

A A man. A man laying, hanging from our fence in front of

our house.

Q And, Ms. Lugo, can you describe for us what that man was doing as you observed him?

A He was --one arm was hanging on our fence and the body just was hanging, just hanging in the air.

Q And then did you see the man do anything?

A He wasn't doing anything but hanging there.

Q Now, I want and this will not go to the jury yet. I want

to show you Plaintiff's Exhibit 16V. Do you see that Ms. Lugo?

A Yes.

Q And, again, what is that a photograph of?

A It's my house.

Q And is that your house as it appeared on the morning of March 9, 2005?

A Yes.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibit 16V into evidence.

THE COURT: Without objection, 16V will be admitted.

MR. GREEN: Ms. Marko, there is a fence area, if you

could highlight.

BY MR. GREEN:

Q Do you see that on your monitor, Ms. Lugo?

A Yes.

Q And is that fence, is that the fence you're talking about?

A Yes, it is.

Q And the fence that you saw the man hanging on?

You have to answer yes or no.

A Yes.

Q Approximately how long did that, from what you observed, how long did that man hang on to that fence?

A It seemed like forever. Seconds, minutes.

Q And then what did you see him do?

A I watched him fall to the ground.

Q Now, Ms. Lugo, you mentioned that you grabbed the phone before you went upstairs to call 9-1-1, is that right?

A Yes.

Q Did you, in fact, call 9-1-1?

A Yes.

Q Do you recall approximately at what point it was you called 9-1-1?

A When I ran upstairs, my husband said grab the phone and I ran upstairs and I said, well, what? What? He's like, there's a guy outside in front. I'm like, what? And that's when I looked out and I think he had just been shot. And so I called 9-1-1 at that point as I was looking out the window.

Q Now, Ms. Lugo, before you came into court today, did you meet with us before today?

A Yes.

Q And did we play your recording of that 9-1-1 phone call?

A Yes.

Q And did you recognize your voice on that recording?

A Yes.

Q And was that recording, did it appear from your memory to be a fair and accurate recording of that phone call?

A Yes.

MR. GREEN: Your Honor, the United States offers Plaintiff's Exhibit 24 into evidence.

THE COURT: Without objection, Plaintiff's Exhibit 24 will be admitted.

MR. GREEN: And request permission to play it to the jury.

THE COURT: Permission granted.

(The tape is being played.)

BY MR. GREEN:

Q And that was, obviously, your voice, Ms. Lugo?

A Yes.

Q You said that, in this call you said that you heard like

four of them. Do you recall that? On this 9-1-1 call.

A Yes.

Q What were you referring to there when you told that to the

9-1-1 operator?

A I was --it just happened so fast, just -

Q You told the 9-1-1 operator how many shots you heard?

A Yes.

Q You told her you heard four of them?

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A Yes.

Q At some point did you and your husband leave the upstairs bedroom?

A We did. We eventually went downstairs.

Q And when you went downstairs, what did you do?

A It was he and I and we walked towards the front door and looked out the peep hole.

Q What could you see when you looked out the peep hole?

A Still saw that guy just laying there on the ground.

Q Did your husband want to do something?

A He wanted to go outside and help him.

Q And what did you do?

A I said, no, you don't know if he has a gun or not.

Q So at some point did the emergency vehicles arrive?

A Yes.

Q And did you stay in your house, basically?

A Yes, we did.

Q And at some point after this incident on the morning still of March 9 of 2005, did you give a statement to members of the Kansas City, Missouri Police Department about what you had seen and observed?

A Yes, we did.

MR. GREEN: May I have one moment, Your Honor?

THE COURT: Yes.

BY MR. GREEN:

Q My last question, Ms. Lugo. On the 9-1-1 phone call which we just heard, you had, in telling the operator what you thought was occurring, you referred to the shooting as being at 9th and Hardesty or Van Brunt. Do you recall that?

A Yes.

Q And what was the cause?

A I couldn't think straight. I mean, I was alarmed. I was surprised that there were shots, that this guy was, in fact, laying on the ground. And I referred to Hardesty and Van Brunt because of the two main streets between our house.

Q But the 9th and Brighton intersection is the one closest to your house?

A Yes, it is.

MR. GREEN: I think that's all I have, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Ma'am, my name is John Osgood. I represent Mr. Gary Eye, the defendant seated at the main table here. We have never met, is that right?

A No, we've never met.

Q You need to speak up just a little bit, too, I think because this lady has to take everything down. But more importantly, the folks in the jury have to be able to hear you,

everything you have to say. Okay?

A Okay.

Q Now, if I ask you a question you don't understand, just tell me you don't understand it and I'll try to rephrase it.

A Okay.

Q Okay. I don't have very much for you. Did the day of or the day or two following the incident, did the police, Kansas City Police Department examine the outside of your house for bullet holes?

A Not that I know.

Q Did you --you said it sounded like a rock hitting the house. Did you go out and look on the side of the house at any time to see if there were any bullet holes in the house?

A No, we did not.

Q Any reason you didn't do that or just didn't think about it?

A Didn't think about, after what we saw we didn't think about searching the house for holes or anything.

Q Okay. Now, you said there was a shot. You were in the kitchen doing dishes?

A Yes.

Q And there were two more shots you said?

A Yes.

Q Now, what I want you to do, ma'am, is maybe you can just do it by, that would be the easy way, tap your finger on the

end of the microphone, like this, tap it. Try that once.

Let's see what it sounds like.

A (Witness complies.)

Q Okay. Now what I want you to do is, I want you to tap the end of the microphone in a minute. That will indicate the first shot. And then I want you to tap the microphone again as best you recall as to how much time went by till you heard the second two shots. Wait a minute. Let me get the time down here. I'll tell you to go in a minute. Go. First shot?

A Tap.

Tap tap.

Q Okay. That was seven seconds, ma'am. Would you agree with me on that?

A Could have been.

Q All right. In your testimony to the police you made the statement that you thought it was about 30 seconds between the two shots. Do you remember that?

A Yes.

Q Did they show you your statement and let you review it?

A Yes.

Q Now, I know things are hectic and they're crazy and you were, obviously, even today you're still emotional about it, aren't you?

A Yes, I am.

Q But would you agree with me that what you tapped on the

microphone here is probably a more accurate description of how fast the shots went off?

A I couldn't be for sure.

Q Well, let's do this. I'm going to start right now and tell you that at the 30 second mark. I tapped it.

That's 30 seconds right there, ma'am. That would be the next hit. And I don't mean to upset you. I know this is very emotional. Would you like a Kleenex?

Please understand I'm not in any way trying to say that you lied to the police or misrepresented anything or that you deliberately got the time wrong or anything. Time is a funny thing. And when we stop and think about it, you'll see that when you're really talking about time, when time goes by and there is a dead space between the time, it makes you realize how quickly something can occur or how long something can occur. Would you agree with me?

A Yes.

Q And so when you tap on the microphone in my original question, tap, seven seconds later, that's more close to what happened than the 30 seconds of dead space as we went around and I walked around and came back and told you?

A What's your question?

Q My question is, you tapped once. Then you tapped twice. And you said that's the way today you recall the shots?

A Yes.

Q I said that was a seven-second interval between the first tap and the two second taps, right?

A Yes.

Q Then I tapped the microphone and we had this real quiet time while I walked all around the courtroom then came back, told you 30 seconds was up and tapped it twice more.

My question to you is your recollection in court today, would you agree with me, of a tap followed seven seconds later is much closer to what really happened?

A It could have been.

Q Thank you. I believe that's all.

THE COURT: Further cross-examination?

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q Good morning, ma'am. Thank you for being here with us this morning. And, like Mr. Osgood, I understand this is difficult for you. So I don't mean to upset you or intimidate you. If I do, let me know and I'll back off. Okay?

A Okay.

Q Do you know what time it was when you heard the first rock hitting your house?

A Before six.

Q And the, if then the second pair of shots came just a few seconds later that also would have occurred before six to the best of your recollection?

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A Yes.

Q When you're doing your dishes, like my house the window in my kitchen is right above the sink. Is that the way it was at your house?

A Yes.

Q Did you look outside the window at all when you were doing the dishes before you heard any rocks hitting your house?

A I did.

Q Did you see any car out there?

A No, I didn't see anything. Still dark.

Q Okay. When the shots were fired or the rocks hit the house, it was still dark at that point as well?

A Yes.

Q Sun hadn't come up yet?

A No.

Q Is there a street light there on the corner of 9th and Brighton?

A Yes, there are.

Q That would have provided light down there at the area of the intersection, is that correct?

A Yes.

Q Now, I believe you testified that after the second, first set of shots or the first shot, when first one hits your house, first rock hits your house, whatever it sounded like to you, you did not look up from your cleaning at that point, is that

correct?

A Yes.

Q And then when the second pair of sounds that you heard at that point, you did look out your kitchen window, is that right?

A Yes.

Q At that point you saw a car speeding off?

A Yes.

Q Did you see anybody leaving from the scene, the middle of the intersection of 9th and Brighton, coming to run back to get in the car to then drive away?

A No.

Q So you heard the sound of the shots then you looked up and the car was at that point already in motion?

A Leaving, right.

Q Did you hear any doors slam before that before the car taking off?

A No.

Q And how far, we saw the picture of the house but how far is it from your window to the corner of 9th and Brighton? Just rough estimate?

A It's feet. 30 feet.

Q It's, basically, just another housing lot, isn't it, empty lot there?

A There is an empty lot.

Q Okay. That's the only distance that separates you between your house where you were standing in your kitchen at that window to the corner of 9th and Brighton, is that correct?

A Yes.

MR. GROMOWSKY: May I have just one moment, Your

Honor?

THE COURT: Uh-huh.

MR. GROMOWSKY: That's all I have, ma'am. Thank you.

THE COURT: Redirect, Mr. Green?

MR. GREEN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. GREEN:

Q First of all, Ms. Lugo, this may seem like an obvious question but was this a traumatic thing for you?

A Yes.

Q And the times that you've been giving are your estimates based on your best recollection? Is that correct?

A Yes.

Q And if I represented to you that the time of the 9-1-1 call that you made on March 9 was 6:12 a.m. would that sound correct?

A Yes.

Q And, again, that 9-1-1 call that you placed that we heard the recording of, you placed it how long after you, for instance, first heard the shots?

A When I first heard the shots to the call, itself?

Q Yes.

A Probably a minute.

MR. GREEN: No further questions, Your Honor.

THE COURT: Recross?

MR. OSGOOD: Nothing.

THE COURT: Mr. Gromowsky?

MR. GROMOWSKY: No, Your Honor. Thank you.

THE COURT: All right. Ms. Lugo, thank you. You may

step down.

MR. GREEN: May this witness be excused?

THE COURT: Without objection, she is excused.

(Witness excused.)

MR. GREEN: Your Honor, the United States calls

Mr. Roberto Lugo.

And also, Your Honor, Mr. Lugo has an interpreter

here.

THE COURT: Ms. Gardner, would you -Let's swear Ms. Gardner first.

(Interpreter sworn.)

ROBERTO LUGO, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you, please, tell us your name, sir?

A (Through Interpreter) Roberto Lugo.

Q Would you spell your first name?

A R-O-B-E-R-T-O.

Q And is your last name spelled L-U-G-O?

A That's right.

Q And what is your wife's name?

A Estella Band-Lugo.

Q And I want to direct your attention back to the date of March 9, 2005. Where were you living?

A That's fine.

MR. OSGOOD: Could we place the microphone a little closer to Mr. Lugo? I speak a little Spanish. I'd like to hear what he says.

THE COURT: Ms. Gardner, you might ask him to move closer to the microphone, please.

BY MR. GREEN:

Q I'm going to ask that question again. Directing your attention back to March 9 of 2005, where were you living, Mr. Lugo?

A That's fine.

Q What was the street address?

A 9th Street.

Q I'm going to show you Plaintiff's Exhibit 16V, what is already in evidence. Do you see that, Mr. Lugo?

A Yes, I'm able to see it.

Q Was that where you were living March 9, 2005?

A Yes.

Q Now, back on March 9, 2005, where were you employed?

A I was at the house that morning working, doing remodeling.

Q What time on March 9, 2005, would you have gotten up?

A About six in the morning.

Q And was there something that awoke you?

A I got up to go to work, to get ready.

Q And as you got up to get ready to go to work, did you hear anything?

A Yes. I heard the first shot.

Q And after you heard the first shot, did you hear something else?

A I heard one more and that's when I went to look out the window.

Q Now, we are looking at 16V. Can you see the windows to the bedroom you were in on that morning?

A Yes.

Q And does one window look west from that bedroom?

A That's right.

Q And does one window look south out of that bedroom?

A That's right.

Q Is that a closer view, Mr. Lugo, of the west and the south windows to the bedroom you were in on that morning?

A Yes.

Q Now, when you heard the shot, the two shots, which window

did you look out of first?

A I saw the west side.

Q And what did you see when you looked out the west side?

A I saw a car speed off but I didn't see him as he was shooting.

Q And did you see anybody, did you see a person when you looked out the west window?

A No, I did not see anything.

Q Did you look out your south window?

A Yes.

Q And what did you see when you looked out your south window?

A I saw the person falling down that had been shot.

Q And what did you see this person doing?

A He was hanging on to the fence.

MR. GREEN: And if you could sort of pull out a little bit, Ms. Marko, on 16V.

BY MR. GREEN:

Q Is that the fence you're referring to? Is that the fence that's in front of your house?

A Yes. In front where the backpack is laying there.

Q Is that a close-up view of that on your monitor there?

Mr. Lugo, is that a close-up view of the area where the man was hanging on to the fence?

A That's right.

Q Seeing this, Mr. Lugo, did you say anything to your wife?

A Yes. I ran down and told her that someone was falling.

Q And did you tell your wife to call 9-1-1?

A Yes, because I knew, because I had heard that someone had been shot.

Q And did your wife call 9-1-1?

A Yes.

Q Now, did you continue, what did you see this man hanging on to the fence, what did you see him do?

A He wanted to fall.

Q Did you see the man, in fact, fall?

A Yes.

Q At some point then, Mr. Lugo, did you and your wife go downstairs from your bedroom?

A We were just standing by the door in front.

Q Which door?

A The main door downstairs.

Q And did you look out your main door?

A Yes, through the main door.

Q Could you still see the man on the ground?

A Yes.

Q And as you also looked out the front door did you notice, did you notice as you looked out the front door --let me ask you this. What street are you looking toward when you look out your front door?

A The main street.

Q Would that be 9th Street?

A Yes, 9th Street.

Q And as you looked out on 9th Street, did you notice a particular man in a vehicle on a phone?

A Yes, in a white truck.

Q And what did the man, from what you could see, appear to be doing?

A Talking on the phone, maybe calling the police.

MR. GREEN: One moment, Your Honor.

Those are all the questions I have, Your Honor.

THE COURT: Cross-examination, Mr. Osgood?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q You were upstairs?

A Yes.

Q You heard the first shot?

A I heard the first shot.

Q Then you heard a second shot?

A Uh-huh.

Q Please say yes or no to these answers because the lady has
to take it down.

A Yes.

Q Thank you. You heard a second shot?

A Yes.

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Q Did you hear a third shot?

A I don't remember exactly everything.

Q Were you excited?

A No. I had just woken up. But I did hear several. I didn't count them. I just heard they were downstairs.

Q Was it just two or was it three or was it four?

A Seems like three.

Q Why did you tell the prosecutor two?

A Well, I didn't remember it well. But it could be two or three or four. Seems like three.

Q Who was more excited, you or your wife?

A Me.

Q All right. Did you come downstairs after the first shot?

A Yes.

Q Where was your wife?

A She was in the kitchen.

Q Is that when you had this conversation with her?

A Yes.

Q About the shooting?

A Yes.

Q Is that when you told her to call 9-1-1?

A Yes.

Q Did you hear all of the shots, however many you heard, before you came downstairs?

A No. I heard the first one as I was getting up. And then

I heard some more.

Q When you heard the first shot, did you immediately jump out of bed and run downstairs?

A Yes.

Q It's a two-story house?

A Two.

Q Where are the stairwells?

A I'm sorry?

Q Where is the stairs?

A What do you mean the stairs?

Q How close to the bedroom you were in?

A It could be like ten steps, ten or more, maybe twelve.

Q Did you run down the stairs or just walk down the stairs slow?

A I walked slow.

Q When did you first look out the window?

A When I got up, and I saw on the west side.

Q What did you see?

A The car that was running off.

Q You saw the car leave from upstairs out the bedroom window?

A Yes.

Q The car is going west?

A Towards west, uh-huh. He went one way and went towards the west.

Q All right. The second and third or more shots that you heard after you got downstairs occurred after the car was leaving?

A No. The car had already left.

Q And you heard two more shots?

A Two more, uh-huh.

Q As the car was leaving?

A Yes, as the car left.

Q Would you agree with me that the shots would have to have come from the left side of the car then since the car is going away from your house?

A I'm not sure.

Q I don't have any more questions.

A That's fine.

Q Thank you, sir.

THE COURT: Mr. Gromowsky?

MR. GROMOWSKY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q Good morning, sir. I think I wrote down notes incorrectly and I just want to clear them up. It has nothing to do with you but kind of, what I heard. You heard the first shot. You're still lying in bed, is that correct?

A Yes, that's right.

Q And upon hearing the shot, you jump up out of bed and go

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look out the bedroom window that faces toward the west, is that right?

A Correct.

Q How big is your bedroom up there?

A The entire bedroom or just -Q

Let me rephrase. From where you were laying in bed to the window on the west side of the house, how many feet is it?

A Maybe about 10-foot.

Q Okay. So how long do you think it took you to move from your bed ten feet to the window and look out?

A Five seconds, ten.

Q Just a couple strides right across the room, is that correct?

A Yes. Yes.

Q And when you looked out that west bedroom window, you looked down, you saw a car already leaving, is that correct?

A Yes. He was leaving.

Q Car was already in motion, is that true?

A Yes, he was in motion.

Q You didn't see anybody running from the middle of the intersection, get in the car and then drive off?

A No.

Q You didn't hear a door slam, a car door slam and then the car drive off, is that true?

A No.

Q So by the time you got to the window, the driver was already in there and gunning the engine and out of there?

A Yes.

Q And your wife has already testified and you know that, correct?

A Yes.

Q And I'm sorry. And she testified that it was still dark outside that early in the morning. Is that true also?

A Yes, it was still dark out.

Q Now, when you saw the car leaving the scene when you looked out the window and the car was leaving the scene, was it going west toward Van Brunt or was it going east toward Hardesty?

A It was going toward Van Brunt, to the west, to the west.

Q Okay. So the car you saw leaving the scene was going from Brighton toward downtown Kansas City?

A Yes.

MR. GROMOWSKY: One moment please, Your Honor.

BY MR. GROMOWSKY:

Q Sir, just one more question. The car you saw leaving the scene, what color was it if you could tell?

A I don't remember but it seems like it was white.

Q Thank you, sir.

THE COURT: Redirect?

MR. GREEN: Yes, Your Honor.

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REDIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Lugo, you've been asked several questions about this car you saw from the west window heading west. Do you recall those?

A Yes.

Q And would it be accurate to say you got just a very quick look at this vehicle?

A Very quickly, right.

Q Could you even tell us what type of just generally what type of vehicle it was?

A No.

Q And also to be clear, as I understood your testimony, you heard at least two shots after you saw this car leave the area, is that correct?

A Yeah. It seems like, I mean at the moment, you know I wasn't able to remember much but.

Q So it seems like what?

A Like what?

Q I'm sorry. You heard at least two shots after the point of which you saw this car heading west out of the area?

A As I was getting up, yes.

Q And I guess I would ask, Mr. Lugo, from your own personal knowledge and what you observed, do you have any idea whether or not the car you saw had anything to do with the shooting?

A I don't think so.

MR. GREEN: That's all I have, Your Honor.

THE COURT: Recross?

RECROSS-EXAMINATION

MR. OSGOOD: Could we have the picture of the house up, please, and the intersection? Wider shot including the intersection?

BY MR. OSGOOD:

Q Mr. Lugo, this is Brighton. Would you agree with me, sir?

A Yes.

Q And you may wish to look this way just so you can see what I'm pointing to. Did you see a car parked when you looked out your window here by Brighton?

A Yes.

Q Did you see that car then pull around the corner and drive down 9th Street?

A Uh-huh.

Q Yes or no?

A Yes.

Q Did you see anybody get in or out of that car at any time as it came around the corner and went down 9th Street?

A No.

Q Now, were you still at your bedroom window up here?

A Yes.

Q When you got downstairs and talked to your wife, could you

see Mr. McCay on the fence, the gentleman on the fence?

A Yes.

Q So how much time from the time you got up until you looked out the window downstairs in the kitchen, went by?

A When I went downstairs?

Q From the time you heard the first shot until you looked out the peep hole with your wife, how much time do you think went by?

A To go downstairs?

Q Pardon?

A To go down?

Q No. From the time you heard the first shot, how many seconds till you got down and looked out and saw Mr. McCay?

A Oh, maybe 12, 13 seconds.

Q Very good. Thank you, sir.

THE COURT: Mr. Gromowsky?

MR. GROMOWSKY: Thank you, Your Honor.

RECROSS-EXAMINATION

BY MR. GROMOWSKY:

Q Sir, you just told Mr. Osgood that you saw a car on Brighton, is that correct?

A Yes.

Q And you saw that car from your upstairs bedroom window, is that true?

A Yes.

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Q And you just agreed with Mr. Osgood that as the car came off Brighton it turned left and went in front of your house.

Is that true?

A Yes.

Q And that's the car you already saw in motion when you looked out your bedroom window, is that correct?

A Yes.

Q And you would agree with me that from Brighton going in front of your house in the direction that that car was going would have been traveling east, is that true?

A Yes.

Q And then you saw another car, this white car maybe going west. Is that also correct?

A Correct.

Q Sir, the car you saw going west was a white car. Do you remember what color the other car was, the one that came off Brighton and went in front of your house?

A No, I don't remember because I was trying to see what type of make it was.

Q Did you see what kind of make it was?

A No. It was a newer one.

Q Thank you, sir.

THE COURT: Thank you, Mr. Lugo. You may step down.

MR. GREEN: May this witness be excused?

THE COURT: Without objection, Mr. Lugo may be

excused, yes.

(Witness excused.)

MR. GREEN: Your Honor, the United States calls Lori Keller.

LORI KELLER, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you, please, tell us your name and spell your first and your last name?

A My name is Lori Keller. L-O-R-I, K-E-L-L-E-R.

Q How are you employed?

A I'm employed with the Kansas City Police Department as a crime scene technician.

Q How long have you been employed as a crime scene technician with the Kansas City, Missouri Police Department?

A For nine years.

Q And tell us, explain to the jury what do you do as a crime scene technician for the Kansas City Police Department?

A I'm responsible for going to crime scenes where I process that crime scene through, basically, taking photographs, documenting through diagrams. I collect items of evidence and package those items of evidence for the criminalist at the crime lab to then analyze.

Q And have you received any training in being a crime scene technician?

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A Yes, I have.

Q Approximately what types and how much?

A The initial training you go through, the police department

puts on a crime scene school that is approximately three weeks.

You then have on-the-job training for three months with an additional three months probationary period. We're certified through the International Association of Identification. We have to be certified so therefore we take a test to gain that certification, which I have a level one certification which is required by our department. And then we also attend several training seminars to maintain those types of certifications.

Q Now, let me direct your attention to March 9th of 2005.

Were you dispatched to a particular location on that day?

A Yes, I was.

Q And what location was that?

A I responded to the area of 9th and Brighton.

Q And who was with you?

A Another crime scene technician, Melanie Bartch.

Q And is Melanie spelled M-E-L-A-N-I-E?

A Yes.

Q And is Bartch spelled B-A-R-T-C-H?

A Yes.

Q And were the duties or division of labor divided up between yourself and Ms. Bartch on March 9th?

A It was.

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Q Were you what is called the primary?

A Correct.

Q What's the primary? What is your responsibility?

A I was the technician that was going to be taking the photographs and writing the report.

Q And what does the secondary person then do?

A Her responsibilities, we kind of work together but she was sketching the scene and helping with measurements and then she created a diagram of the scene.

Q And is it correct that in processing this scene that you and Ms. Bartch worked together?

A Yes.

Q Now, is it your understanding that, in fact, Ms. Bartch produced a diagram of the 9th and Brighton crime scene?

A Correct.

Q Let me ask, too, Ms. Keller, when you got to the scene, approximately what time was it?

A I believe it was about 8:00 in the morning. 8:15.

Q And did you talk to any law enforcement personnel on the scene?

A The responding officers and the detective that was there.

Q And is that your normal course to do something like that?

A Yes.

Q And that's just to get a background of what happened?

A Correct.

Q And what was your understanding of what --was it your understanding a shooting had occurred at 9th and Brighton?

A Correct. We were under the understanding that a shooting had happened and that the victim had been transported to a hospital.

Q So now, Ms. Keller, by the time you got to the 9th and Brighton scene, was the victim's body still there?

A No.

Q Now, I refer to a, you referred to a diagram. Ms. Bartch, did she produce a diagram of the crime scene on March 9th?

A Yes.

Q Have you reviewed that diagram?

A Yes.

Q Is that diagram, which I'll refer to as Plaintiff's Exhibit 15, fair and accurate?

Well, let's put it up for -

Exhibit 15, can you see that, Ms. Keller?

A Yes.

Q And is that the diagram that was produced by Ms. Bartch?

A Correct.

Q Is that a fair and accurate depiction geographically of the 9th and Brighton area?

A Yes.

MR. GREEN: Your Honor, the United States offers Plaintiff's Exhibit 15 into evidence.

THE COURT: Without objection, 15 is admitted.

MR. GREEN: And if you could sort of enlarge it as much as you can.

Your Honor, is it permissible for me to approach that screen over there and point on there for the jury?

THE COURT: Yes.

BY MR. GREEN:

Q Ms. Bartch, excuse me. Ms. Keller, I'm sorry, on this drawing by Ms. Bartch, I'm pointing to a box that says 5006. Do you see that?

A Yes.

Q What was that?

A That was a residence.

Q And then below it, it says, item 23 as well as items 21 hyphen 22. Do you see that?

A Yes.

Q What did that refer to?

A That was where a backpack was located and a pair of head phones.

Q And did you end up seizing or recovering those items?

A Yes.

Q And then this area right here, making a circle, what is that?

A That's the intersection area of 9th and Brighton.

Q And so 9th Street goes which way?

A 9th Street goes east west.

Q And Brighton goes which way?

A North south.

Q And is Brighton as depicted on here, is that a one-way street heading south?

A It is from the south side of 9th Street. I'm not for sure if it is all the way down.

Q But it is at least at this portion?

A Correct.

Q Now, 5006 lies, is it --which way from 9th and Brighton?

Is it east, west, north, south?

A It's to the east.

Q And just to the west of 5006, is that a vacant lot, is that correct?

A Yes.

Q I think you mentioned this but you also had occasion to take photographs of the scene?

A Correct.

Q So I just want to display several of those for you.

First, 16, Plaintiff's Exhibit 16A, as in Albert. And what is that a photograph of?

A This is a photograph of looking east down 9th Street.

MR. GREEN: United States offers 16A into evidence.

THE COURT: Without objection, 16A is admitted.

BY MR. GREEN:

Q So this is, I'm pointing to a house there. Is that 5006?

A Yes.

Q And then this street here, which street is that?

A That's 9th Street.

Q And which way are we looking as we look on this photograph?

A East.

Q And this street sign here, this green sign here, what does that depict?

A That's the intersection of 9th and Brighton.

Q What's already in evidence as 16H. And do you see that, Ms. Keller?

A Yes.

Q And, again, is that just a different view of the intersection with that residence in it?

A Yes.

Q Plaintiff's Exhibit 16J, what's that depict?

A This is kind of the same direction, just looking east on 9th Street. Just a little bit closer or a little bit further east from the intersection.

MR. GREEN: Your Honor, the United States offers 16J into evidence.

THE COURT: Without objection, 16J is admitted.

BY MR. GREEN:

Q And I'm pointing to a figure right here. Can you see that on your monitor, Ms. Keller?

A Yes.

Q And what was that?

A It was a backpack.

Q And you've already referred to that in a prior photograph. Is that backpack later recovered from the scene?

A Yes.

MR. GREEN: Now, not to the jury but for Ms. Keller, 16F.

BY MR. GREEN:

Q Do you see that, Ms. Keller?

A Yes.

Q What is that?

A That's looking north up Brighton from the intersection of 9th and Brighton.

MR. GREEN: Your Honor, United States offers 16F.

THE COURT: 16F is admitted.

BY MR. GREEN:

Q So, again, this is which street here?

A That would be Brighton.

Q And you're looking which way?

A North.

MR. GREEN: And not for the jury but Ms. Keller, 16G.

BY MR. GREEN:

Q Do you see that?

A Yes.

Q What is that a photograph of?

A That's pretty much looking just a little bit further.
It's kind of a north east angle from the intersection.

MR. GREEN: Your Honor, 16G, Plaintiff's Exhibit 16G.

THE COURT: Admitted.

BY MR. GREEN:

Q This is Brighton running north, correct?

A Correct.

Q And you can see part of a residence that is cut off. What was the address?

A That would be 5006.

Q Now, I want to show you 16N.

Do you see that?

A Yes.

Q And what is that a photograph of?

A That is a photograph looking south standing in the intersection of 9th and Brighton but looking south down Brighton.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibit 16N.

THE COURT: 16E?

MR. GREEN: I'm sorry. 16N, as in Ned.

THE COURT: Without objection, 16N will be admitted.

MR. GREEN: If you could, Ms. Marko, pull up this van here.

BY MR. GREEN:

Q Ms. Keller, do you recall what is depicted there in that photograph, 16N?

A It's a news camera or a news crew van.

Q And so, obviously, the news crews were at the scene while you were there?

A Yes.

MR. GREEN: Display just for Ms. Keller, 16P.

BY MR. GREEN:

Q And can you see that?

A Yes.

Q And what was that?

A That's standing in the intersection of 9th and Brighton, looking to the southwest. It's kind of just an empty area with --it's a news person filming.

MR. GREEN: Your Honor, the United States offers 16P into evidence.

THE COURT: 16P is admitted.

BY MR. GREEN:

Q And, again, I'll just point it out here on the monitor.

There is a man standing here, is that correct?

A Yes.

Q Who was he? Who did it appear to be?

A Appeared to be from the news.

Q Now, I want to show you -

Just for Ms. Keller, 16W, Plaintiff's Exhibit 16W.

Do you see that?

A Yes.

Q And what is that a photograph of?

A This is the residence of 5006, showing the backpack and that general area.

MR. GREEN: Offer Plaintiff's Exhibit 16W into evidence.

THE COURT: 16W is admitted.

BY MR. GREEN:

Q There is a dark object I'm pointing to. Do you see that?

A Yes.

Q What is that?

A That was the backpack.

Q And over here I'm also pointing to --Can you see a figure there?

A Yeah.

Q What was that?

A It's a pair of headphones.

Q Did you take a closer photograph of that?

A Yes.

MR. GREEN: Display just for Ms. Keller photograph

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16, Plaintiff's Exhibit 16AA.

BY MR. GREEN:

Q Do you see that, Ms. Keller?

A Yes.

Q What is that?

A This is showing the backpack and the headphones that were
along the sidewalk.

MR. GREEN: Offer 16AA into evidence.

THE COURT: 16AA is admitted.

BY MR. GREEN:

Q And what am I pointing to there?

A The backpack.

Q And right there?

A That's the headphones.

Q Now, at some point, Ms. Keller, were you called from the

9th and Brighton scene, you and Ms. Bartch?

A Yes.

Q Where were you called to?

A To 23rd and Manchester.

Q And describe what that area is, just generally,
physically, describe it?

A It's kind of an industrial area with train tracks.

Q When you and Ms. Bartch got to this location, 23rd and
Manchester, what did you find?

A There was a car that was abandoned in that area that had

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been set on fire.

Q And were there law enforcement personnel at the scene?

A Yes, there were.

Q And did either yourself or Ms. Bartch take photographs?

A Crime Scene Technician Bartch did.

Q But you were there when she did it?

A Yes.

MR. GREEN: Display for just Ms. Keller, 19H.

BY MR. GREEN:

Q Do you see that?

A Yes.

Q And what is that a photograph of?

A That's a photograph of the vehicle that was under this

bridge.

MR. GREEN: Your Honor, United States offers Exhibit

19H into evidence.

THE COURT: 19H is admitted.

BY MR. GREEN:

Q And first of all, this, what am I pointing to here?

A That's a bridge.

Q Is that what's called the Manchester Bridge? Do you know the name of the bridge?

A It's referred to, yes, as the Manchester Bridge.

Q What is this I'm pointing to?

A That was an Intrepid, a vehicle that was abandoned under

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the bridge.

Q And what condition did it appear to be in?

A The entire interior of the vehicle was pretty much gone. It was burned.

Q Now, for purposes of your report, did you capture the last six numbers of the vehicle identification number?

A Melanie Bartch did.

Q Was that incorporated into the report that you reviewed?

A Yes.

Q And as you sit here, can you recall those six numbers?

A Can I refer to the report?

Q Would referring to the report refresh your recollection?

A Yes.

MR. GREEN: May she refer to her report, Your Honor?

THE COURT: She may.

THE WITNESS: Want me to go ahead?

BY MR. GREEN:

Q Yes.

A 534636.

Q Those were the last six numbers of the VIN number on the Intrepid?

A Yes.

Q Now, from 23rd and Manchester, where did you go?

A Back to 9th and Brighton to complete.

Q Complete your crime scene processes?

A Correct.

Q Now, with respect to that backpack, what did you do with that backpack?

A The backpack and the contents inside were collected.

Q And who collected them?

A I did.

Q And what did you do with them?

A They were packaged and then brought back to the lab where they were placed into our property vault.

Q And did you do that?

A Yes.

Q And did you inventory the items before you placed them in the property vault?

A Yes, I did.

Q Could you just, again, if you need to refer to your report to refresh your recollection, but tell us just what, generally, what types of items you found inside that backpack?

A May I refer?

Q Yes. I believe you'll find it on pages 7 and 8.

A There were several types of clothing including socks, underwear, jeans, sweatpants, a shirt, towel, some gloves, couple pairs of gloves, two books, a Bible, a can of shaving gel, floss, Carmex lip balm, Q-tips, bandaid, radio, pair of headphones, papers, lunch box.

Q And all those items were placed by yourself in an evidence

sack and put in the property room?

A Correct.

Q Now, staying on March 9th, Ms. Keller, did you have occasion to go anywhere else?

A Yes. We went to the Jackson County Medical Examiner's Office.

Q What was your purpose in going to the Jackson County Medical Examiner's Office?

A We were going there to conduct an external body exam from the victim at the scene.

Q Explain to the jury what it was --When you do an external exam of a body of a suspected shooting or homicide, what do you do?

A We go there and we will photograph the victim and their injuries. We will also collect relevant items of evidence.

Q And do those relevant items of evidence include what are called nail scrapings?

A Yes, in some instances.

Q And in this instance and we'll just touch on it briefly with you but were nail scrapings performed?

A Yes, they were.

Q Just tell the jury briefly what a nail scraping is?

A Briefly, what we do with a nail scraping is we use a, it's

called a wooden cuticle stick is what it's called, and we'll scrape under the fingernails into a piece of like weighing

paper. And then they are put into an envelope and sealed.

Q And then did you also collect the clothes that the victim would have been wearing at the time the incident occurred?

A Yes.

Q And you mentioned, before you do any of this do you take, well, do you take photographs before you do any of these other things?

A Yes. Photographs are taken, kind of as is when we first get there. And then they continue along throughout the process.

MR. GREEN: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GREEN: At this point I'm going to start showing pictures of Mr. McCay's body. I didn't know if the Court wanted to give a warning how just to proceed on. I didn't know how the Court wanted to handle that as far as they're not going to, they're not pleasant but they're not unduly graphic. But I just wanted to warn the Court of that.

MR. ROGERS: I would just as soon do it after lunch instead of right before. It's not up to me.

MR. GREEN: I'm not angling for a lunch break. I wanted to let the Court know this was going to happen. I know his family is in the courtroom.

THE COURT: Let's take a lunch break and come back.

I'm going to tell the jury what's going on.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Folks, we're going to pause at this point for lunch.

Let me remind you of Instruction No. 8. During this recess or any other recess, do not discuss the case among yourselves or with anyone else. If anyone tries to talk to you about the case, please let me know that immediately. Don't listen to any news reports about the case. Keep an open mind until you have heard all the evidence and the views of your fellow jurors.

When we return, there will be some rather graphic photos taken during the autopsy. I want you to be aware of that. I want you to know what to expect. It may be that it's emotional for you and maybe emotional for spectators. I'll ask that everyone try to control your emotions. If you believe, and I'll address this to the spectators, if you believe that that will be difficult for you, please don't return until after the photos are finished.

All right. We'll be in recess until 1:10.

(Witness temporarily excused.)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: See you in an hour.

(Noon Recess)

(The following proceedings were had OUT OF THE

PRESENCE AND HEARING OF THE JURY:)

THE COURT: Ms. Keller, you can come back up.

Are we ready, folks?

Let's bring the jury in.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Green, you may resume.

MR. GREEN: Yes, Your Honor.

May it please the Court.

THE COURT: Go ahead.

LORI KELLER, RESUMED

CONTINUED DIRECT EXAMINATION

BY MR. GREEN:

Q Ms. Keller, when we broke right before lunch we had just come to the part where you were about to testify to an external examination you had done of the victim in this case, is that correct?

A That's correct.

Q And the victim in this case, you knew he had been identified as a William McCay, is that correct?

A Correct.

Q Now, before you actually did the external examination, you

take photographs, is that correct?

A That's correct.

Q And do you follow a certain procedure in taking the photographs of the body?

A Yes.

Q What is that procedure?

A Typically, it's not an official procedure but it's kind of generally how I do it each time is, I take overall photographs and then I'll take segmented photographs of the victim, profile type shot, things of that nature.

Q I'm going to just for the witness, Ms. Keller, show you what's marked as Plaintiff's Exhibit 17B. Do you see that, Ms. Keller?

A Yes.

Q And what do you identify that as being?

A This is a photograph of the victim at the morgue.

Q And this was also, this and the other photographs you're going to be testifying about were all taken on March 9 of 2005?

A Yes, that's correct.

MR. GREEN: Your Honor, the United States offered 17B as in boy in evidence.

THE COURT: Without objection, 17B is admitted.

BY MR. GREEN:

Q And that's now being displayed. I'm going to focus on, I'm making a notation, not very well, but I just drew sort of

called a circle there. What was that?

A This was the area on the left side of the torso where there was an apparent bullet wound.

Q I'm going to clear this.

And then, Ms. Marko, if you could zoom in on that portion of 17B.

And that's what is showing right there in close up of the apparent bullet wound?

A Correct. Yes.

MR. GREEN: All right. And then just for Ms. Keller only, 17H as in horse.

BY MR. GREEN:

Q And what is this?

A This is a photograph of the victim taken kind of from over the top and down.

MR. GREEN: Your Honor, the United States offers 17H into evidence.

THE COURT: Without objection, 17H is admitted.

BY MR. GREEN:

Q And, again, just narrate for the jury what they're seeing there?

A I'm actually standing on like a step stool and I'm standing over the top, shooting downward.

Q Now, from --did you have occasion to take photographs of Mr. McCay's hands?

A Yes, I did.

Q And for what purpose did you do that?

A Basically, for documenting if there were any injuries on his hands.

Q In your training and experience as a crime scene technician, why is that important for documenting possible injuries on the hands of a victim?

A We take pictures of the hands to show if there are any injuries to them that can indicate to us whether or not there's any possible defensive wound. So we will photograph if we see anything like that, then document them.

Q Based on your training and experience where do possible defensive wounds show up on the hands of a victim?

A Often times they're on the inside of the hands or the fingers. Some times it can extend down into the arms.

Q But they, generally, again, would be on the inside of the hands and fingers, is that correct?

A Often, yes.

MR. GREEN: I'm going to show just for the witness Plaintiff's Exhibit 17N, as in Ned.

BY MR. GREEN:

Q What is that a photograph of?

A This is a photograph of the top side of the hand.

Q Of which hand?

A Of the right hand.

MR. GREEN: Your Honor, the United States offers Plaintiff's Exhibit 17N into evidence.

THE COURT: 17N is admitted.

BY MR. GREEN:

Q I want to just, basically, sort of focus on the whole, you see the top portion of Mr. McCay's right hand, correct?

A Yes.

Q Did you just from your external examination detect any wounds on the top side of his right hand?

A No.

MR. GREEN: Moving next to 17, just for the witness, 17O.

BY MR. GREEN:

Q What is that a photograph of, Ms. Keller?

A This is just showing the inside of the right hand.

Q And is there anything in particular in that photograph that you could see?

A There is an injury on the right ring finger.

MR. GREEN: Your Honor, the United States offers 17O into evidence?

THE COURT: 17O is admitted.

BY MR. GREEN:

Q And little bit better there. What did I just circle, Ms. Keller, on 17O?

A An injury to the right ring finger.

Q Is there a certain term that you use or that is used?
Injury or laceration?

A It appeared to be a laceration.

MR. GREEN: 17, just for the witness, 17Q.

BY MR. GREEN:

Q And what is that a photograph of, Ms. Keller?

A This is a photograph of the injury just with a scale and a little bit closer up so you can see it.

MR. GREEN: Your Honor, the United States offers 17Q
into evidence.

THE COURT: 17Q is admitted.

BY MR. GREEN:

Q And, again, cut it off there. But what is that? What did I just circle?

A That's the laceration on the finger, just like I said, with a scale on it for size.

Q And this was on the inside of the hand, correct?

A Correct.

Q Now, did you also take photographs of the left hand?

A Yes.

MR. GREEN: Just for the witness, 17S.

BY MR. GREEN:

Q What is that?

A That's an overall of the top of the left hand.

MR. GREEN: Your Honor, the United States offers 17S

into evidence.

THE COURT: 17S is admitted.

BY MR. GREEN:

Q And as you looked at 17S, as you examined it, did you note any abrasions of any type on the top side of the left-hand?

A Not on the top.

MR. GREEN: Just for the witness, 17V.

THE COURT: V as in Victor?

MR. GREEN: Yes, V as in Victor.

BY MR. GREEN:

Q What is that a photograph of?

A That's a photograph of the fingernail on the left hand and it was torn.

Q And you took a picture of that as to why, what would be the possible significance of that?

A Showing that the fingernail was torn or broken in some way if it could have possibly been related to any struggle.

MR. GREEN: Your Honor, the United States offers 17V as in Victor into evidence.

THE COURT: 17V is admitted.

BY MR. GREEN:

Q And what did I just circle right there?

A The fingernail. And it was the top part that was slightly torn.

MR. GREEN: Just for the witness, 17W.

BY MR. GREEN:

Q And what was 17W?

A This is just the same area, just kind of a different angle, little bit closer.

MR. GREEN: Offer 17W into evidence.

THE COURT: 17W is admitted.

BY MR. GREEN:

Q And, again, did I just circle what appeared to be the torn fingernail?

A Yes.

Q Now, did you also have occasion to take photographs of Mr. McCay's arms?

A Yes, I did.

Q And I'm going to have brought up for you, Plaintiff's Exhibit 17CC. And what is shown in 17CC? What is that?

A This is just showing the right, the top of the right forearm. And there appeared to be some apparent bruising on the arm.

MR. GREEN: Your Honor, United States offers 17CC into evidence.

THE COURT: 17CC is admitted.

BY MR. GREEN:

Q And is this approximately the area in which you detected the apparent possible bruising?

A Yes.

MR. GREEN: Then just for the witness, Exhibit 17Z as in zebra.

BY MR. GREEN:

Q What is that?

A This is showing the left side of the torso, with the apparent bullet wound.

MR. GREEN: Your Honor, the United States offers 17Z in evidence.

THE COURT: 17Z is admitted.

BY MR. GREEN:

Q And what did I just circle there, Ms. Keller?

A That is the apparent bullet wound.

Q Now, did you look to see if there was any type of exit wound?

A Yes, I did.

Q And was there?

A No, there was not.

MR. GREEN: I'm going to just for the witness have

displayed 17HH.

BY MR. GREEN:

Q And what does 17HH represent?

A This is just showing the back.

Q And showing something in particular?

A Just an overall of the back.

MR. GREEN: Your Honor, the United States offers 17HH

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into evidence.

THE COURT: 17HH is admitted.

BY MR. GREEN:

Q And this is the back side again. You note no exit wound was observed, is that correct?

A That's correct.

Q And that's it for the photographs. Thank you.

Did you then, I think you already made reference to this earlier before lunch but on the gurney with Mr. McCay were any types of items?

A Yes. The clothes that he was wearing had been removed at the hospital and they were on the gurney with him.

Q Is that standard practice to have the clothes there if the victim is wearing clothes to have them there with the body?

A Often, yes.

Q Then what did you do with respect to those clothes?

A They were collected.

Q And how did you collect them?

A They were packaged, packaged up in a paper bag and sealed and then they were transported to the crime lab.

MR. GREEN: Your Honor, the next couple pieces of evidence I want to show this witness are rather bulky. Could the witness step down to right in front of the jury box so she can handle those items?

THE COURT: Yes.

BY MR. GREEN:

Q I'm going to show you what is marked for identification as Plaintiff's Exhibit 251. Have you seen this before today, this

bag?

A Not this particular bag.

Q Right. But before your testimony today was this opened up?

A Yes.

Q By an agent of the FBI?

A Yes.

Q Special Agent Gothard?

A Yes.

Q Would you go ahead and finish opening it up?

A (Witness complies.)

Q What, I'm going to put 251A, exhibit sticker 251A on to what you just pulled out. I'll stick it right here on the top side. Can you identify what I just marked as 251A?

A Yes. This is the coat that was collected from the morgue.

Q And do your initials appear on the sack that I marked as 251A?

A Yes, they do.

Q As well as the date you recovered this coat?

A Yes.

Q Again, what did you do with this coat once you placed it in this bag? Did you seal it up?

A Right. Stapled then sealed with the orange tape.

Q And then?

A And then labeled over.

Q Then forward it on to the crime lab?

A Correct.

Q Let me ask you this. Did the coat appear to be in substantially the same condition as when you recovered it March 9, 2005?

A Yes.

MR. GREEN: Your Honor, the United States would offer 251A into evidence.

THE COURT: 251A will be admitted.

BY MR. GREEN:

Q Then I think I have one more item to show you, Ms. Keller.

We had talked before lunch about the backpack you recovered and you talked about the inventoried items but I'm showing you what is marked as Exhibit 48. That's a bankers box?

A Yes.

Q That was opened in front of you before your testimony today, is that correct?

A Yes.

Q I'm going to put an exhibit sticker 48A on to the paper sack found inside. And what do you identify 48A as being?

A This is the backpack.

Q That you recovered?

A That was recovered in front of 5006.

Q And your initials and name appear on the paper sack that I put the exhibit sticker on?

A Yes.

Q Does 48, the backpack, within 48A, the evidence sack, appear to be in substantially the same condition as it was when you recovered it on March 9, 2005?

A Yes.

MR. GREEN: The United States offers 48A into

evidence.

THE COURT: 48A is admitted.

MR. GREEN: And if I might have a moment, Your Honor,

that might be it for my direct examination.

Your Honor, that's all the questions I have of

Ms. Keller.

THE COURT: Cross-examination?

MR. OSGOOD: Could I have just a minute with

Mr. Green?

I think we agreed, Your Honor, I might go a little beyond direct. That's simply to keep from having to recall her in the defense case which we were going to do and Mr. Green is in agreement with that.

THE COURT: Okay.

MR. OSGOOD: Is that right?

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CROSS-EXAMINATION

BY MR. OSGOOD:

Q Ms. Keller, my name is John Osgood. I'm an attorney from Lee's Summit. I represent, along with Mr. Sandage seated at the counsel table, the defendant Mr. Eye.

Have you ever seen Mr. Eye prior to coming to court here today?

A No, I have not.

Q You didn't interview him or participate in any interviews or anything like that?

A No.

Q Strictly crime lab, crime scene duties?

A Correct.

Q Okay. Now, I want to take you back to March 9th. Where were you when you got the call that there was an incident at 9th and Brighton?

A We were at the crime lab which is located at 66th and Troost.

Q And how did the call come in?

A I don't recall exactly if it was a phone call or if it was over the radio.

Q Okay. Do you monitor the radio there at the crime lab?

A We wear walkies on our person and then we also have a base unit in the, down in our Crime Scene Unit.

Q Do you recall anything at all about any reports over the

radio or from any fashion whatsoever about an earlier incident half a mile back up 9th Street at 9th and Spruce?

A No, I do not.

Q Did you investigate the scene at 9th and Spruce?

A No.

Q Did you cordon it off?

A No.

Q Participate in the search of any evidence there?

A No, I did not.

Q All right. So, basically, 9th and Spruce area in the alley is not something you dealt with?

A Correct.

Q Now, when you got to the scene did you have a conversation with patrol officers or was Ms. Bartch there or, I don't remember from the reports?

A Melanie Bartch and I came together. We were in the same van. She was with me.

Q So you arrived together?

A Correct.

Q There were what, just patrol officers there at the time?

A And a homicide detective.

Q Who was the homicide detective?

A Detective Blehm.

Q How long had Detective Blehm been there when you arrived?

A I do not know.

Q How long did it take you to get there after you got the dispatch?

A Not long. We're at 66th and Troost so, basically, had to go up to 9th Street, so from 66th Street to 9th Street. I got in at 7:30 that day is when my shift started so I was there about 8:15.

Q So if this incident occurred somewhere around 6:10, the crime scene then was about an hour and a half old by the time you got there?

A Yes.

Q All right. Now, how long does it take blood to dry?

A It depends, it depends on the environment that it's in. It's hard to say.

Q This was March. Do you remember what the weather was like?

A It was cold.

Q Cool?

A Approximately, I think it was like in the 20s.

Q Would that require a longer dry time for blood?

A It just depends.

Q Okay.

A I don't really know the answer to that exactly.

Q I noticed --And I don't know that we need to throw the photos up there. You, actually, or someone did, cordoned off the entire area with yellow police investigation tape, is that

correct?

A Correct.

Q And I believe the piece of tape went across from Brighton, would be the west side of Brighton across the street over to the building over there, is that right?

A I believe.

MR. OSGOOD: Can you throw that exhibit up with the yellow tape?

BY MR. OSGOOD:

Q Yes. That's a good start.

Now, your tape right here, I'm not as good as Mr. Green. The tape right at this location here, we can see the yellow tape. And it stretches across apparently from the corner of 9th and Brighton across the street, right?

A Yes.

Q So it's blocking off Brighton itself?

A That is actually 9th Street.

Q I understand. But it's blocking, you can't go down 9th Street but it also goes over to Brighton?

A Right.

Q I don't know if we have a photograph but I assume you probably had a squad car up at the other end of 9th Street with tape across that so nobody could come south on Brighton?

A Yeah, I believe there was.

Q You've got it cordoned off a block up on 8th Street to

prevent anybody from driving down into your crime scene?

A Yes.

Q You don't have a picture but I've been working with you guys long enough to know that's how you work.

A Right.

Q You've got your tape. We can see it faintly on the far side over here, right here. And that tape runs from the corner over here to that other building, is that correct?

A Yes.

Q Then somewhere, no doubt down here at the other end, you probably have got another piece of yellow tape cordoning off that entire area?

A Yes.

Q Okay. Now, what were you told when you arrived had happened?

A At that time the information that I received is just that the victim had been located in front of the residence and then he had been transported to the hospital with an apparent gunshot wound.

Q So as a matter of caution you cordoned off an area considerably larger than the place where the body was found?

A The First Responders were the ones that put up all the tape. I didn't put the tape up.

Q Would the procedure be, and I don't mean to put words in your mouth. If it's not the procedure, you tell me because I'm

not trying to testify for you. Would the procedure be to be very cautious and careful about any tromping around, walking around in that cordoned off area other than by technical people such as yourself?

A Yes, that would definitely be recommended.

Q So the patrol officers are there to secure the scene, initially, be sure there's no threat or anything. Then they kind of quietly move out of the scene and you guys take over?

A Correct.

Q Pretty much like we see on CSI. I know they've got a lot of inventions and gadgets you don't have?

A That's true.

Q You do have something called luminal, don't you?

A Yes, we do.

Q Tell the folks what luminal is.

A Luminal is, it's a chemical that can be typically sprayed. And what it does is it reacts with, basically, the iron in blood. And in a dark setting what it will do is if it's present then it will fluoresce a blue color in the dark.

Q So that you can actually see tiny little blood spots that would never show up. If I was cleaning fish out in my garage and scrubbed down the garage real good and what not, six months later you could find fish blood in my garage with luminal, couldn't you?

A Possibly.

Q Now, did you --Strike that.

We saw a picture of Mr. McCay, of his back with a considerable amount of blood on the back of him?

A He had some blood on his back.

Q Did that blood also soak through to his clothing?

A I do not know.

Q All right. Did you examine his clothing at the crime scene? No, you didn't. You examined it at the hospital first?

A Actually his clothes were cut off at the hospital and they were put into a, like a hospital bag then they were sent down with him to the morgue.

Q What time did you first see the clothing?

A When I responded down to the medical examiner's office, they were on the gurney with him.

Q All right. Now, I take it, it did not surprise you that there was blood on the clothing and blood on his body?

A No.

Q That would be normal to bleed out particularly, apparently, a wound that went into the heart?

A Blood is very common, yes.

Q All right. Did you do any forensic examination for blood of this open area here that we've been talking about that was cordoned off? In other words, did you spray luminal on the street looking to see if you could locate precisely where the altercation occurred?

A No. There was no chemical processing for blood.

Q All right. Now, Mr. McCay had a cut on the inside of his right hand, didn't he?

A Right.

Q A laceration. Did you, where did you observe the backpack at?

A It was on the, just kind of by the sidewalk in front of 5006.

Q And that's a chain link fence?

A It is.

Q A typical chain link fence comes up, has the little deals at the top and runs across with little retainers that hold the chain link fence against the pole?

A Correct.

Q Did you do any testing of the fence itself to determine if there was blood residue on the fence which would account for the laceration on Mr. McCay's hand?

A There wasn't any chemical testing but visually looking.

Q Did you see any?

A I did not.

Q Would you agree with me though that since it's a very small laceration, less than a half inch or something, and it's in the hand, there doesn't appear to be any blood smear in the hand, that it was possible the blood was on the fence that you didn't see with a visual inspection, that perhaps luminal would

have shown?

A It's possible.

Q You didn't do that? No?

A No.

Q Not faulting you for it. You just didn't do it?

A Correct.

Q What I'm getting at is we can't say if that laceration was a result of Mr. McCay expiring on the fence and grabbing the fence and slicing his hand as he fell down the fence?

A Right.

Q As opposed to a wound that occurred during the altercation?

A Correct.

Q Okay. Same thing for the fingernail that's broken, I guess?

A Correct. Yeah, I don't know how that happened.

Q Did you go through his clothing after you picked it up?

A The items that were at the morgue then were collected from the morgue so.

Q What items did he have on him?

A May I refer to my report?

Q Oh, please do.

A The items consisted of a sweatshirt, a denim shirt, a purple shirt, blue jeans, a black belt, gray underwear, pair of white socks and pair of gray socks, pair of brown boots and a blue and brown coat. And then there were some miscellaneous

items with the clothing.

Q What were those items?

A Those consisted of pipe tobacco, cigarette papers, some -just some toilet tissue, a radio, a type of a Palm game, and a glass pipe.

Q What was the glass pipe?

A The glass pipe was burnt residue that was consistent with what would be referred to as a crack pipe.

Q Okay. Anything else that you found?

A I believe that was it.

Q Okay. Now, did you --you say the clothing was cut off when you got to the scene, to the hospital?

A They appeared to have been cut.

Q They were there though?

A Yes, they were with the victim.

Q Did you take the coat and try to reconstruct the position of the coat, vis-a-vis the bullet hole?

A I did not.

Q You know why I ask that question?

A No, I don't.

Q For example in the Kennedy assassination, one of the big, big issues for years and years and years was whether the jacket was bunched up as opposed to flat. Have you studied that? Do you remember that?

A No.

Q Would you agree with me that if you're tussling around and wrestling and everything, your coat could be in a position that would cause the bullet hole to be perhaps not where it would line up if you were just standing here and someone shot me in the side standing here?

A It's possible.

Q In other words, if I'm wrestling around, the bullet hole might be further down here even by my pocket, whereas the wound would be in my left side. Would you agree?

A If that's what happened, yeah.

Q If I'm wrestling around and I'm shot while I'm wrestling?

A Yes.

Q Would you agree with that?

A It's possible.

Q You did not, though, do any reconstruction to see if it was just a clear bullet hole into the side that matched the location of the wound?

A I, myself, personally, did not.

Q Okay. Now, next question. Do you routinely, I know it's probably something that the doctor does also but do you look for what is called striplings?

A Stipplings?

Q Stippling?

A Stippling. Yes, we would look for that.

Q Tell the folks what stipplings are.

A Stippling is when a gun is fired, there's particles that will burn and then there's also particles that won't burn. So stippling is basically partially burned and unburned pieces of gun powder that would at a particular distance burn or what is called tattooing or stippling of the skin. So it can kind of give you a determination of a distance, determination as to where a shot was fired.

Q I know you're not a firearms expert and a doctor but you've dealt with a lot of these cases, haven't you?

A Yes, I have.

Q And a close contact wound with a gun pressed directly into your body, would you expect to find stipplings?

A At a close contact, pressed in, no.

Q Through clothing, not directly into the body?

A If it was --it just depends. If there is a lot of

clothing then the stippling might not be present because of the clothes that are causing, you know, that would absorb the gunshot particles.

Q That would account for the absence on the body. What about the coat, would you expect to find something on the coat?

A There is a possibility there would be soot or powder on them.

Q Okay. What are hinge lifts?

A A hinge lift is, it's basically a two-sided piece of plastic that has an adhesive on one side so we can peel the

side off, then you can press on a piece of clothing or a car seat to try to lift up hairs or fibers or things of that nature.

Q Now, did you get the feedback from the lab on all the testing that was done by the crime lab itself, even where you didn't do it yourself?

A No.

Q Okay. Were you involved at all in the examination of the hinge lifts?

A No, I was not.

Q Who was that?

A I don't know.

Q Okay. There is a Ms. --I'm going to butcher the name -- Hentges?

A Kathy Hentges.

Q Can you spell it for us? I know she would appreciate that. I just totally ruined it.

A H-E-N-T-G-E-S.

Q Sounds close.

A I believe.

Q Was she involved in some of this?

A I don't know.

Q Okay. She's a fingerprint lady, I believe?

A Yes, she is.

Q Did you or have you seen the report from your firearms

person on dealing with examination of the clothing and the body for stipplings?

A No, I haven't.

Q Okay. You weren't involved in that?

A No.

Q Now, you said there was some bruising, I believe, on the side of the body, looked like maybe, and one of the forearms?

A I saw some bruising on the top of the right arm.

Q Now, had --Strike that.

How long was it that, after what we're calling the

6:10 a.m. shooting, was it that you arrived at the hospital?

What time did you get there?

A At the medical examiner's office?

Q Yes, ma'am.

A I believe it was actually, I'm not exactly sure what time.

I think it was afternoon.

Q Is it possible then that some lividity had set in, into that arm?

A It's possible lividity could have set in but it wouldn't be on the top of the arm. Lividity goes down.

Q And tell the jury, please, for those who might or might not know what lividity is?

A Lividity is, it happens after death. It's, basically, the pooling of blood so it will settle in the lowest parts that are most in contact to the ground. So if someone was laying on

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their back, or if they had their arms straight, along the bottom and back side.

Q If the arm was up across the body, it would tend to pool down toward the elbow?

A In that particular photograph we had moved his arm up like that. It wasn't like that.

Q Was there anything remarkable in your mind as an expert about the wound itself? Could you determine, for example, entry path or anything like that?

A No.

Q Okay. And did you stay there throughout the autopsy?

A No, I did not.

Q Okay. Did some other officer?

A The detectives typically stay throughout the autopsy. If he did, I'm not for sure.

MR. OSGOOD: May I have just a minute, Your Honor?

THE COURT: Yes.

BY MR. OSGOOD:

Q Now, what, and I don't know if this is even an issue, but what happened to the evidence that you seized? What's the chain of custody on it? We're not objecting to that but might be helpful for the folks to understand how this evidence moves from location A to B to C to D?

A From, what happens after I have completed packaging it and completing what we call a 236, which is, basically, an evidence

form that lists what we have collected, I will log it into a logbook and then it is placed into the property vault in the lab.

Q And if we weren't, if we wanted to complain about it, then you would bring in the people that signed for it in each successive step, is that correct?

A That's correct.

Q And we didn't do that here. Basically, it appears to be in the same condition it is when you got it and I'm not contesting that it isn't. But there would be steps that you would go through if we really wanted to show every step and you could show that based on logs and that kind of thing?

A As the evidence is moved throughout the lab and who ever comes into contact with it, that's all documented.

Q Okay.

Just a minute, Your Honor.

MR. OSGOOD: I believe that's all I have, Your Honor.

THE COURT: Further cross-examination?

MR. ROGERS: Yes, Your Honor. Thank you.

CROSS-EXAMINATION

BY MR. ROGERS:

Q How are you, ma'am?

A Good. Thank you.

MR. ROGERS: Could we have Exhibit 15, please?

BY MR. ROGERS:

Q Can you see Exhibit 15 in front of you, ma'am?

A Yes.

Q And that is the diagram that Technician, I guess, Bartch -A

Yes.

Q --drew with your help. Did you do the legend for it or did she?

A She did it.

Q That's good because I'm going to pick on her a little bit. Just a very minor thing. Calling your attention to item No. 3, right? Is that No. 3?

A That's a street light.

Q Okay. And that's L3 then?

A I believe that's right, yes.

Q And looking at the legend, do you have that in front of you?

A I will.

Q That indicates all the street lights, right?

A Correct.

Q And it says Light No. 3 is measured at 109 feet, 9 inches north of the north side of 9th Street. That can't be right, can it?

A No.

Q Okay. So that's got to be a typo?

A Correct.

MR. ROGERS: So, may I see 16A, please?

BY MR. ROGERS:

Q Calling your attention to Exhibit 16A. That's the street light right there?

A Yes.

Q That's the pole, the bottom of the pole. On top you see the light?

A Correct.

Q Okay. And it looks like it's maybe four or five feet north of the north edge of 9th Street?

A Correct.

Q Straightened that out.

MR. ROGERS: By the way while we have 16A, could you just zoom in a little bit, please?

I'm sorry. I just wanted a closer picture of the middle, basically.

BY MR. ROGERS:

Q Does that show the yellow crime scene tape right there?

A Yes.

Q That goes across whatever the block to the east of Brighton is?

A Yes, that is crime scene tape.

Q You searched not only the items that were with the decedent at the morgue but also everything found in the backpack, correct?

A Correct.

Q You inventoried all of that on your 236. Is that what you call it?

A Yes.

Q And you found some toiletry items like shaving gel, dental floss, lip balm and Q-tips and bandaids.

A Yes.

Q Did you find any fingernail clippers?

A Can I refer to the report?

Q Sure. Definitely.

A I do not believe so.

Q Okay. And so the broken fingernail depicted in Exhibit 17V could have been there for hours or even days if he didn't have any fingernail clippers to cut it off with, right?

A That's possible.

Q Okay. When you got to the crime scene, by the way the first thing that the initial responding officers do after checking for vital signs and arranging for the transport of the victim to the hospital or the morgue or wherever, right? By the way those are, basically, the same building, right? The hospital and the morgue?

A It's close to it. It's a separate building.

Q But it's down at Truman Medical Center?

A It's across the street. I think it might be attached to a building that is part of Truman. It's a little bit separate

from the hospital part.

Q Okay. Anyway, after the First Responders do that, they are responsible for protecting the crime scene, correct?

A Right.

Q And so they put up the tape and make sure that nobody is tromping around it as was Mr. Osgood's phrase?

A Yes.

Q And when you got there, it was daylight?

A Right.

Q And you could see clearly?

A Correct.

Q And you also, being very careful, watching where you stepped, looked all over the area there at 9th and Brighton, didn't you?

A Yes.

Q And did you see any blood in the street?

A No.

Q Did you see any blood on the sidewalk?

A No, I did not.

Q Did you see any blood on the grass near the fence where the backpack was?

A No, I did not.

Q And, of course, you didn't use luminal because it was light outside and luminal wouldn't have done anything at that point?

A Correct.

Q And you would have had to come back in the middle of the night to use luminal?

A Yes.

Q Now, you were talking with Mr. Green earlier about defensive wounds, correct?

A Correct.

Q And when you look for defensive wounds on the inside of the hand, that's usually in the stabbing kind of case, isn't it? Where you find defensive cuts on the hand?

A Often in cutting type cases there are defensive wounds on the hands.

Q And, obviously, if it's a shooting case, a defensive wound is going to look like a bullet hole?

A In some instances.

Q Or a bullet graze?

A Could be.

MR. ROGERS: Could I see 17Q again, please?

BY MR. ROGERS:

Q And that's a picture of the index finger of the --is that the left hand?

A I believe it's the right ring.

Q Right ring finger. Okay. That's what is confusing me.

And there's that lacerations, right there. I'm a lot better than these guys by the way at drawing circles. And that's what

you're talking about, right?

A Yes.

Q That's the focus of that picture. Now, comparing that with your scale, that looks to be about an eighth of an inch long?

A I'm not sure exactly. The medical examiner will have an exact measurement of that.

Q I'm just -A

Approximately, yes.

Q And that certainly could not be a bullet graze, could it?

A The doctor would probably be the one that would answer that.

Q Okay. Does it appear to you to be an incised wound?

A It appears to me to be some kind of a laceration or cut.

Q Okay. And now moving to the area of 23rd and Manchester, is that where the car was?

A Correct.

Q And did you take the photographs there?

A No, I did not.

Q Okay. And was that Ms. Bartch?

A Yes.

MR. ROGERS: That's all I have, Your Honor.

THE COURT: Redirect?

MR. GREEN: No, Your Honor. May this witness be

excused?

THE COURT: Without objection, she may be excused.
(Witness excused.)

MR. GREEN: I believe Mr. Gibson has the next witness.

MR. GIBSON: Thank you, Your Honor. The government calls Peter Paschetti.

PETER PASCHETTI, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GIBSON:

Q Good afternoon, sir.

A Good afternoon.

Q Sir, you can see there's a microphone in front of you. I can hear you okay. I think the jurors can to. But if there comes a point where you start to trail off, I might need you to lean a little closer to that microphone. Okay?

A Yes.

Q If I ask you anything that you don't understand, just ask me to stop. I'll repeat the question. Okay?

A (Nodding head.)

Q And you're nodding your head but the young lady in front of you is taking down everything we say but she can't take down a nod or shake of the head. You'll have to answer with a word. Okay?

A Yes.

Q Thank you. Now, sir, how are you employed?

A With Kansas City Southern Railroad.

Q And how long have you been employed with the Kansas City Southern Railroad?

A Twelve years.

Q Twelve years? Is it safe to assume that in March of 2005 you were also then employed with the Kansas City Southern Railroad?

A Yes, sir.

Q Okay. Now, I'd like to direct your attention specifically to March 9 of 2005. Were you working for the railroad on that date, sir?

A Yes.

Q And what were your duties on that date? Specifically, what was your employment situation? What were you responsible for?

A We was delivering a freight train from Pittsburgh, Kansas to Kansas City.

Q To Kansas City, Missouri?

A Yes.

Q And at some point when the train arrives in Kansas City can you go straight through? Do you have to stop? How does that work?

A When we come into the station out there at 23rd Street called Blue Valley and we have to stop and get over in the yard and tell them we're out there and they'll get back with us with

permission when it's time for us to bring it on to town.

Q And that station that you indicated, that's over by 23rd.

Is that in the area of 23rd and Manchester?

A Yes, it is.

Q And, in fact, did the freight train that you were on on March 9 of '05, did that stop at 23rd and Manchester as you just indicated you would have to?

A Yes, it did.

Q And do you remember approximately what time your freight train arrived on March 9, 2005 at 23rd and Manchester?

A Around 4:00 a.m.

Q Okay. Now, how long do you have to wait before you get clearance to come into Kansas City?

A It's anywhere from 15, 20 minutes to maybe five, six hours.

Q Okay. And what are you waiting for? Who is directing you whether or not you can proceed?

A Our yard master from our yard.

Q So when the train arrives in Kansas City, what happens next? Do you have to contact the yard master or how does that work?

A Yes. When we pull into the Blue Valley, we contact the yard master. Let him know we're there.

Q On March 9th of '05, I believe you indicated you did that around 4:00 a.m., is that correct?

A Yes, that's correct.

Q Now, you said, we. Was there somebody who was with you on the freight train?

A My engineer. I'm the conductor. I have an engineer, the one that drives the train.

Q Was there anybody else on the train?

A No.

Q And do you remember approximately how long you were waiting before you got clearance from the train master to proceed?

A We never did.

Q Never did. Now, did something happen that drew your attention on March 9 of 2005 while you were sitting there waiting for permission from the train master?

A Yes. While, after it got daylight, we'd both been napping. And I heard a noise. I looked out and I seen a dark SUV vehicle setting over on the next to the tracks by a bridge pillar. And I seen a man get out of the passenger side and go behind the pillar. He was gone maybe a minute or so, got back in the vehicle. Then another man got out of the driver's side of the SUV and went over behind the pillar. Was gone a little while, then he got back in and they left, headed east.

Q Now, from your vantage point, you were on the train when you saw this?

A Yes.

Q And approximately how far away were you from this SUV that you saw when you made those observations?

A Around probably 150 yards.

Q And from your distance were you able to see the face of either of the males that you saw?

A No, sir.

Q And, approximately, how long did the SUV stay at that location, if you remember?

A When I seen it, it was only there maybe five minutes.

Q Five minutes?

A Yes.

Q Then what happened?

A Then it left and went eastbound across the tracks toward Manchester.

Q Now, from where you were situated on the train, could you tell what, if anything, was on the other side of the pillar?

A No.

Q And, approximately, well, strike that. After the SUV left, did you notice anything else?

A Well, started seeing some smoke. And then one of our other trains was coming out of town and they radioed on to our yard master, said that there was a car on fire behind that bridge pillar. About the time they started saying that on the radio, that's when we could start to see the smoke.

Q And you saw the smoke from where?

A I was up on the engine and the smoke was coming from behind that bridge pillar.

Q Okay. Now, did the fire department come out?

A Yes.

Q And do you have a sense of how long it took the fire department to come out after you heard that radio broadcast?

A Somewhere in the vicinity of ten minutes probably.

Q Was the fire department out there for awhile?

A Probably 30 minutes or so.

Q And did any police arrive at the scene as well?

A Yes.

Q And did you have occasion to stay behind and speak with any of the officers or any of the detectives investigating this?

A Yes. Later I spoke with, I believe, it was a detective.

Q Was the fire department still on location when you spoke with the detective?

A I can't remember that.

Q Okay. Did the --did your train at any point go ahead without you or did the train stay behind and then you got back on? How did that work?

A Yeah. The train went ahead and they brought another crew out and we crewed the train there. Had them take it on to town while I was staying out there for the investigation.

Q Okay. So your train went on without you?

A Yes.

Q How did you leave the location?

A One of our officials come in the vehicle and took us back to town.

Q Picked you up?

A Yes.

Q That was after the investigators were done talking to you?

A Yes.

MR. GIBSON: Now, if I could, I'd like to have Government's Exhibit 19A displayed for the witness, please.

BY MR. GIBSON:

Q Sir, could you take a look at the screen in front of you?

A Yes.

Q Do you recognize that, sir?

A Yes. It's the locomotive I was on that morning.

Q The locomotive you were on March 9th of '05?

A Yes.

Q And that location that you're seeing, that's the area of 23rd and Manchester?

A That's correct.

Q Okay.

MR. GIBSON: Could I have 19A moved into evidence and displayed for the jury, please?

THE COURT: Without objection, 19A is admitted and may be published.

MR. GIBSON: Now, could I have the witness shown Government's Exhibit 19C, please?

BY MR. GIBSON:

Q See 19C, sir?

A Yes.

Q What is that a photograph of?

A Of the 23rd Street Bridge.

Q And do you see in there the pillar you were discussing earlier?

A Yes, I do.

Q Is that more or less how it looked from your vantage point where you were on the locomotive?

A Yes. We was to the south of that but it would be a blockage just like that.

Q Okay.

MR. GIBSON: Like to have 19C moved into evidence and shown to the jury, please.

THE COURT: 19C is admitted and may be published.

BY MR. GIBSON:

Q Now, you indicated, sir, that after the fire department was out and after the investigators arrived, you came and talked to the investigators and you had to get off the train to do that. Is that right?

A Yes.

Q So did there come a point in time when you saw what was on

the other side of that pillar that you couldn't see when you first saw the smoke?

A Yeah. At one point I was further on down the track there where, just barely seen the back end of a car.

Q Okay.

MR. GIBSON: And could I have the witness shown what was previously moved into evidence as 19H?

BY MR. GIBSON:

Q Do you recognize that, sir?

A Yes. That's the rear of the vehicle I seen that morning.

Q And that was the car that had been on fire on March 9th of '05?

A Yes.

MR. GIBSON: Thank you, sir. I don't have any other

questions at this point.

THE COURT: Cross-examination?

MR. SANDAGE: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SANDAGE:

Q Hi. My name is Lance Sandage. Along with John Osgood, we represent Mr. Eye. You and I have never spoke, is that correct?

A That's correct.

Q I'm just going to go over with you a couple of questions, reviewing what you just testified to with Mr. Gibson, the

attorney for the government.

Could the government, please, put up 19C again?

You had discussed this picture with Mr. Gibson, is

that correct?

A Yes.

Q And is that a fair representation of where you would have been looking toward those pillars?

A No, not when I was on the locomotive.

Q Describe to the jury how that picture is either different or consistent with how you would have seen it? Where would you have been?

A I would have been, this is looking straight at the bridge pillar. I would have been south, more to the left of that, on down the track like 150 yards or so but still the angle, all I could see is that big about 8-foot wall of pillar.

Q So are you saying that you were actually farther away from that pillar than this picture represents?

A That's correct.

Q And when we're talking about the pillars, are we referring to the second pillar, the one that's farthest away in that picture?

A The farthest west one.

Q Sir, how far would you, looking at this picture, how far would you say this picture is to that second pillar?

A Oh, it's 20 yards.

Q And you say that you were another 150 yards from there.
Is that fair?

A Yeah, around 150 yards away.

Q So you're saying you were about 170 yards away?

A I was 150 yards, somewhere in there, yeah.

Q So I'm a sports guy. So let's put it in terms of football

field. I'm not athletic but I do like to watch it. How many
football fields away is that?

A Little over 20 yards longer than a football field. I mean
70 yards longer than a football field.

Q Okay. So it's fair to say we're coming up almost on
two football fields that you were away that day?

A Yes.

Q I think you testified it was in the early morning hours,
is that correct?

A That's correct.

Q What time did you first see the car burning?

A That was around, going on six, I believe.

Q It was March of 2005, is that correct?

A Yes.

Q What was the temperature like that day?

A It was, well, I would say it was probably 50-ish.

Q Was it dark outside?

A Not then it wasn't. It was already light.

Q Was the sun completely up or was it coming up?

A It was coming up.

Q Were there, is there any artificial lighting in that area that would help you view the pillar at all?

A No lighting over that way.

Q And you're in your cab, is that correct?

A That's correct.

Q Were the lights on in your cab or off?

A Off.

Q And I think you had told investigators when you were first interviewed that you had been there awhile and is it common that you sleep when you're waiting for someone for, waiting for the call to go into the yard?

A Yeah, if you're there a long time, you might nod off, take a nap.

Q Did that happen on this morning?

A Yes.

Q And then what awoke you to look some 170 yards down the road?

A I heard a noise.

Q What type of noise did you hear?

A Kind of a bang sound. A noise you usually don't hear out there except for trains going by, you know.

Q And then I believe you testified on direct examination that you saw two individuals. Is that correct?

A That's correct.

Q Two different people. Is that your testimony?

A Yes.

Q And what was the first individual wearing that you saw?

Do you remember?

A No, I don't remember that.

Q I believe when you met with investigators you said that you saw what you thought to be a white male wearing blue jeans and a light-colored jacket. Is that a fair description of the first person you saw?

A Yeah. Yes.

Q Sir, is it possible that the person that you saw some 170 yards away near that pillar in the early morning hours of March of, March 9, 2005, could have been a female?

A No.

Q What makes you say that?

A Just, I can pretty much tell a male from a female.

Q How tall was that first individual that you saw?

A I'd say, oh, 6-foot range.

Q Did you see a third person ever at the scene?

A No.

Q After you saw the second individual, how long was it before you saw the fire?

A Probably around ten minutes.

Q What were you doing in between the time, during that ten minutes?

A Still sitting in the cab of the engine.

Q That first person that you saw, you described as wearing a jacket. Do you know if that jacket had a hood on it or not?

A I don't know.

Q Do you remember if the person, the first person you saw had a hat on or no hat?

A No, I don't.

Q Do you remember if that person had a hood up or off their head?

A No.

MR. SANDAGE: May I have one minute, Your Honor?

THE COURT: Uh-huh.

BY MR. SANDAGE:

Q Sir, before testifying today have you talked to law enforcement any other times, other than the time right after the morning hours of March 9 of 2005?

A On this case?

Q Yes, sir.

A No.

Q So the only other time you have spoken is today in court about this?

A About this? No. I spoke to them that day. And the investigators I believe it was.

Q So on March 9, 2005, you gave a statement. Is that correct?

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A Yes.

Q And you testified today. That's right. You're here right now, right?

A Right.

Q Any other time between March 9 of 2005 and today that you have talked to anybody involving the incident on March 9th of 2005 from law enforcement perspective?

A No.

Q Thank you.

Nothing further, Your Honor.

THE COURT: Mr. Rogers?

CROSS-EXAMINATION

BY MR. ROGERS:

Q Very briefly, sir. You weren't really keeping close track of time that morning?

A No, not really.

Q And so if the fire department or somebody were to say that the alarm was called in at 6:32 in the morning, that would be inconsistent with your memory, wouldn't it?

A No.

MR. ROGERS: Thank you.

THE COURT: Redirect?

MR. GIBSON: No, Your Honor. Thank you.

THE COURT: Thank you, Mr. Paschetti.

MR. GIBSON: May Mr. Paschetti be excused, please?

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THE COURT: Without objection, the witness is excused.

(Witness excused.)

MR. GIBSON: Government calls Officer Jarrett Lanpher.

JARRETT LANPHER, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

MR. GIBSON: May I proceed?

THE COURT: Yes.

BY MR. GIBSON:

Q Good afternoon, officer.

A Good afternoon.

Q Sir, obviously, you're employed by the Kansas City Police Department, is that correct?

A Yes, I am.

Q How long have you worked for the Kansas City Police Department?

A Thirteen years.

Q What is your current rank and assignment?

A Sergeant. South Patrol Division.

Q And in March of 2005, what was your assignment then?

A Police officer at East Patrol.

Q And how long had you been assigned to East Patrol?

A At that time?

Q Yes, sir.

A I had just transferred out of homicide over there so maybe six months.

Q And, specifically, did your duties on March 9 of 2005 take you to the area of 23rd and Manchester in Kansas City?

A Yes, they did.

Q How did your duties take you there, to 23rd and Manchester?

A I was dispatched there to meet the fire department on a car fire.

Q And, approximately, what time did you arrive at the location?

A I was dispatched at 6:48 a.m.

Q And when you arrived, was the fire department already on location?

A Yes, they were.

Q And when you arrived, were you in uniform?

A Yes, I was.

Q Were you in a marked car?

A I was in actually a patrol wagon.

Q Patrol wagon?

A Yes.

Q What was your specific assignment once you arrived?

A I met the fire department. We usually meet them on any car fire for one, tow the vehicle, and, two, to check any VIN, see if they're stolen or anything like that.

Q Now, while you were out there did any members of the homicide unit come to the location?

A Later on, yes.

Q And were you given any instructions or did you assume the task of preserving the scene at that location at all?

A Yes. After the fire, I was already aware that we had had a shooting in the area and this vehicle matched the description of the suspect vehicle. So we automatically started setting up the crime scene, just securing everything.

Q And what is involved in that, setting up a crime scene and securing the area?

A Basically, setting up a perimeter and making sure no one goes in that is not allowed.

Q After you would set up your perimeter and establish a crime scene, while you were on location did anyone other than fire department personnel or Kansas City Police Department personnel, did anyone touch or access that vehicle in any way?

A No, they did not.

Q And what time did you leave the location?

A I was relieved at 9:25 a.m.

Q And when you were relieved, was it still a scene? Did you turn over that task to somebody else?

A I turned it over to the homicide unit.

Q I'd like you to take a look at what was previously marked as Government's Exhibit 19H.

Could we display that to the witness, please?

Do you recognize that, sir?

A Yes, I do.

Q Is that the vehicle that you secured at the scene at 23rd
and Manchester on March 9 of 2005?

A Yes, it is.

MR. GIBSON: Thank you, sir.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Sergeant, you work out of which division?

A Right now?

Q Well, on March 9 of 2005?

A East Patrol Division.

Q That's on Van Brunt, isn't it?

A Yes.

Q Does that include the 9th and Spruce area?

A Yes, it does.

Q The 9th and Brighton area?

A Yes, it does.

Q And what was your communication set up when you were working in the East Patrol there? Were you in a car?

A I was in a patrol wagon.

Q Patrol wagon. What shift were you working?

A Dog watch.

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Q Okay. I know what that is but these folks probably don't.

A --midnight shift.

Q Midnight to six?

A At that time I was working -Q

8-A

--eleven to seven.

Q So you were on duty at about six in the morning?

A Yes.

Q In your car?

A In my wagon, yes.

Q In your wagon. Did you have a partner with you?

A No, I did not.

Q Okay. And what was your normal procedure working your wagon? Would you patrol or sit at various locations?

A I would patrol as well as be available to transport arrests.

Q Now, the previous witness who worked for the train company said when things were slow, he takes naps. I presume you don't take naps?

A No, I do not.

Q So you're listening to the radio for emergency calls, that kind of thing?

A Anything, yes.

Q And that would range all the way from somebody trying to, elude because they're speeding, all the way up to a homicide,

wouldn't it?

A Anything, yes.

Q And, typically, what is the procedure if you get a shooting call? Who responds? Who dispatches, first of all, the officer to respond and who would all respond on that?

A Who ever the dispatch, dispatched.

Q What would be a typical procedure in those days, as far as the number of cars dispatched to a shooting scene?

A Minimum of two, unless -Q

Minimum of two?

A Unless it's a two-person crew -Q

I'm sorry. Say that again. I think I interrupted.

A When I say two cars, that's usually if there is one

officer in each car, that's a two-car minimum.

Q And do you recall today and thinking back, did you hear the initial report over the radio of the shooting at 9th and Spruce?

A Yes, I did.

Q And was there a lot of hectic radio traffic right around that five or ten minutes of that occurring, dispatches?

A I wouldn't say hectic, no.

Q I don't mean hectic in the sense you guys weren't organized or anything. I mean activity picks up at that point?

A A lot of people start doing, moving into the area, yes.

Q And so there is increased radio traffic, I guess, is what

I should have said.

A Somewhat. For that time of the morning, yes.

Q You've got a security issue, of course, whether or not there's a shooter still in the area, right?

A Yes.

Q You're probably coordinating with the rescue people, ambulance and that kind of thing, somebody is, aren't you?

A No. We're sent there to secure the scene before MAST comes in.

Q All right. Had it been a slow night that night up to that point? Or do you remember?

A I don't recall prior to that.

Q Just probably blends together over the years but the thing that triggered your mind and you recall today is this was a shooting and a homicide in that area?

A Yes.

Q That sticks in your mind, doesn't it?

A Yes, it does.

Q If there had been a previous shooting minutes before at 9th and Spruce, would that have generated similar radio traffic?

A If there was dispatch to the shooting, yes.

Q And would you remember that if that, in fact, occurred?

A That exact address?

Q Yes.

A I know a shooting was dispatched. I don't recall what the exact address was at.

Q The shooting was dispatched on March 9th to?

A In the northeast area.

Q To 9th and Brighton where the homicide was?

A It was on 9th Street.

Q Okay. But there weren't two separate dispatches in your mind?

A Not to my knowledge.

Q Okay. That's all. Thank you.

THE COURT: Mr. Rogers?

MR. ROGERS: Thank you.

CROSS-EXAMINATION

BY MR. ROGERS:

Q Sir, following up a little bit on Mr. Osgood. The shooting that you recall is the shooting at 9th and Brighton, right?

A The shooting I recall is the shooting that came out at that time in the morning. I don't recall 9th and what but I know it was 9th Street in that area.

Q Shortly after 6:00 in the morning?

A I don't recall the exact time, yes, but, yes, somewhere around 6:00 a.m.

Q And there was also a vehicle described in connection with that shooting?

A Yes.

Q And that was?

A A red vehicle.

Q A red vehicle. And so when you went, that's the shooting that turned out to be the homicide, correct?

A Yes.

Q And did you work with Officer Foley? Do you know her?

A Yeah, I know her.

Q She was on your shift, right?

A Yes. She was in my sector.

Q Dog watch, as you call it. And in your sector, did you say?

A Yes.

Q Tell me about sectors.

A Sectors are broken up into, east zone is broken up into four sectors, 10 Sector, 20 Sector, 30 Sector, 40 Sector.

Q Those are geographic divisions of the zone?

A Yes.

Q So the zone is the territory for which one particular station is responsible. In your case, east zone is the station at 27th and Van Brunt?

A Yes.

Q And then it has four different sectors, correct?

A Yes.

Q And there are how many units? By unit we mean a car,

right?

A Average four per sector.

Q Per sector, per shift?

A Four to five and a wagon.

Q And the wagon is what you were driving?

A That night, yes.

Q And that's not your usual assignment. That's just -A

No. We would rotate because we don't have a permanent

wagon driver. So we would share the duties.

Q So you were lucky, you got to drive the wagon?

A Yes.

Q And that didn't mean that you just sat around waiting for somebody to get arrested so you could fetch them. You would also drive around and see what's going on?

A I would monitor what other officers are doing and if I thought they would need a wagon for an arrest, I would start heading in that direction.

Q And you would also sort of cruise, like you would if you had been driving a patrol car?

A Yes, I would.

Q And what sector were you assigned to?

A Forty.

Q And what was 40 Sector?

A What was it?

Q Yeah, what's the boundaries?

A We went from 12th Street, south to about 39th and Jackson, all the way to the city limits in Independence.

Q Okay. That's a lot of territory?

A Yes.

Q As a matter of fact, you didn't stay south of 12th Street, did you?

A South of 12th Street?

Q Yeah. In other words, Officer Foley was in your sector, was dispatched to 9th and Brighton?

A We could go anywhere we wanted, yes.

Q And depending on what everybody else was doing, some times you got dispatched outside your sector?

A At that time in the morning, we were the late sector. So we were the last ones to go home. So the other three sectors were already at the station getting ready to be relieved by the next crew. So we get all the late calls.

Q So you're batting clean up, so to speak?

A Yes.

Q And the only shooting that you recall from that night is the one that Officer Foley was the primary officer dispatched on?

A Yes.

Q There is, by the way, a 7-Eleven at like on 12th Street in that sector, is that correct?

A There is a 7-Eleven at 27th and Van Brunt and there's one

at Independence and Benton.

Q Independence is the one I'm thinking of, I guess. No shootings reported at any 7-Eleven that night, were there?

A Not to my knowledge.

MR. ROGERS: That's all the questions I have. Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. GIBSON:

Q Is a shooting uncommon in the northeast?

A No, it's not.

Q And are there, in fact, shootings that go unreported that don't get into the 9-1-1 system?

MR. OSGOOD: Objection. If it's not reported, how would he know, Your Honor?

THE COURT: Well, he can answer if he has an answer. If he doesn't know, he shouldn't guess or speculate.

THE WITNESS: I would imagine.

BY MR. GIBSON:

Q Is it safe to say if no one calls in -

MR. ROGERS: Excuse me. I move to strike that answer.

THE COURT: Overruled.

BY MR. GIBSON:

Q If no one reported it to police, would there be any

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dispatch traffic from headquarters directing radio cars to go to any specific location?

A If nobody called it in, either on shots fired or outside disturbance or anything else, then, no, we would not be dispatched.

Q Now, did you run the vehicle identification number on that particular car at that location?

A Yes, I did.

Q And what were the results of your check regarding the vehicle identification number?

A It responded back stolen out of Raytown, Missouri.

Q Thank you, sir.

THE COURT: Recross?

MR. OSGOOD: Nothing, Your Honor.

THE COURT: Mr. Rogers?

MR. ROGERS: Nothing. Thank you.

THE COURT: Thank you, sir. You may step down.
(Witness excused.)

MR. GIBSON: May the sergeant be excused?

THE COURT: Without objection, he may be excused.

MR. GIBSON: Government calls Thomas Kievlan.

MR. ROGERS: May we approach, Your Honor?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

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MR. ROGERS: Co-counsel advised us one of the jurors has been having trouble staying awake. Maybe this is a good time for a break.

THE COURT: I'll not break yet. I'll have him stand up and stretch. Which one is it?

MR. GROMOWSKY: Gentleman in the back row, second from the left.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Okay. Before we do the next witness, everybody stand up and stretch.

The after-lunch sessions are some times hard to focus and concentrate. So any time you feel tired and fatigued, feel free to stand up and stretch out. You may sit down.

THOMAS KIEVLAN, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GIBSON:

Q Sir, how are you employed?

A I'm a fire investigator for the City of Kansas City, Missouri Fire Department.

Q And how long have you been employed with the Kansas City Fire Department?

A Eleven and a half years.

Q And before that, how were you employed?

A I was in the Air Force. I'm retired. 20 years.

Q And how long have you been fighting fires?

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A I was a fire fighter for 20 years in the Air Force and investigation for ten and a half years.

Q And did you receive any specialized training for fire investigation?

A Yes.

Q Could you tell us about that, please, sir?

A I have been through the Missouri course on fire investigation. National Fire Academy on fire arson investigation and National Fire Academy on interview, interrogation, courtroom testimony.

Q Approximately, how many fires do you investigate a year, sir?

A On the average, probably about 300.

Q And in the past eight years, approximately how many of the fires that you investigated were related to cars or car fires?

A Approximately, 300 or around that figure.

Q Now, have you ever testified before, sir?

A Yes, I have.

Q And what courts have you testified in?

A I have testified in city court, county court and I've given depositions in federal court.

Q And, sir, were you employed by the Kansas City Fire Department on March 9th of 2005 as a fire investigator?

A Yes.

Q And were you dispatched to the scene at 23rd and

Manchester to investigate a car fire at that location?

A Yes.

Q Were you able to form any conclusions to a reasonable degree of professional certainty regarding the cause of the fire related to that car?

A That the car was intentionally set on fire.

Q Did you prepare a report in connection with your examination of that vehicle?

A Yes.

Q Will your report assist you in your testimony today, sir?

A Yes.

Q Showing you what's been marked as Government's Exhibit 60, do you recognize that, sir?

A Yes, sir.

Q Is that your report?

A It is a computer generated copy of the report, yes.

Q Sir, at what time was the Kansas City Fire Department dispatched to the location at 23rd and Manchester?

A Time of the alarm was at 0632 and 55 seconds.

Q And that's 6:32 a.m.?

A Yes.

Q And approximately how long after the initial alarm went out did you arrive on the location, if you recall?

A Approximately, probably about ten after seven.

Q And tell us about what you saw when you got there?

A I saw that there was a vehicle located at the, underneath the Manchester Bridge, 23rd and Manchester Bridge, near the back pillar of the bridge support.

Q And were police on location when you arrived?

A Yes. I had a district officer that was holding the fire scene once the fire crew extinguished the fire for me.

Q Was that Officer Lanpher?

A Yes.

Q And was the fire department engaged in extinguishing the fire when you arrived or was it already out when you got there?

A It was already extinguished and the fire pumper that was on the scene had already left the scene.

Q Now, what kind of examination do you do to determine whether or not the fire was intentionally set? Walk us through that, please?

A Okay. Basically, I go from the least burnt to the most burnt and start to do an exterior investigation of the vehicle to determine where the fire had been let out of the vehicle or fire spread on the outside of the vehicle then working inward to the interior of the vehicle.

Q And why do you start from the least burnt and move toward the most burnt?

A Because the least burnt tells there is less fire at that area or no fire. Then it works into the area where the actual fire was burning.

Q So at the point of origin would it be safe to say that's where the fire had been burning the longest?

A The area of origin would be where the fire burned --could be where it burnt the most at that point, yes.

Q Now, specifically what did you observe with respect to this vehicle as you did your examination?

A That, at the time when I arrived, the trunk lid and the hood were both opened up. And I confirmed that with the fire captain. And that there was very --no damage to the trunk area or inside the trunk. And as I went down along the side, that there was damage out the back window up on to the roof of the vehicle. Continuing around, that the doors were open because they were opened up by our fire crews to extinguish the fire. Engine compartment had the hood up but had minor damage around the area near the windshield. But no fire damage in the engine compartment at all.

Q What, if any, significance was there to the fact there was very little fire damage near the engine compartment?

A That there was, along the fire wall there was just some minor damage, that the fire spread from the compartment into the engine area. They had not gotten to the engine and the engine was not involved in the fire.

Q The engine was not involved in the fire?

A Yes, sir.

Q Okay. Now, what else did you observe?

A Continuing on around, I observed that the doors on the driver's side were also opened up and that the damage had ventilated out; the fire had ventilated out the front window and all. And when I was there, the color of the vehicle and the make and model of the vehicle.

Q And what, if anything, did you observe relative to the windows, the windshield and so forth?

A Okay. The front windshield was partly out at that time. The fire crews removed additional amount of it. The rear window had the glass broken out by our fire crews. And I could tell by the glass that there was what we normally call a sooting where, basically, the inside of the glass has black soot built up on the inside. And that was removed by our fire crews. And then all the fire damage was into the compartment of the interior of the vehicle.

Q Was there a license plate on the vehicle?

A There was not a license plate on the front or rear of the vehicle.

Q And what, if anything, did you observe relative to the ignition on the vehicle?

A I observed that the ignition area along the steering column had received fire damage but there was no key in the ignition.

Q Now, if I could, sir, I'd like you to take a look at what was previously entered into evidence as Government's Exhibit

19H, as in Harry. Take a look at that screen, sir. Do you recognize that?

A Yes.

Q Is that the vehicle you were discussing?

A Yes.

MR. GIBSON: Now, if I could, I'd like to have shown to the witness 19J, as in Jack.

BY MR. GIBSON:

Q Do you recognize that, sir?

A Yes. That is the vehicle we were discussing within the fire report.

Q And is that about how it looked when you were at the location on March 9th of 2005?

A Yes.

MR. GIBSON: Like to move Government's Exhibit 19J into evidence, please, and have it shown to the jury.

THE COURT: Without objection, 19J is admitted and may be published.

BY MR. GIBSON:

Q Now, what could we see in this picture relative to your examination of the vehicle?

A That the rear of the vehicle received no fire damage due to the fact that the color is all still there. There is no rear license plate. And there is no fire in the trunk. There are other windows that are out that were removed by the fire

crews.

MR. GIBSON: And like to have the witness shown what was marked as 19N, as in Nancy.

BY MR. GIBSON:

Q Do you recognize that, sir?

A Yes.

Q Is that another view of the vehicle?

A Yes.

Q Is that from the passenger side?

A That is from the passenger side.

MR. GIBSON: Like to have 19N published to the jury and moved into evidence, please.

THE COURT: 19N is admitted and may be published.

BY MR. GIBSON:

Q Now, what can you tell us about this photograph relative to your investigation?

A That the fire was in the interior of the vehicle. The vehicle damage to the upper hood area is where the fire had ventilated out of the front windshield and that all the fire was contained into the interior of the vehicle with the doors damaged and everything and vented out the window.

Q So it's your judgment that the fire started in the interior and spread outward, is that correct?

A That's correct.

MR. GIBSON: Could I have the witness shown as what

has been marked as Government's Exhibit 19R?

BY MR. GIBSON:

Q Do you recognize 19R, sir?

A Yes.

Q Is that a closeup or a closer view of the engine area of the vehicle?

A Yes.

MR. GIBSON: I'd like to have this shown to the jury, please, and moved into evidence as Government's Exhibit 19R.

THE COURT: 19R is admitted and may be displayed.

BY MR. GIBSON:

Q Now, does this photograph at all assist you in explaining what you were talking about earlier when you referenced the fire wall as it relates to the engine area?

A Yes.

Q Tell us about that, please.

A In the mid section of the, where the hood is up, just where the hood is, just below there, you can see there is fire damage across there. That is your fire wall area there. The fire wall maintained the fire in point, in check at that point and it did not spread into the engine compartment. And that, basically, it shows that the engine had no fire damage or any fire involvement.

MR. GIBSON: Like to have shown to the witness what was marked as Government's Exhibit 19S as in Sam.

BY MR. GIBSON:

Q Do you recognize that, sir?

A Yes.

Q Is that a closer view of the passenger side front seat?

A Yes.

MR. GIBSON: Like to have that published to the jury as 19S and moved into evidence, please.

THE COURT: 19S is admitted and may be published.

BY MR. GIBSON:

Q Now, what, if anything, do you see in 19S, sir.

A I'm looking at the front seat area where --the passenger side where the foam padding is still remaining intact. And along the top portion of the seat area you have the burnt remains of the fabric that was on the seat itself. You've got heavy fire damage up in the upper right portion of the interior which is the dashboard area, where it's completely consumed. And the steering wheel, which is kind of blocked with the door over there, but that area is the steering column area.

MR. GIBSON: Like to have shown to the witness what is marked as Government's Exhibit 19T as in Tom.

BY MR. GIBSON:

Q Do you recognize that, sir?

A Yes.

Q Is that a photograph of the rear seat passenger side, same vehicle?

A Yes.

MR. GIBSON: Like to have 19T moved into evidence and displayed for the jury, please.

THE COURT: 19T is admitted and may be displayed.

BY MR. GIBSON:

Q What do you see in this photograph, sir?

A In this photograph I'm looking at the seat back rest for the front seats have all the material, foam padding and everything burnt down to the metal framing. And that you have heavy fire damage right on that passenger, rear passenger seating area where it had consumed the material and the foam padding down to the level of the metal parts of the car.

Q Now, based on your examination, where on this vehicle had the fire been burning the longest?

A That back right section of the seating area is where the fire was burning the longest. And it went in an upwards and outward motion that consumed the back rest of the front seat.

Q So that back seat, that would be the point of origin?

A That would be the area of origin.

MR. GIBSON: And if I could have shown to the witness

what was marked as Government's Exhibit 19V.

BY MR. GIBSON:

Q Do you recognize 19V, sir?

A Yes. That is the trunk area showing that there was no fire extension into the trunk.

MR. GIBSON: Could I have 19V displayed to the jury and moved into evidence, please?

THE COURT: Without objection, 19V is admitted and may be displayed.

BY MR. GIBSON:

Q Now, what is the significance of there being no fire damage in the trunk area, sir?

A That the fire did not start in the trunk area and spread to the interior of the vehicle.

Q Now, how is it you were able to determine that this fire was intentionally set as opposed to being an accidental fire?

A Combination of my interviewing my company officers that, by phone, and talking to Officer Lanpher and also the witness that was on scene from the railroad.

Q And did you see anything based on your own independent examination of the vehicle, anything that would suggest that the fire had been accidental?

A There was nothing in that area or on the vehicle that suggested an accidental cause of the fire.

Q Were you able to determine what was used to start the fire?

A No.

Q And why is that?

A Because most of the time that evidence, if it's a match or a piece of paper, is usually consumed at initial time of the

fire occurring and it's not there any more. Plus it could also be transported out.

Q And in your examination of the vehicle and in your report for the Kansas City Fire Department, did you record the vehicle identification number on this particular car?

A Yes, I did.

Q Could you tell us what the last six digits of the vehicle identification number are that you recorded, sir? Just the last six?

A 534636.

Q And the conclusion that this fire was intentionally set, that's your judgment to a reasonable degree of professional certainty, is that correct?

A That is correct.

MR. GIBSON: Your Honor, the government would move for the admission of Government's 60 which is Mr. Kievlan's report. And with that I turn it over to cross-examination.

MR. ROGERS: May we approach, Your Honor?

THE COURT: You may.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. ROGERS: Object to the exhibit as hearsay and it's narrative. He already testified about everything in it. No need to give them a transcript.

THE COURT: It does appear to be hearsay.

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MR. GIBSON: It's an expert report. He used it to assist in his testimony. The defense didn't object to that. I'll defer to the Court on ruling but there's nothing in there he hasn't already testified to. I don't see what the problem is with the exhibit.

MR. ROGERS: It's cumulative.
THE COURT: I'll sustain the objection.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)
MR. GIBSON: Still have no further questions.
THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. SANDAGE:

Q Good afternoon, sir. My name is Lance Sandage. Along with John Osgood, we represent Mr. Eye in this matter.

In a car fire like this and you respond, who is in charge of processing the vehicle for evidence?

A I don't understand your question fully on this.

Q When you're, you're examining the vehicle. Are you or anybody else with the fire department in charge of recovering evidence out, anything out of the vehicle at all?

A Not on recovery, no.

Q Well, what is your responsibility as far as any type of evidence that would come out of that car?

A Evidence recovery, none, unless I see something that I think that might be, then I would identify it to the police

department officer that's on scene or a detective or a crime scene specialist.

Q And did you do any such thing on this car?

A The only thing I might have done is when I was doing my investigation is point out that there was nothing, to the Officer Lanpher, that there was no, from my indication, that there was no key in the ignition would have been the only thing, direct evidence, I would have said other than that the car was set on fire.

MR. SANDAGE: Thank you. Nothing further, Your

Honor.

MR. ROGERS: No questions, Your Honor.

THE COURT: Redirect?

MR. GIBSON: No, Your Honor.

THE COURT: Thank you, sir. You may step down.

MR. GIBSON: May he be excused?

THE COURT: Without objection, the witness is excused.

(Witness excused.)

MR. GIBSON: Government next calls Crime Scene Technician Greg VanRyn.

GREG VANRYN, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GIBSON:

Q Good afternoon, sir.

A Hello.

Q Sir, you're employed by the Kansas City Police Department?

A Yes, I am.

Q How long have you been employed with the Kansas City Police Department?

A Approximately 18 years.

Q What's your current assignment?

A Crime scene technician.

Q How long have you been assigned as a crime scene technician?

A Approximately, 13, 14 years.

Q And were you a crime scene technician on March 9th of 2005?

A Yes.

Q And were you, in fact, working on March 9, 2005 as a crime scene technician?

A Yes, I was.

Q Now, at some point during that day did you receive an assignment to examine a particular vehicle?

A Yes.

Q And where did that examination take place?

A The police garage at 5215 East 27th Street.

Q And was your understanding that the vehicle had been towed there for an examination?

A Yes.

Q And the vehicle that you examined, do you recall what color it was?

A Red.

Q Do you recall what make it was?

A A 2003 Dodge Intrepid.

Q And walk us through that. What is involved in your examination when you're looking for evidence?

A Well, in this case the car was burned. I was told it was involved in a shooting, a homicide. And, basically, looking for any firearms-related evidence.

Q And what steps did you take to examine the vehicle? What specifically did you do?

A First step is to document the vehicle. That's through photographs.

Q And how long did that take you, approximately?

A Ten minutes.

Q And then what, if anything, did you do with respect to the interior?

A Again, search for any related evidence.

Q How did you conduct your search?

A With hands, just sifting through the debris in the burned-out vehicle.

Q Now, like you to take a look at what is marked as Government's Exhibit 21A for identification purposes, and ask you if you recognize that?

A Yes. That's a photograph of the vehicle.

Q That's a photograph of the Intrepid we've been talking about?

A Yes.

Q Is that one of the photographs you took?

A Yes, it is.

Q Is that from the police lot?

A Yes.

Q And this was taken during your examination?

A Yes.

MR. GIBSON: Like to have that moved into evidence and displayed to the jury, please.

THE COURT: 21A is admitted and may be published.

BY MR. GIBSON:

Q Now, sir, if I could, I'd like to have you take a look at what has been marked as Government's Exhibit 21F and ask if you remember that?

A That would be the interior of the vehicle.

Q And what, if anything, did you determine during your search of the interior of the vehicle?

A The interior was completely singed, windows were shattered, fabric was gone, plastic melted.

Q Did you find anything of an evidentiary value as a result of the search that you conducted?

A No.

MR. GIBSON: I'd like to have 21F moved into evidence, please, and displayed.

THE COURT: 21F is admitted and may be displayed.

MR. GIBSON: If I could, I'd like to have the witness shown 21G.

BY MR. GIBSON:

Q Do you recognize that, sir?

A Again, that's another photograph of the vehicle.

Q Is that a fair and accurate depiction of how the vehicle looked at the time that you conducted your search?

A Yes.

Q Have all these photographs been an accurate depiction of how the vehicle looked at the time of your search?

A Yes, they have.

Q Did the burning of the interior of the vehicle, did that make your ability to search the vehicle easier or more difficult?

A More difficult.

MR. GIBSON: Like to have 21G moved into evidence and

shown to the jury, please.

THE COURT: 21G is admitted and may be displayed.

MR. GIBSON: May I have the witness shown what has

been marked as Government's Exhibit 21H.

BY MR. GIBSON:

Q Do you recognize that, sir?

A Again, photograph of the interior of the vehicle.

Q And is this how it looked while you were doing your search?

A Yes.

MR. GIBSON: Like to have 21H published to the jury, please, and moved into evidence.

THE COURT: 21H is admitted and may be published.

BY MR. GIBSON:

Q Now, sir, if I could, I'd like to have you shown what is marked as Government's Exhibit 21J.

Do you recognize that?

A That's the interior of the vehicle, the two front seats.

Q And that's how it looked while you were doing your search?

A Yes.

MR. GIBSON: Like to have 21J moved into evidence and displayed to the jury, please.

THE COURT: 21J is admitted and may be displayed.

BY MR. GIBSON:

Q Now, during your examination, sir, were you able to or did you record in any way the vehicle identification number for the vehicle?

A Yes, on my report.

Q And did you photograph the vehicle identification number as well?

A Yes.

Q Like you to take a look at what has been marked as 21Q.

Do you recognize that, sir?

A That's the VIN number.

Q Did you also record that in your report, sir?

A Yes.

Q What are the last six digits of the vehicle identification number for this Intrepid?

A 534636.

Q And, again, sir, during your examination, were you able to find anything of any evidentiary value, anything you recovered from inside the car?

A No.

MR. GIBSON: Thank you, sir.

THE COURT: Cross-examination?

MR. GIBSON: Your Honor, I would offer, I'm sorry, I

would offer 21Q for admission into evidence and ask it be

published to the jury.

THE COURT: Do you have an objection to 21Q?

MR. OSGOOD: No.

THE COURT: 21Q is admitted and may be published.

MR. OSGOOD: May I have just a moment, please?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q I don't have any questions about this. You also went to, I believe, to examine another vehicle in connection with this

investigation?

A I don't believe so.

Q You did not?

A No.

Q There wasn't another Jeep you looked at?

A No.

Q Okay. I was mistaken. Thank you.

THE COURT: Mr. Rogers?

CROSS-EXAMINATION

BY MR. ROGERS:

Q Very briefly, sir. You indicated that when you examined the vehicle, several, if not all, of the windows had been broken out?

A Correct.

Q You don't know whether that preceded the fire, happened during the fire or as a result of the fire or whether that was done by the fire crews that were fighting the fire?

A Correct.

Q That's all. Thank you.

THE COURT: Redirect?

MR. GIBSON: No, Your Honor.

THE COURT: Thank you, sir. You may step down.

MR. GIBSON: May he be excused?

THE COURT: Without objection, this witness is

excused.

(Witness excused.)

THE COURT: Your next witness is Mr. Deleon?

MR. KETCHMARK: That's correct, Your Honor.

THE COURT: Let's take about a 15-minute break.
Don't talk about the case or make up your mind. We'll see you
back here about 3:15. We'll be in recess.

(The following proceedings were had OUT OF THE
PRESENCE AND HEARING OF THE JURY:)

THE COURT: We have what I think are the instructions
to be given to the jury following phase one. Steve will hand
those to you now. I am tentatively planning on an instruction
conference on Friday afternoon when we finish with the evidence
that day. If we move faster than you expect to move, we may
need to move that up but that's my plan at the moment.

I do instruction conferences a little differently
than other judges. What I have given you I think is a set of
instructions which fairly and accurately states the law and
allows everyone to argue your theory of the case. What I'm
going to be primarily interested in is whether those
instructions contain error which might cause this case to be
retried, reversible error. So if you notice that, please let
me know, or if you catch any typos or things of that nature,
let me know. Otherwise, I have tried to factor in the fairness
issues in these instructions. So, take a look at them. We'll
plan on talking about them at one on Friday. See you in about

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ten minutes.

(Recess)

(The following proceedings were had OUT OF THE

PRESENCE AND HEARING OF THE JURY:)

THE COURT: Is everyone ready?

All right. Let's bring the jury back.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Ketchmark.

MR. KETCHMARK: Thank you, Your Honor.

VINCENT DELEON, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Sir, would you, please, state your name and spell your name for the court reporter?

A Vincent Deleon. V-I-N-C-E-N-T. D-E-L-E-O-N.

Q Mr. Deleon, how old are you?

A Twenty-one.

Q Where did you grow up?

A Kansas City.

Q Any particular area of the city that you grew up in?

A Northeast.

Q Northeast?

A Yes.

Q Can you scoot a little bit closer to the microphone to make sure we're able to hear you?

And did you have one particular house that you grew up in, in the northeast, or were there several homes that you lived at?

A Several.

Q Mr. Deleon, I'd like to, if I could, draw your attention back to early March 2005. Is that okay?

A Uh-huh.

Q And do you remember in March of 2005? Were you in the custody of the Platte County Jail?

A Yes.

Q And had you been in custody in Platte County for a period of time before you eventually bonded out?

A Yes.

Q And before you were in custody in Platte County, Mr. Deleon, were you also in custody in Jackson County?

A Yes.

Q Do you remember approximately when you would have gone into custody in Jackson?

A No.

Q Would late fall 2004 sound about right?

A Yes.

Q And in terms of your time that you spent in Platte County, I have already alluded to it, but at some point, sir, did you

post bond?

A Yes.

Q In posting that bond was there a particular spot you were going to be residing at?

A Yes.

Q Can you tell the ladies and gentlemen of the jury where you were suppose to live?

A At my mother's.

Q Where was your mom living at that time?

A In Independence, in that area.

Q Was it off of Hawthorn?

A Yes.

Q And as part of your bonding conditions that the court imposed on you, were there any special conditions or restrictions on what you could do or not do?

A Not --suppose to be on house monitoring.

Q House monitoring. Can you tell the ladies and gentlemen the term, what do you mean by house monitoring?

A Ankle bracelet.

Q And you wear it around your ankle. Is it, basically, design to insure that the court is able to make sure you're at the house when you're suppose to be there and you have to get permission for times to leave?

A Yeah.

THE COURT: Mr. Deleon, I'm going to ask you to speak

up, please. We're having difficulty hearing you.

THE WITNESS: Okay.

BY MR. KETCHMARK:

Q Were you successful, Mr. Deleon, in completing that house monitoring or house arrest?

A No.

Q And why not?

A I cut it off.

Q And, again, it's kind of hard. I don't know if you're able to lean in, Mr. Deleon, a little bit. But what was your response?

A I cut it off.

Q Do you remember if there was something about a particular court date that you had in Jackson that would have coincided with the date that you would have removed the ankle bracelet?

A Yes.

Q Can you tell the ladies and gentlemen of the jury about how your removal or cutting off of the bracelet, how did that relate to the day that you were suppose to be in Jackson County Court?

A I cut it off the day I was suppose to go to court.

Q The day you were suppose to go to court?

A Yes.

Q Did you, in fact, show up to Jackson County and go to court that day?

A Yes.

Q What was your decision, Mr. Deleon, or what caused you to decide to cut the bracelet off after you had gone to court that day?

A I didn't want to go back to jail.

Q Were you scared you were going to get revoked in Jackson County and that's why you removed the bracelet?

A Yes.

Q And if I were to tell you that your Jackson County court date was on March 8th of 2005, would you have any reason to disagree with that?

A No.

Q Now, back in March the 8th of 2005, Mr. Deleon, were you dating anyone?

A Yes.

Q And who were you dating?

A Christina Stanley.

Q How long had you been dating Christina Stanley?

A For a few months.

Q So would your relationship with Ms. Stanley have begun while you were locked up in Platte County?

A Yeah.

Q Because, obviously, you hadn't been out for very long, had you, when you removed your bracelet?

A No.

Q And on that day that you removed the bracelet, was Ms. Stanley with you on that day?

A Yes.

Q Do you remember what you and Christina would have done, Ms. Stanley would have done on the day that you removed the bracelet?

A We went to a friend's house --After?

Q Yeah.

A We went to a friend's house.

Q And when you're saying after, are you talking about after you're in court and after you decide to remove the bracelet? Is that what you mean by after?

A Yes.

Q And you said you and Ms. Stanley went to a friend's house. Who was the friend you went to?

A Jonnie Renee.

Q Do you know Jonnie Renee's last name?

A No.

Q How is it that you knew Jonnie Renee?

A Through a friend.

Q Through another friend?

A Yes.

Q Who was that friend?

A Regennia.

Q Do you know Regennia's last name?

A Rios.

Q And how --tell the ladies and gentlemen of the jury how you know Ms. Rios?

A She's my ex-girlfriend.

Q Ex-girlfriend?

A Yes.

Q How long did you and Ms. Rios date?

A About three or four years.

Q And when did your relationship, your dating relationship with Ms. Rios end?

A It never has.

Q It never has?

A No. No.

Q Was it kind of an on-again, off-again, relationship, I guess? Is that the best way to characterize it if you're saying it never ended?

A Yeah.

Q But at this time in March of 2005 you were dating Ms. Stanley. Did you consider yourself to be dating Ms. Rios at that time as well or were you just friends?

A Just friends.

Q Outside of dating Ms. Rios for this period of three to four years, Mr. Deleon, how long have you known her?

A For about ten years.

Q About ten years? And you mentioned that that's how you

got to know this individual by the name of Jonnie Renee?

A Yes.

Q Was there a relationship or what was the relationship, if any, between Jonnie Renee and Ms. Rios?

A They're cousins.

Q Now, back in March, on March 8th, the date that you cut your bracelet, you said that you and Christina went over to Ms. Jonnie Renee's house, correct?

A Yes.

Q How well did you know Jonnie Renee at that point? Was she a friend, an associate, a good friend?

A A good friend.

Q Had you known her for awhile?

A Yeah.

Q And did Ms. Chrisp reside in the northeast section of Kansas City, her home, at that time? Do you remember where she was living?

A You said who?

Q I'm sorry. Jonnie Renee?

A Yeah.

Q She was living in the northeast?

A Yes.

Q And, Mr. Deleon, what was your reason for going over there with your girlfriend that day?

A To go get high.

Q To get high?

A Yes.

Q And by getting high, can you tell the ladies and gentlemen of the jury what you mean?

A Drugs.

Q To use drugs? Was there a particular type of drug that you were intending on using that day?

A Methamphetamine.

Q And, Mr. Deleon, at this time back in March of 2005, had you used methamphetamine before?

A Yes.

Q Did you use it on a regular basis?

A Yes.

Q So this wasn't, obviously, the first time you ingested the drug?

A No.

Q In fact, Mr. Deleon, in March of 2005, it would be accurate to state that you had a prior felony conviction for drug possession?

A Yes.

Q And did you also have a felony conviction for resisting arrest, burglary and stealing? Did you have those convictions at that time?

A No.

Q Since that time have you received convictions in Jackson

County for those offenses, for resisting arrest, the burglary and stealing to your knowledge?

A No.

Q Okay. Well, let me ask you about your Platte County matter. You were, obviously, at that point locked up in Platte County?

A Yes.

Q Was that locked up on a pending matter or was that on a probation violation?

A A pending.

Q And were you subsequently convicted of a weapons offense for possessing a silencer in that Platte County case?

A Yes.

Q Turning your attention back to you and Ms. Stanley going to Ms. Jonnie Renee's house. While you're there, do you have a problem with somebody else that's there?

A Yes.

Q Mr. Deleon, could you tell the jury about what the problem was that you had with this individual?

A Somebody had stolen some drugs from me.

Q Somebody stole some drugs from you?

A Yes.

Q Were you upset about that?

A Yes.

Q Did you make a decision about how you wanted to handle

dealing with that individual who stole the drugs from you?

A Yes.

Q What were you going to do?

A Take his car.

Q His car?

A Yes.

Q Was there a particular vehicle that you were intending on taking? Was it, do you know what type of car it was?

A Yes.

Q Can you tell the ladies and gentlemen of the jury?

A It was an F250.

Q An F250. And when you're saying car, is F250, in fact, a pickup truck?

A Yes.

Q And do you remember approximately what time of day this would have happened, when this problem arose with this individual at Jonnie Renee's house?

A It was at night.

Q At night?

A Yes.

Q Was it early evening, late evening?

A Early.

Q Mr. Deleon, you remember, do you not, back on May 18th of 2005 when you appeared before a federal grand jury?

A Yes.

Q And at that time we covered a lot of the information that we're, obviously, covering right now, did we not?

A Yes.

Q And we also covered, in addition to the information we talked about, more information that, obviously, we're going to get to, correct?

A Yes.

Q And if I were to represent to you when we talked on May 18th of 2005, at that time when we were trying to piece this together about this incident with the truck, at that time we were discussing it and you indicated it was around midnight. Does that sound accurate?

A I don't remember.

Q Mr. Deleon, I'm going to show you what has been marked as Government's Exhibit 29. Would you agree with me that this is a copy of the grand jury transcript of you on the 18th day of May 2005?

A Yes.

Q And if I might be able to show you on page 16, if you'd like to read to yourself, starting at line 20, do you see the question there? If you would read down from line 20 to line 25 and let me know when you're done, I'll turn the page.

A Okay.

Q Again, starting at the top, line 1 on page 17 and continuing down through line 16.

Have you had an opportunity to review that?

A Yes.

Q And in reviewing that transcript does that help refresh your recollection as to what you had told us back then as to the time frame of when there would have been a problem with this individual?

A Yes.

Q And what was the time frame?

A Midnight.

Q And, again, Mr. Deleon, obviously, when we spoke with you back in May of 2005, that would have only been a couple of months after what we're talking about now which is March, correct?

A Correct.

Q And as we sit here today, we're now in 2008, it's some three years removed, right?

A Yes.

Q With this incident happening at Jonnie Renee's house and your decision, did you know where that, was it a guy? A girl? Who is this individual? Did you know who he was?

A Yeah, I knew him. I knew him through Jonnie Renee.

Q You knew him from Jonnie Renee?

A Yeah. It was a guy.

Q Was his truck there at Jonnie Renee's house?

A No.

Q Did you have an idea where you thought it might be?

A Yes.

Q Was it some place from Jonnie Renee's house that you could walk to get?

A No.

Q How were you planning to get where this gentleman's truck was?

A I was going to call Gary and Stevie.

Q Gary and Stevie?

A Yes.

Q By Gary and Stevie, who are you referring to, Mr. Deleon?

By Gary, are you referring to Gary Eye?

A Yes.

Q Do you see Mr. Eye present in the courtroom?

A Yes.

Q Can you point him out or describe an article of clothing he's wearing for the record? The gentleman standing here?

A Yes.

MR. KETCHMARK: Your Honor, I ask the record reflect the witness identified the defendant, Gary Eye.

THE COURT: The record will so reflect.

BY MR. KETCHMARK:

Q In addition, you mentioned Stevie. Who is the Stevie that you're referring to?

A Stevie Sandstrom.

Q Do you see Mr. Sandstrom in the courtroom?

A Yes.

Q Could you point him out and describe an article of clothing he's wearing?

A The one with glasses.

Q The gentleman with glasses in the blue shirt?

A Yep.

Q Yes?

A Yes.

MR. KETCHMARK: Your Honor, I ask the record to

reflect that he's identified Mr. Sandstrom.

THE COURT: The record will reflect it.

BY MR. KETCHMARK:

Q Now, Mr. Deleon, back in March of 2005, how well did you

know Gary?

A Well, very well.

Q Very well?

A Yes.

Q Would you have considered him a friend?

A Yeah.

Q Close friend?

A Family.

Q Almost family.

A Yes.

Q And at other times we've talked, have you used best friend

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to describe him?

A Yes.

Q And what about Mr. Sandstrom or Stevie, how well did you know Stevie?

A Well.

Q How would you characterize your relationship with Stevie at that time, Mr. Deleon?

A We were good friends.

Q How long had you known Stevie?

A Probably close to ten years.

Q At that time?

A Yes.

Q And what about Gary, how long had you known him?

A About 15.

Q So longer than Stevie?

A Yes.

Q So back to Jonnie Renee's house. You said that you were going to call Gary and Stevie to come help you with this guy's truck. I think that's where we left off. Do you remember talking about that?

A Yes.

Q Did you make that phone call?

A Yes.

Q Did you get hold of them?

A Yes.

Q And do they agree to come pick you up at Jonnie Renee's house?

A Yes.

Q Do you remember, did you call both of them? Did you call one of them, if you remember?

A I called Gary.

Q When Mr. Eye or Gary, does he show up at Jonnie Renee's house?

A Yes.

Q Is anybody with him?

A Yes.

Q Who?

A Regennia and Stevie.

Q By Stevie, are you referring to Defendant Sandstrom?

A Yes.

Q By Regennia, are you referring to Regennia Rios?

A Yes.

Q When you called Gary to ask him to come pick you up, did you know who was with him at that time, if anyone?

A Yes.

Q How did you know that? Do you remember?

A Just from talking to him.

Q From talking to him?

A Yes.

Q Mr. Deleon, were you surprised to see these three

individuals together, Gary, Stevie and Regennia?

A No.

Q Didn't surprise you?

A No.

Q Now, before you had been incarcerated in Platte and Jackson, was it common or uncommon for Gary and Stevie to hang out together?

A Uncommon.

Q Uncommon. And what about after your incarceration and your release, did you learn that they were hanging out more and more together?

A Yeah. Yes.

Q Yes? Were you the common thread between the two of them or did they, I mean, did they know each other independent of you or was it through you that they met?

A Through me.

Q Through you?

A Yeah.

Q And so while you're locked up, they, obviously, you weren't available to hang out with at that point, right?

A Right.

Q But by the time or at least on March 8th of 2005 you knew that they had been running around with each other for awhile?

A Yes.

Q And what about Ms. Rios, did you know whether or not

Ms. Rios was running around with Gary and Stevie?

A I heard.

Q You had heard?

A Yeah.

Q But it didn't surprise you?

A No.

Q And did Ms. Rios know Gary and Stevie from growing up like you did?

A Yes.

Q Had she known them for awhile?

A Yes.

Q Mr. Deleon, at Jonnie Renee's house when Gary and Stevie and Regennia show up, do you remember what type of vehicle they arrived in?

A A red Intrepid.

Q A red Intrepid. Do the four of you stay at Jonnie Renee's house?

A For a little while.

Q At some point do you leave?

A Yes.

Q And when you leave, who leaves with you, if anyone?

A Gary, Stevie and Regennia.

Q What vehicle do you leave in?

A The red Intrepid.

Q The one they arrived in?

A Yes.

Q And where do you go?

A To go get that truck.

Q That truck.

MR. OSGOOD: Your Honor, I'm having trouble hearing.

I'm sitting close.

THE COURT: Yeah, I'm having trouble, too.

Mr. Deleon, you're going to have to speak up.

MR. KETCHMARK: If you need to lean in, you can lean

in. I don't know if that microphone can be moved at all.

THE COURT: The microphone is stationary.

BY MR. KETCHMARK:

Q Let's try this last question again. Little louder. My question was, when you left Jonnie Renee's house, you said it was you, Gary, Stevie and Regennia and you were in the Intrepid, is that correct?

A Yes.

Q And then I asked where you went and what was your answer?

A To go take the guy's truck.

Q To find the truck?

A Yes.

Q And where was, did you find his truck?

A Yes.

Q Do you remember where it was at, approximately?

A By Sheffield Church.

Q By Sheffield Church? Yes?

A Yes.

Q And is that still in what is considered the northeast?

A Yes.

Q What happens when you get to the truck?

A I take it.

Q You take it?

A Yes.

Q Does anybody help you take it?

A Gary.

Q Gary. And what do you do with the truck?

A I go park it around the corner.

Q Is there a reason you just moved it around the corner?

A It was on empty. The gas was on empty.

Q What do you do after you move the truck?

A I go park it around the corner.

Q Okay. But after you park it around the corner, do you set out on foot, get back in the Intrepid? What do you do?

A I get back in the Intrepid.

Q And where are --who is in the Intrepid when you get back into it?

A Regennia and Stevie.

Q Where is Mr. Eye?

A Oh, he's in the Intrepid, too.

Q So you're in the truck, even though Mr. Eye helps you take

it, he gets back in the Intrepid before you, it sounds like?

A Right.

Q So, it's the four of you, again, in the Intrepid?

A Right.

Q Do you remember who's driving the Intrepid?

A Stevie.

Q And where are you at in the Intrepid?

A I'm in the back.

Q Where is Mr. Eye?

A He's in the passenger.

Q Front, back?

A Front.

Q Where is Ms. Rios?

A She's in the back.

Q Do you tell Stevie where you want to go? Did you ask him

where to take you?

A I don't remember.

Q Again, Mr. Deleon, I'm showing you what has been marked as

Government's Exhibit 29. I'll refer you to page 22, question

starting on line 25, carrying over, answer, then if you can

read down to line 10.

Had a chance to read that? Does that help refresh

your recollection as to what you asked of Mr. Sandstrom after

you moved the truck?

A Yes.

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Q What did you ask Mr. Sandstrom?

A To take me back to Christina.

Q Back to Christina, where were you asking him to take you?

A Jonnie Renee's.

Q Where you had left her?

A Yes.

Q Does Mr. Sandstrom do that?

A No.

Q Does he tell you why?

A No.

Q Where do you go, the four of you?

A To Raytown.

Q To Raytown?

A Yes.

Q And for those members of the jury who might be not be familiar with Kansas City, would you agree with me that Raytown is out towards the sports complex, the Chiefs and Royals stadium, that general direction?

A Yes.

Q Now, Mr. Deleon, in addition to meeting with us and testifying before the grand jury which we have used the transcript a few times, were you also interviewed by homicide detectives with the Kansas City, Missouri Police Department back in March of 2005?

A Yes.

Q And they were talking to you about the general time frame that you and I are discussing right now. Is that a fair statement?

A Yes.

Q And at the time you were interviewed by them, you told them about going and taking this gentleman's truck from Sheffield Church, did you not?

A I don't remember.

Q Again, Mr. Deleon, I'm going to show you what's been marked just now as Government's Exhibit No. 294 and represent to you that it's a 14-page statement. And does this appear to be a question and answer format, a videotaped statement that you would have given to homicide detectives back on March 30th of 2005?

A Yes.

Q And do you remember talking to the homicide detectives and them videotaping a statement of you?

A Yes.

Q Again, refer you to page 5 of that.

Counsel, I'm looking about midway down.

Do you see where there is a question and an answer about Sheffield Church?

A Yes.

Q So in looking at this, does this refresh your memory as to the fact that you did talk to those detectives about taking

this gentleman's truck by Sheffield Church?

A Yes.

Q And my question, Mr. Deleon, is would you agree with me though that you didn't tell the detectives about going out to Raytown? You told them you, in fact, went back to your girlfriend, Ms. Stanley's house and stayed there the remainder of the night. Is that what you told the detectives?

A Yes.

Q And would you like to take a look at it? You acted like maybe you don't have a recollection. Would you like to see where you would have mentioned that's where you went?

A No.

Q You have no reason to dispute that's what you would have told them?

A Yes.

Q And that, in fact, wasn't accurate. That was a lie?

A Yes.

Q Back to the four of you in the Intrepid, after you leave this gentleman's truck that you've moved, you said you were heading out toward Raytown, correct?

A Yes.

Q What was your purpose in going to Raytown? Did you know at that point?

A No.

Q In route to Raytown, Mr. Deleon, do you see any weapons or

guns in the Intrepid?

A Yes.

Q Tell the ladies and gentlemen of the jury about that.

A I seen a handgun that Stevie pulled out of his waist.

Q And when you're sitting there, I think the jury can see it but you're indicating that you're kind of reaching and pulling it out of the waist area, is that correct?

A Yes.

Q And by Stevie, you're talking about this defendant, Mr. Sandstrom?

A Yes.

Q Was there anything on or around his waist that he appeared to carry that gun in?

A It looked like a back brace, kind of.

Q A back brace?

A Yes.

Q And have you described that before as something maybe you've seen somebody at Home Depot wear? Brace that goes around their waist, is that consistent with it, kind of?

A Yes.

Q And I think you said you saw Stevie pull the gun out of the back brace, is that what you said?

A Yes.

Q And was that while you were traveling towards Raytown?

A Yes.

Q Do you remember what type of gun it was?

A .22 revolver.

Q .22 revolver?

A Yes.

Q Had you seen that gun before?

A I don't remember if I did or I didn't.

Q You don't remember if you did or you did not?

A No.

Q What was Mr. Sandstrom doing with the gun when he pulls it out?

A Just, he just pulled it out and had it in his hand.

Q Did you ask him why he had a gun?

A No. Or I might have. I don't remember.

Q Mr. Deleon, again, I'll refer you back to Plaintiff's Exhibit 29. You agree with me this is, obviously, your grand jury transcript?

A Right.

Q And, again, let's start if we could at line 16 and continue down through the bottom of the page. Let me know when you're done and I'll turn it.

A (Nods head yes.) Okay.

Q In reviewing that, does that help refresh your recollection as to whether or not you inquired of Stevie, Mr. Sandstrom, why he had the gun?

A Yes.

Q And did you ask him why he had the gun?

A Yes.

Q And what did he tell you?

A For protection.

Q In that car ride out towards Raytown, Mr. Deleon, does Defendant Sandstrom make any statements about harming anyone?

MR. GROMOWSKY: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GROMOWSKY: Your Honor, I think we're going to get into some hearsay statements here that are going to be offered for the truth of the matter asserted. And I don't think it's proper to be asking him those, to this witness at this point.

MR. KETCHMARK: Your Honor, the statements are being asked of Mr. Deleon whether these particular defendants made statements. The statements are as outline in my opening statement. They did, they indicated, make statements, they would kill a nigger quick. It's the government's belief this is the beginning of the time frame in which there's discussion about harming witnesses or harming individuals, African-Americans in particular, which ultimately ends in Mr. McCay's demise. I think the statements, not only against the interest by the respective parties but as soon as we make the

Bell finding or ask the Court to make, they'll be admissible under the aiding and abetting theory of the conspirator statement.

MR. GROMOWSKY: Your Honor, I disagree but I stand on my objection.

THE COURT: The objection will be overruled.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q Mr. Deleon, would you like me to repeat the question?

A Yes.

Q And my question was, we talked about Mr. Sandstrom and the fact that he pulls out the .22 revolver. And I asked you in the car as this is happening and you're heading toward the stadium or towards Raytown, does Mr. Sandstrom make any statements about harming anyone?

A Yes.

Q Do you remember, Mr. Deleon, what Mr. Sandstrom said?

A That he could kill a nigga quick.

Q And, again, can you lean in? I'm sorry. I couldn't hear you. What do you remember Mr. Sandstrom saying?

A That he could kill a nigga quick.

Q Who, kill who?

A A nigga.

Q You're saying N-I-G-G-A?

A Yes.

MR. KETCHMARK: Again, counsel, referring to grand jury -

MR. GROMOWSKY: Your Honor, may we approach again?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GROMOWSKY: Your Honor, at this point I think this is improper use of the grand jury transcript. He's now, it, now any time he doesn't get the answer he likes, he goes back, calling it refreshing his recollection. But that's not what it is. He's trying to decide --what is relevant to this jury in this case is what this person says on the stand now, not what, you know, may have occurred back some other time. And this is improper use of the transcript to try to change his story on the stand to fit what their theory of the case is.

MR. KETCHMARK: Your Honor, in terms of refreshing his recollection, I was using it for that fashion. When I was questioning Mr. Deleon, I asked him if it would help refresh his recollection. It clearly did. That's permissible use of the grand jury transcript because it was two months after the incident in question.

THE COURT: Keep your voice down.

MR. KETCHMARK: All right. As it relates to the current posture, Your Honor, I understand Mr. Deleon's answer, his testimony, sworn testimony in grand jury was different. My

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intention at this point is to show him his testimony in his grand jury, ask him if that changes or helps refresh his recollection or changes his remembering of what he told the grand jury. If his testimony here is nigga, it's my intention to remind him or to use the prior inconsistent statement, remind him it was under oath, have him acknowledge he, in fact, made that statement. That's what the grand jury transcript reflects and that's why we all filed trial briefs with respect to using prior inconsistent statements as substantive evidence that were given in other proceedings under oath.

I can also establish, Your Honor, that as he has already indicated these individuals are friends of his. I think I can establish through Mr. Deleon that he doesn't want to be here. That if he had his choice, he wouldn't be here. And so there's no question that his testimony, if he sticks with nigga, I don't know if he will, Your Honor.

MR. GROMOWSKY: But at this point he didn't say he didn't recall. He said, he made a perfectly clear statement of what his recollection is. And that needs to be before the jury, not what they think they can go back and rehabilitate.

MR. OSGOOD: This goes to another issue that I addressed in opening statement. This was a spontaneous answer. The way this young man talks and the way they all talked and the way they talked on the phone records and the way they talk in letters. And what they did in the grand jury was spoon feed

them the word nigger versus nigga. And I agree with Mr. Gromowsky, I know your last name, John. I agree with Mr. Gromowsky that the method here is improper. All he's got to do is ask him, was it nigger or was it nigga and that answers his question. To go up there and reinforce and act like there's something sacrosanct about this grand jury testimony is improper at this point. And he hasn't laid a proper found fashion for the impeachment. He can ask him straight up, was it nigga or nigger.

MR. KETCHMARK: I think what I need to establish for a proper foundation, I think I need to remind him. I want to, my belief is I need to give him an opportunity to review the statement he made. The statement, it was sworn testimony. If he is consistent, saying it was nigga versus nigger, then I think I have the ability to then go the step forward and establish it was a statement that was made under oath. He was sworn to tell the truth at the time he testified in grand jury. That his grand jury testimony is inconsistent with that and to begin impeaching him with the use of the sworn testimony. But I think a foundation requirement is I have an opportunity for him to review the prior statement to either accept, modify his answer or indicate that that's not his recollection as he takes the witness stand today. This is all foundational aspects that we laid out in the trial brief. And I think this is the proper procedure in which to do. I understand why we're all up here

because he wanted what his testimony is today. But quite frankly, that wasn't his testimony in grand jury when he was under oath. And that's not what his testimony has been on the numerous times we've met with him and he's indicated it's because these guys are his friends and he doesn't want to do this.

MR. GROMOWSKY: I was going to say this is not an instance where a witness is wavering any way, shape or form. He gave a very specific answer, clear answer to a direct question. It was responsive and it's appropriate for us to move on from here. It's not appropriate to go back and try, as Mr. Osgood said, start spoon feeding him an answer, try to make it training. You can't build in a discrepancy which is what he's going to try to do.

THE COURT: Seems to me there are two ways this evidence comes in. One is as a prior statement. Must be a foundation for that. You haven't laid it yet but I assume that you will. The other way is if he repudiates it, then it comes in as a prior inconsistent statement, given under oath at a hearing. It comes in either way. So the objection will be overruled.

Proceed. If you lay the proper foundation it comes

in as memory refreshed. If not, then it comes in as a prior inconsistent statement. Or as, actually, not a prior inconsistent statement. It is an inconsistent statement given

under oath therefore excluded by the hearsay rule.

MR. KETCHMARK: Foundational --I think I need to let him look at the statement and say whether he remembers or remembers what his statement was.

THE COURT: Proceed.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q And, Mr. Deleon, when we broke I had asked you about Mr. Sandstrom, if he had made statements he would harm anybody. And I think you indicated that he did and you said that he would harm a nigga, N-I-G-G-A, correct?

A I don't remember.

Q Well, my question then to you, Mr. Deleon, does Mr. Sandstrom make statements in the car as you're traveling out toward Raytown about harming someone?

A Yes.

Q What does he say?

A I don't remember if it was nigga or nigger.

Q Well, let me, if I could, Mr. Deleon, referring you again to your grand jury, on the 18th of May 2005, page 24. Starting at line 11. Do you see that? Please read down through 25 and let me know when you're done.

Starting on page 25, counsel, at the top.
Would you, please, read that portion of your grand jury testimony?

Turning to page 26, starting at line 1, read to line 18, please.

Do you see that?

A Yes.

Q And, Mr. Deleon, in referring to your grand jury, does that help refresh your recollection as to what Mr. Sandstrom said?

A Yes.

Q And can you tell the ladies and gentlemen of the jury what you remember Mr. Sandstrom saying as you're driving in the car?

A He would kill a nigger quick.

Q A nigger?

A Yes.

Q N-I-G-G-E-R?

A Yes.

Q Had you heard Mr. Sandstrom use that term before?

A I don't remember.

Q Let me ask you this, Mr. Deleon. Do you want to be here?

A No.

Q And back in grand jury we referred to the grand jury transcript a couple of times, were you excited about coming into grand jury to testify?

A No.

Q At that time, Mr. Deleon, back in the spring, in particular in May of 2005, were you incarcerated in Jackson

County?

A Yes.

Q And were you brought over to testify on a writ?

A Yes.

Q And a subpoena?

A Yes.

Q And did we let it be known to the ladies and gentlemen of the grand jury, like you're saying now, you didn't want to be there, just like you don't want to be here?

A Yes.

Q With respect to Steven Sandstrom, you mentioned another term, nigga, N-I-G-G-A, correct?

A Yes.

Q Had you heard Stevie use that or have you heard him use that before?

A Yes.

Q And just so we're clear --Well, let me ask you this. You said you don't remember hearing Mr. Sandstrom or you don't recall if he had used the term nigger?

A I know he did before.

Q What's that?

A I know he has before.

Q You know he has before?

A I don't know when.

Q That wasn't the first time you heard it from him?

A No.

Q Was it the last time you heard it from him?

A No.

Q Now, when Mr. Sandstrom makes that statement about killing a nigger quick, do you respond? Do you say anything?

A Yes.

Q Do you remember what you say?

A That I won't shoot nobody but I'll probably, I mean, I won't kill nobody but I'll probably shoot them in the legs.

Q And what about Gary, Mr. Eye, does he make any statements in the Intrepid while this conversation is taking place?

A Yes.

Q Do you remember what Mr. Eye says?

A That he would kill a nigger quick or he would, he would, I guess he would. I don't know. Just adding in, like I'm saying, not me, I'll kill a nigger quick, too.

Q Not me. I'll kill a nigger quick or nigga?

A I don't remember.

Q And, again, did we talk specifically about that in your grand jury?

A Yes.

MR. KETCHMARK: Again, counsel, we're referring to the grand jury testimony on page 27, starting at line 1, reading through line 19, please.

BY MR. KETCHMARK:

Q Does that help you remember what Mr. Eye said in response to this discussion that's going on in the Intrepid?

A Yes.

Q And tell the ladies and gentlemen of the jury what Mr. Eye said?

A That he would kill a nigger quick.

Q And, again, nigger, N-I-G-G-E-R?

A Yes.

Q Had you heard Mr. Eye use that term before?

A No.

Q You had not?

A No.

Q Do you remember when we talked in grand jury about Mr. Eye's use of the N word? And I asked you if you had heard him use that before and you said not while growing up. Do you remember telling me that?

A Yes.

Q And then I asked you about whether or not Mr. Eye's use of that word changed or whether he started using that word more frequently and do you remember what you told me?

A That he had probably after he got out of prison. I just don't remember him saying it.

Q Again, referring to your grand jury testimony on page 54, in particular to where you answer, starting at line 19 and

continuing through 25.

Tell me when you're done, Mr. Deleon.
A Okay.

MR. KETCHMARK: Starting at the top of page 55,
counsel, line 1.

MR. OSGOOD: Could we approach for a moment, Your
Honor?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
PROCEEDINGS WERE HAD:)

MR. OSGOOD: We're about to hear for the second time
that he got out of prison. He's causing this problem himself
with the way he's doing this examination.

MR. KETCHMARK: I'm not. If they'll give me some
latitude to lead, I'll be happy to do it. I'm not going to
elicit. I wasn't prepared that he was going to make that
response. But my answer is in looking at the grand jury
testimony, what he said when he got out of prison and he and
Mr. Sandstrom started hanging out together. I'm going to focus
him on, did you tell me when we spoke about Mr. Eye's use of
that word when he began hanging around a particular individual
caused it to increase. Who was that individual? What did his
usage of --I will tailor it to avoid that problem, Your Honor.

MR. OSGOOD: What happened in this case was they took
him and did one of these proffer sessions with the FBI and

spoon fed him all of these answers we're hearing. They've always used the word nigga. And they're telling him he used nigga now that he's actually using it the way he should have known he was going to say, when he got out of prison. That's what, that's what he directed him to.

THE COURT: What was he in prison for?

MR. KETCHMARK: Prison, tampering with a vehicle.

THE COURT: Has anyone become aware of that?

MR. OSGOOD: I haven't decided whether he's going to

testify or not.

THE COURT: I will allow the government to lead in

this area.

MR. OSGOOD: That's fine.

THE COURT: Be very careful that he doesn't mention

it again.

MR. KETCHMARK: I will.

MR. OSGOOD: That's what we suggested while ago is

leading is maybe a more apt way to get at, did you say this or

did you say that? I don't have any objection.

THE COURT: I'll allow leading in this area.

MR. KETCHMARK: Thank you, Your Honor.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q Mr. Deleon, we talked back in grand jury, it's correct

that you informed us when I asked you about Mr. Eye's use of

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the N word, and you said he didn't use it while he was growing, did not use it while he was growing up?

A That's correct.

Q In fact, Mr. Deleon, when we talked about whether you had heard him use that word, you told me, in fact, that you did, is that correct?

A Yes.

Q And you, in fact, told me, did you not, Mr. Deleon, that once Gary and Stevie started hanging out together, Gary's use of that word increased significantly, is that correct?

A Yes.

Q In fact, the phrase that you had told the agents of the FBI when your attorney was there was that it was nigger this, nigger that, correct?

A Yes.

Q And is that accurate?

A Yes.

Q And is that the truth?

A Yes.

Q Now, we talked about, again, back in the Intrepid going towards Raytown, this discussion about Mr. Sandstrom's statement about killing a nigger quick, your response and Mr. Eye's response, correct?

A Yes.

Q Does Ms. Rios participate in this conversation?

A No.

Q She's just sitting back chilling?

A Yep. Yes.

Q I neglected to ask you but are you still high on methamphetamine at this time?

A No.

Q You weren't high in the car going out to Raytown?

A Oh, yes.

Q I'm not talking about right now, Mr. Deleon. I apologize if my question was confusing.

What about Ms. Rios, could you tell if she was under the influence of drugs?

A Yes.

MR. KETCHMARK: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: I want to approach on making the record clear. My intention from here is with respect to the defendants, I clearly believe Mr. Gromowsky opened, with respect to Mr. Sandstrom's drug use. I don't know the position on it with respect to Mr. Eye. I'd like to get a point of clarification before I tender the next question to the witness.

Do you care if I ask him if Gary was high on meth at this point, John?

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MR. OSGOOD: He wasn't smoking Camels.
MR. KETCHMARK: Well, I understand that.
MR. OSGOOD: I think it's part of the case. It's

properly admissible. I don't like it but -MR.
KETCHMARK: I appreciate it. I just wanted
clarification before I inquired.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q Now, Mr. Deleon, in addition to yourself and Ms. Rios,
were Mr. Eye and Mr. Sandstrom also high on methamphetamine at
the time?

A Yes.

Q Where do you end up in Raytown?

A I don't know exactly where we were.

Q Well, what do you do? Did you go to McDonald's? Do you
go to a movie? What do you do?

A We were off of Stadium Drive, the street.

Q Off of Stadium Drive?

A Yeah. We pulled into a neighborhood.

Q A neighborhood?

MR. OSGOOD: Your Honor, his voice is trailing off.

BY MR. KETCHMARK:

Q Can you lean in?

A We go into a neighborhood. We were looking for a car to
steal.

Q Looking for a car to steal?

A Yes.

Q Were you guys successful in finding a car to steal?

A Yes.

Q Who gets out to take this vehicle?

A Stevie.

Q Does he get out by himself?

A Gary gets out with him.

Q Gary does. What type of vehicle is it, Mr. Deleon?

A A Cherokee.

Q Jeep?

A Yes.

Q And is Stevie successful in getting this Jeep Cherokee started and taken?

A Yes.

Q Where do you guys go from there?

A We go to a gas station.

Q A gas station?

A Yes.

Q Do you get gas in either of the vehicles?

A No.

Q Why not?

A Because I wasn't going to steal gas. I was driving the Cherokee. They were all in the Intrepid again.

Q Okay. So we're clear, even though Mr. Sandstrom takes the

Jeep, at some point you guys pull over and switch around vehicles?

A Yeah. Yes.

Q And you looked a little confused on that. At some point do you remember getting in the Jeep by yourself?

A Yes.

Q And you said the other three were in the other vehicle, the Intrepid?

A Yes.

Q And you're at a gas station. You said you didn't want to steal gas. Can you explain to the jury why you were okay with stealing a vehicle but you didn't want to take gas?

A Because it makes the car hot.

Q It does what?

A Makes the car hot.

Q Makes the car hot?

A Yes.

Q Is that because there's attendants and there's video that watches?

A Yes.

Q When you leave the gas station, what vehicle do you leave in, Mr. Deleon?

A Cherokee.

Q By yourself?

A Yes.

Q And where are Gary and Stevie?

A In the Intrepid.

Q Where is Ms. Rios?

A In the Intrepid.

Q Where do you go?

A Over to Jonnie Renee's.

Q You go back to Jonnie Renee's?

A Yes.

Q It might sound silly but why do you head back there?

A For Christina.

Q Your girlfriend, whom you left there?

A Yes.

Q Did Gary, Stevie and Regennia follow you back to Jonnie Renee's house?

A No.

Q In fact, did you separate from them intentionally?

A Yes.

Q Do you remember why?

A Stevie said they were going to take care of some other shit so.

Q Were you concerned about the fact that there was a gun in the car and statements that were being made about harming people?

A Sort of.

Q That factor into your decision, making at least a

little -A

Yes.

Q And I think to help the jury place the time here, you said it was about midnight when you called Gary and Stevie for a ride before you left Jonnie Renee's, is that correct?

A Right.

Q How long do you think you were gone before you get back to Jonnie Renee's?

A Couple hours.

Q Couple hours?

A Yes.

Q When you get back, is your girlfriend Christina Stanley still there?

A Yes.

Q Is she happy with you?

A No.

Q Is she mad?

A Yes.

Q Do you stay at Jonnie Renee's house for very long?

A No.

Q Where do you go?

A To another friend's house.

Q Is that other friend? Who?

A Christina Carol.

Q Christina Carol?

A Yes.

Q Do you go by yourself to Ms. Carol's house?

A No.

Q Who goes with you?

A Christina and Jonnie Renee.

Q And by Christina, are you referring to Christina Stanley, your girlfriend?

A Yes.

Q What is your purpose in going over to Ms. Carol's house?

A To go get some dope.

Q Get some dope?

A Yes.

Q What kind of drugs were you looking for?

A Meth.

Q And you might have said it and I might have missed it, Mr. Deleon, but where did Ms. Carol live at the time?

A Kansas City, Kansas.

Q When you get there, is your friend Christina Carol there?

A No.

Q She's not?

A No.

Q Had you called and told her you were coming?

A Yes.

Q And had you called her while you were coming?

A Yes.

Q So, but when you get there, she's gone?

A Right.

Q And do you know why she left?

A No.

Q Do you wait for her to come home?

A Yes.

Q How long did you wait?

A About an hour.

Q And after, well, does she ever come home while you're there?

A No.

Q So at some point you just get tired of waiting and decide to take off?

A Yes.

Q And who leaves Ms. Carol's house with you?

A Christina and Jonnie Renee.

Q Same people that came there with you?

A Yes.

Q Where do you go?

A Back to Jonnie Renee's.

Q Why?

A Because it was late.

Q It was late?

A Yeah.

Q Well, do you stay at Jonnie Renee's?

A No.

Q What do you do?

A I go pick up my little sister.

Q And let me ask you, Mr. Deleon. Why did you go by Jonnie Renee's after you leave Ms. Carol's?

A To switch cars.

Q Well, you said, then you said that you go pick up your little sister. Where was your little sister at?

A Home.

Q And by home, what home are you referring to? Your mom's house?

A Yes.

Q Is that the house out in Independence on Hawthorn that you mentioned that you were staying at when you were at least on house arrest?

A Yes.

Q And does anybody go with you to pick up your little sister?

A Christina Stanley.

Q Just the two of you?

A Yes.

Q And it's your memory, Mr. Deleon, that you took Ms. Chrisp from Ms. Carol's home and dropped her back off at her house, is that correct?

And, again, you kind of have an inquisitive look on

your face. Would it help maybe to refresh your memory -THE

COURT: You referred to her as Ms. Chrisp.

MR. KETCHMARK: Oh, I'm apologizing then. Maybe it's

on me.

BY MR. KETCHMARK:

Q Is it your memory you dropped Jonnie Renee off at her

house?

A Yes.

MR. KETCHMARK: Thank you, Your Honor.

BY MR. KETCHMARK:

Q After you pick up your sister in Independence, what do you

do?

A I go to that truck.

Q That truck? And by that truck, what are you referring to?

A That truck I had stolen earlier.

Q The truck that was by Sheffield Church?

A Yes.

Q And who goes to that truck with you?

A My little sister and Christina Stanley.

Q And what do you do once you go to that truck?

A I take that truck and go to Christina's mom's house.

Q By Christina's mom's house, who are we referring to?

Which Christina?

A Stanley.

Q Was that the house they lived in on East 16th Terrace?

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A Yes.

Q Is that also on the northeast side?

A Yes.

Q And you have made a reference with regard to dropping Jonnie Renee off, that it was late. Do you remember approximately what time you would have been getting to the Stanley residence?

A It was morning.

Q It was morning. Early morning? Late morning? Can you be a bit more specific than that?

A Early morning.

Q Was the sunlight out?

A Kind of. I mean -Q

Would day break be a good description of it?

A Yes.

Q And while you're at the Stanley residence, Mr. Deleon, do you have contact with Mr. Eye?

A Yes.

Q Explain to the ladies and gentlemen of the jury your contact with Mr. Eye.

A I think I called him to see if he was all right.

Q You called him to see if he was all right?

A Yes.

Q Were you concerned about him?

A Yes.

Q Why?

A Just because he just seemed a little higher than usual.

Q He was higher than usual. Is that what you said?

A Yes.

Q And did you get hold of him?

A Yes.

Q Tell me about your conversation with Mr. Eye.

A I just asked him if he was all right. He said, yeah.

Then he told me that he would be by there later.

Q Did he tell you what he was doing?

A Getting high.

Q Did he tell you if he was busy doing something and that he couldn't talk and he would come by? Does that sound familiar?

A Yes.

Q Was Mr. Eye aware that you were at the Stanley residence?

A Yes.

Q And at some point, Mr. Deleon, does he show up at the Stanley house?

A Yes.

Q Is he by himself when he arrives?

A No.

Q Who is with him?

A Regennia and Stevie.

Q Same people that were with him earlier when you had gone with them to get the truck and when you had gone out to

Raytown?

A Yes.

Q What vehicle were they driving? Do you remember?

A A blue Jeep Cherokee.

Q A blue Jeep Cherokee?

A Yes.

Q And do you remember, Mr. Deleon, if there was anything unusual about the Jeep?

A No.

Q Do you remember if it had a front attachment? Tow package? Does that sound familiar?

A I think it did.

Q That sounds familiar?

A Yes.

Q Mr. Deleon, is it your memory that on, what is your memory on whether Gary and Stevie come into the Stanley house?

A You mean what happened?

Q Do you remember, did they come in the house? They show up in this blue Jeep. Do they come in? What happens?

A They came in.

Q They did come in?

A Yes.

Q And do you remember where they went when they came in?

A We were in the living room.

Q In the living room?

A Yes.

Q And when you say we, who is we?

A Christina's parents, her sister, me, and Regennia, Gary and Stevie.

Q And when you say Christina's parents, would that be Larry and Mary Stanley? Does that sound correct?

A Yes.

Q So there were a number of people in the front living room?

A Yes.

Q Do you remember, Mr. Deleon, if there was a T.V. in the living room?

A Yes.

Q And on that particular morning, was the television on?

A Yes.

Q Do you remember what was getting reported on the news? Or what was on the T.V, I guess, is a better question.

A It was the news.

Q All right.

A And it was just showing a homicide that had just happened.

Q And did it say who the suspects were?

A It said three black males.

Q Three black males?

A Yes.

Q Now, were Gary and Steven, Mr. Eye and Mr. Sandstrom, present when the news is reporting this?

A Yes.

Q Were they in a position to hear the news?

A Yes.

Q And did they appear to be watching the news as it was being reported?

A Yes.

Q What was their reaction?

A They just started laughing.

Q In addition to the reports of the homicide, was there anything else on the news that caught your attention?

A Yeah.

Q What?

A A burning red Intrepid.

Q A burning red Intrepid?

A Yes.

Q And it might be obvious, Mr. Deleon, but why did that pique your interest?

A Because it was the same Intrepid or looked like the same Intrepid they had been in that night.

Q Does Mr. Sandstrom make a statement about the news report of the burning Intrepid?

A He said, yeah, that's my car.

Q That's my car?

A Yes.

Q Now, based on the news story, their reaction as well as

Mr. Sandstrom's statement, Mr. Deleon, did you ask either or both of them, you know, what's going on, words to that effect?

A Yeah, I asked Gary.

Q You asked Gary?

A To come outside.

Q To go outside?

A Yes.

Q Does Gary go outside with you?

A Yes.

Q And when you go outside, who, if anyone else, is with you?

A Just me and him.

Q Just you and Gary?

A Yes.

Q What happens once you and Gary get on the front --or outside of the Stanley house?

A I asked him, what's up? What's going on?

Q Do you remember what he responds?

A He was like, shit, and he just said like, I did that shit.

Q And did you ask him by, I did that shit, what he meant?

A Nope.

Q Do you remember, Mr. Deleon, if Mr. Eye used the word nigger while he was on the front porch?

A Yes.

Q He did?

A Yes.

Q What did he say?

A Something like, I got that nigger --something -Q

I smoked that nigger, does that sound familiar?

A Yes.

Q Is that what Mr. Eye said?

A Yes.

Q Did you understand what Mr. Eye was saying when he made that statement?

A Yes.

Q What did you understand Mr. Eye to be saying when he said, I smoked that nigger?

A That he had killed him, a black dude on the news.

Q That he had killed the black dude on the news?

A Yes.

Q Now, while Mr. Eye is telling you this, does anybody come out of the house?

A Yes.

Q Stevie?

A Yes.

Q And as Stevie comes out is Mr. Eye still telling you this information about being responsible for killing the black man on the news?

A No.

Q Well, what happened when Mr. Sandstrom comes out of the house, Mr. Deleon?

A He just comes out laughing. Shit. It was like --I don't really remember what he said. He was just laughing.

Q And, again, Mr. Deleon, would it help refresh your recollection to review what you told the federal grand jury back on May 18th of 2005?

A Yes.

MR. KETCHMARK: Counsel, I'm referring to beginning on page 48, carrying over to page 49.

BY MR. KETCHMARK:

Q Start, Mr. Deleon, if you would, at line 16 and read through and let me know when you're done.

And, again, starting at the top of page 49 and going to line 20.

Does that help refresh your recollection, Mr. Deleon, as to when Mr. Sandstrom would have exited the house and what, if anything, he would have said?

A Yes.

Q And do you remember now, after you reviewed that, what, if anything, Mr. Sandstrom said?

A Yeah.

Q What did he say?

A He was just like, yep. And he was like, like it, love it or leave it.

Q Like it, love it or leave it?

A Yes.

Q What did you take the yep to mean?

A To confirm what Gary did or what they had did.

Q Mr. Deleon, if I could address your attention to the monitor in front of you and do you see a photograph that's marked 73K? Do you see that picture?

A Yes.

Q And do you recognize the vehicle or the back of the vehicle that's contained in 73K?

A Yes.

Q And is that the vehicle that they would have arrived in? They being Mr. Eye, Mr. Sandstrom, Ms. Rios, when they picked you up at the Stanley house?

A Yes.

MR. KETCHMARK: Your Honor, I offer to admit that and ask to publish that to the jury.

THE COURT: Without objection, 73K is admitted and may be published.

BY MR. KETCHMARK:

Q Now, Mr. Deleon, in that photograph the back window is busted out, is it not?

A Yes.

Q On March 9th when they are at the Stanley house, was that back window broken out at that time?

A No.

Q That happened later?

A Yes.

Q But you knew that vehicle because that, in fact, you remember when that vehicle was, busted the back window, right?

A Yes.

MR. KETCHMARK: Now, if we could, Ms. Marko, please show to Mr. Deleon 73B.

BY MR. KETCHMARK:

Q Mr. Deleon, again, directing your attention to the monitor and what is shown there is 73B. Do you recognize that?

A Yes.

Q Is that the picture of the same Jeep from the driver's side?

A Yes.

MR. KETCHMARK: Your Honor, at this time I move the admission of 73B and ask leave to publish it.

THE COURT: Without objection, 73B is admitted and may be published.

BY MR. KETCHMARK:

Q Again, Mr. Deleon, directing your attention to the monitor on 73B. Do you see the front area that reflects the tow package, is what I'm calling the tow package. Do you see that on the front bumper?

A Yes.

Q This is the vehicle that they would have arrived at the Stanley house in, correct?

A. Yes.

Q Directing you back, Mr. Deleon, if I could to the front porch of the Stanley residence. Do you remember anything else? Let me ask you this, I guess. We'll do it this way. Did you ask any questions of Mr. Eye or Gary as he's telling, he makes that statement to you?

A No.

Q Why?

A Because I didn't want to hear it.

Q At some point, Mr. Deleon, do you leave the Stanley residence?

A Yes.

Q Did you leave by yourself?

A No.

Q Who do you leave with?

A Regennia, Stevie and Gary.

Q Do you remember what vehicle you leave in?

A That Cherokee.

Q That Cherokee that you're looking at in 73B?

A Yes.

Q Who is driving?

A Stevie.

Q Who is in the front passenger seat?

A Gary.

Q And where are you and Ms. Rios?

A In the back.

Q Just the four of you?

A Yes.

Q At some point, Mr. Deleon, does Mr. Sandstrom drive that Jeep by the intersection of 9th and Brighton?

A Yes.

Q And do you remember as you drive by there, did you notice anything out of the ordinary?

A CSI stuff was going on.

Q CSI vehicles and stuff was out there?

A Yes.

Q Were there police vehicles?

A Yes.

Q And as Mr. Sandstrom drives by the location, does he make any statements?

A Who?

Q Mr. Sandstrom, does he make any statements as he drives by the vehicle, or excuse me, drives by the intersection?

A Yeah, but I don't remember what he said.

Q Again, would it help refresh your memory of what you told the grand jury back on May 18th of 2005?

A Yes.

MR. KETCHMARK: Yes. Counsel, it's page 53.

BY MR. KETCHMARK:

Q Starting at line 7, Mr. Deleon, down to line 17.

Does that help refresh your memory as to what Mr. Sandstrom said as he drives by the intersection where the police are at?

A Yes.

Q And what does Stevie say?

A That's where Gary shot that nigger.

Q Again, nigger, N-I-G-G-E-R?

A Yes.

Q Would you agree with me, Mr. Deleon, when you talked to the grand jury, initially you stated that it was, that's where Gary shot that dude?

A Yes.

Q Two lines up?

A Yes.

Q And then I asked you if that was accurate and you told me that. And I asked you if it was, in fact, Gary shot that nigger. And you indicated that was, in fact, accurate, right?

A Yes.

Q Was it difficult testifying in grand jury against your friends?

A Yes.

Q Is it difficult, Mr. Deleon, being here in court testifying against them?

A Yes.

Q When, excuse me, when Stevie makes the statement that's

where Gary shot that nigger, what is Mr. Eye's reaction?

A He starts laughing. Said, here, nigger, nigger, nigger.

Q Again, nigger, nigger, nigger?

A Yes.

Q And you said that Ms. Rios was in the car at that point as well?

A Yes.

Q Did she make any statements?

A I don't remember if she did. Oh, yeah. I do remember she did.

Q Do you remember what she said?

A She told Gary to take off his hat.

Q Take off his hat?

A Yes.

Q Did she make any other statements about making certain, going back and making certain that Eye had finished what he started? Do you remember her making that statement that they needed to go back and finish what they had started?

A I remember her making a statement like that but not then.

Q So just so we're clear, you remember her making a statement they needed to go back and finish what they started but your recollection is it wasn't in the car?

A Yes.

Q And if I were to tell you, Mr. Deleon, that at the time of the grand jury, which was on May 18th of 2005, you indicated

that she made that statement in the car, well,--the bottom line on that is you remember her making that statement, correct?

A Right.

Q Now, again, we talked earlier, Mr. Deleon, about when you talked to the homicide detectives on March 30th of 2005, correct?

A Right.

Q And in that statement did you tell the police that Mr. Sandstrom had made the statements instead of Ms. Rios?

A Yes.

Q Do you remember telling them that it was Stevie Sandstrom who made the statement about needing to go back and finish him off?

A Yes.

Q Was that accurate what you told the police?

A No.

Q Because Mr. Sandstrom didn't make that statement, correct?

A No.

Q It was, in fact, Ms. Rios?

A Yes.

Q That's what you told the federal grand jury and corrected that lie to the police for lack of a better term?

A Yes.

Q Why did you tell the police that it was Mr. Sandstrom

versus Ms. Rios?

A I was trying to protect her.

Q Trying to protect her?

A Yes.

Q After driving by the intersection and these conversations or statements being made in the car, Mr. Deleon, where did the four of you go, Mr. Eye, Mr. Sandstrom, Ms. Rios and yourself?

A To Jonnie Renee's house.

Q And how long did you stay there?

A I don't remember. Not long.

Q Not very long?

A No.

Q Did you use methamphetamine again at her house?

A Yes.

Q Were you using by yourself or were others using with you?

A We were all using.

Q All?

A Yes.

Q So the four of you plus Ms. Chrisp? Jonnie Renee?

A Yes.

Q Now, at some point, Mr. Deleon, do you, Mr. Eye, Mr. Sandstrom and Ms. Rios end up at a K-Mart Store in the Kansas City area?

A Yes.

Q And why did the four of you go to K-Mart?

A To go steal another car.

Q Another vehicle?

A Yes.

Q And do you remember were the four of you successful in taking another vehicle?

A Yes.

Q Do you remember the type of vehicle it was?

A I think it was a Dodge Stratus.

Q Dodge Stratus?

A Yes.

Q Do you remember who ultimately leaves in that Dodge Stratus?

A Me and Gary.

Q And where or in what vehicle do Mr. Sandstrom and Ms. Rios leave?

A In that Cherokee.

Q In the Cherokee that's still up as Government's Exhibit 73B?

A Yes.

Q And where do you and Gary go?

A To Gary's mom's.

Q When you leave the K-Mart and you head to Gary's mom's house, do you and Gary have a gun with you?

A No.

Q So the .22 revolver is not with you?

A No.

Q Do you know where it's at, at that point?

A No.

q. But you're positive it's not with you?

A Yes.

Q When you and Gary get to his mom's house, what do you do?

A Get cleaned up.

Q Get cleaned up?

A Yes.

Q And, Mr. Deleon, at some point at his mom's house does Mr. Eye tell you about a game that he and Mr. Sandstrom had been playing?

A Yes.

Q What was the name of the game?

A Nigger, nigger, nigger.

Q Nigger, nigger, nigger?

A Yes.

Q Mr. Deleon, does he tell you anything else at his mother's

house about the homicide?

A I really don't remember. I just remember him saying

something like, dude didn't want to die.

THE COURT: Can't hear you.

THE WITNESS: The dude died slow.

BY MR. KETCHMARK:

Q The dude died slow?

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A Yes.

Q Mr. Deleon, if I could fast forward a couple of days, are you still with Mr. Eye at that point?

A When?

Q A couple of days after being at his mom's house, are you and Gary still together?

A Yes.

Q Do you remember an occasion when you and Gary are riding around in a car and the subject of this game, nigger, nigger, nigger comes up?

A Yes.

Q Tell the ladies and gentlemen of the jury about that.

A I don't remember how it started. Just asked me if I wanted to play the game called, nigger, nigger, nigger, just -Q Defendant Eye asked you if you wanted to play the game, nigger, nigger, nigger?

A Yes.

Q What did you understand him to be asking?

A I didn't know. I mean, kill a black person? I mean, I didn't really know.

Q What was your response?

A No.

Q Mr. Deleon, at some point are you locked up in the Jackson County Jail with Stevie Sandstrom?

A Yes.

Q Did you have occasion to talk to him while you guys are locked up?

A Yes.

Q And does the subject of the gun used in the homicide at 9th and Brighton come up?

A Yes.

Q Tell the ladies and gentlemen of the jury about that.

A He just said that he had his sister go pick up the gun or told his sister to go pick up the gun from my cousin's house.

Q And for the jury's benefit, who is Stevie's sister? Do you know her name?

A Stephanie Sandstrom.

Q And you mentioned that this defendant, Steven Sandstrom, told his sister to pick up the gun from your cousin's house.

What cousin are you referring to?

A Jonathan and Kristina Chirino.

Q Chirino?

A Yes.

Q And for the benefit of the court reporter, is that C-H-I-R-I-N-O? Does that sound correct?

A Yes.

Q Do you know why Mr. Sandstrom was asking his sister to go pick up the gun from that house?

A Because it was involved in a murder.

Q Was it your understanding as to what he was saying, that

the gun was at the house, obviously, and that's why his sister needed to get it?

A Yes.

Q And, again, in the jail is there a discussion with Defendant Sandstrom about the Intrepid in terms of what happened to it?

A Yes.

Q Tell the ladies and gentlemen of the jury about that.

A He just told me he set the seat on fire.

Q That who set the seat on fire?

A He did.

Q Did he tell you if he was worried about if anybody saw them?

A Yeah. A railroad worker had saw them.

Q A railroad worker saw them?

A Yes.

Q Mr. Deleon, we talked about how back in May of 2005 you were in the Jackson County Jail and we brought you over on a writ, correct?

A Yes.

Q And at that point, sir, did we also get you appointed counsel?

A Yes.

Q And is that Anita Burns?

A Yes.

Q And you see Ms. Burns seated in the courtroom?

A Yes.

Q And did we have a discussion with you about wanting -

MR. OSGOOD: Your Honor, excuse me. Could he ask what the discussion was? The leading is,-

THE COURT: Well, I think I'll allow a little bit of leading in this area, Mr. Osgood. When we get to the important testimony, let him answer the question.

MR. KETCHMARK: Thank you.

BY MR. KETCHMARK:

Q Mr. Deleon, after we got Ms. Burns appointed to represent you, was it your understanding that we wanted to sit down and talk to you about what you knew about the homicide in the days in question?

A Yes.

Q And did we give a letter to your attorney that's called a proffer letter that, basically, said that you can come in and tell us information without fear that it would be used against you on the letter, based on the letter?

A Yes.

Q And do you remember some concern that we had expressed because we believed that you weren't truthful about being at the Stanley house from 1:00 in the morning through the remainder of the day. Do you remember that discussion?

A Yes.

Q And, Mr. Deleon, did you sit down with agents from the FBI, in fact, these two agents seated right here at counsel table, on a couple of days and provide information that forms the basis of not only your grand jury testimony but your testimony here in court today?

A Yes.

Q And, Mr. Deleon, do you remember a discussion about immunity?

A Yes.

Q What do you remember about that?

A Just that I be granted immunity.

Q And do you remember that we had indicated that we would give you immunity if you needed it or we would be interested in looking into that but you remember telling us that you didn't need immunity because you hadn't done anything wrong?

A Yes.

Q Because we never actually brought you in front of a judge, this judge or any other judge and actually had that judge grant you formal immunity, did we?

A No.

Q It was just the proffer letter and your discussion with these agents, correct?

A Correct.

MR. KETCHMARK: May we approach, Your Honor?
(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: I'm not going to get done with him, I don't think, so this would be, probably be a logical breaking point if that would be okay with the Court.

THE COURT: He says he's not going to finish with him. This would be a logical breaking point. I was going to ask him how much longer he would be. Let's go ahead and quit for the day.
(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Folks, we're going to take our first overnight recess and let me remind you of Instruction No. 8. During this recess or any other recess you must not discuss this case with anyone including your fellow jurors, members of your family, people involved in the trial or anyone else. If anyone tries to talk with you about the case, please let me know about that immediately. Do not read, watch or listen to any news reports about the trial. I want to emphasize that. Please do not read, watch or listen to any news reports about the trial. Keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

I'll ask that you be in the jury room by 8:30 tomorrow morning and ready to return to the courtroom at that time.

Thank you very much for your attention today. Good night.

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(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Okay, folks. See you in the morning. I will be here by 8. If you need me, let me know.

(End of session)

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APRIL 29, 2008 -DAY 5

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: I am told that you needed to talk to me.

MR. OSGOOD: An administrative matter, first. There is a blond lady with the victims here. It was reported to me yesterday evening and, certainly, the government, it's not their fault and they've done their best to tell these people not to do it. But I'm afraid that based on what she said to my client's wife in the elevator, going out, that she'll say something similarly inappropriate to the jurors, something to cause problems.

THE COURT: What did she say?

MR. OSGOOD: She told Mrs. Eye, allegedly, that when this was over, that her husband was a dead man. Certainly I wouldn't --Mrs. Eye doesn't care about it. It rolled off her back. But I don't want this person saying something in front of the jury or something else inappropriate. So I think some kind of instruction or admonition would be appropriate.

MR. KETCHMARK: Judge, what I can tell you on that is I talked to Mr. Osgood and John beforehand. I told them I pulled the victim's family into a conference room and talked to

them about that very issue in terms of the jurors are around.
We don't want to talk. If you want to talk about what you hear
in court, wait until you're home, that type of stuff. The lady

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he's referring to is Teresa Metal and she was the fiancée of Mr. McCay at the time. She was not one that I was able to get. I got all the family except for her and I told him I would talk to her just to give her the same admonition that I had given the other members of Mr. McCay's family and I will do that, obviously. So I just want to let you know that I tried to grab her but she had gotten away. She stepped out to smoke or what but she was the only one I was unsuccessful in getting in the room to give them that admonition but I'll do that this morning.

THE COURT: Is that adequate, do you think, John?

MR. OSGOOD: I guess the usual admonition at the break to the jury, don't talk to anybody, don't listen, report to me if there is any contact immediately.

THE COURT: I would do that. The next step is for me to talk to her.

MR. KETCHMARK: And I think, Your Honor, and, again, obviously, my thought would be that I think I can stress the point to her and explain to her the importance of that. And I think she'll understand. I just didn't get a chance to tell her that and I hadn't had contact with her like I had with the other family members through the pretrial litigation process. So I think if I talk with her, that should be more than adequate and if I can let her know that is something that is brought to your attention. Quite frankly, I wasn't there, and

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I don't know if the statement was made as Ms. Eye is reporting but I feel comfortable that I should be able to get it addressed.

THE COURT: Well, some times when the breach is as broad as this is, communication gap, what is said is not what is heard or what is heard is different than what is intended. But nevertheless it needs to stop and if it happens again, I will want to see her.

MR. KETCHMARK: Absolutely.

The other thing, too, and I don't know that the defendants need to be here for this. They can speak to that. One of the things we were talking about is this morning I gave the Court the batting lineup, which should be in front of you. But two of witnesses that are coming are the detectives, Detective Williams and Detective Blehm. And they were the ones that interviewed Mr. Sandstrom on two occasions. We have provided to the Court as well as defense counsel the redactions in terms of the, Brutonize the statements. And what I was proposing and you may want to mark those as Court's exhibits but what I had proposed to all defense counsel that what my intention was or my preferred method in presenting that information would be to go through and establish with each detective the voluntariness aspect of the statement and then when we get to the content of the information, establish that they would have, basically, taken a report that would have

summarized their interview or interrogation with Mr. Sandstrom. And then ask them if they would read that for the jury and then use what I have already talked with them about, which is this version. I think it's the cleanest way to avoid any potential slip up in terms of having to do it in a question and answer format. And I don't want to speak for defense counsel but my belief is that their objection is more as to they don't think the redacted version complies with Bruton and they want to preserve that from an appellate record standpoint. I said, obviously, I understand that. And they can mark these as exhibits and show the Court. Maybe we can take it up now. And then propose that be the manner and means in which we actually do the presentation of the statements and turning it over to them for cross.

THE COURT: Do you have an extra copy?

MR. OSGOOD: I'm marking them as a court's exhibits right now.

THE COURT: I don't have a copy up here so-

MR. OSGOOD: I'll tender to the Court, Your Honor, what we marked for identification as Court's 1 and Court's 2. They are the two statements Mr. Ketchmark just talked about. He's accurate that we're willing to accept the manner of presentation that he just described. It seems to be the cleanest. And, obviously, this is Mr. Eye's objection in my view, not Mr. Sandstrom's because he's the speaker. My problem

is based on the opening statements and the testimony that we have heard thus far from Mr. Deleon and then we anticipate we will hear from Ms. Rios. That based on that, there is a confrontation problem, even with the use of the word someone in those statements, simply because there's no other possible person it could be in light of what we've already heard testimony, other than Gary Eye. We would be treating these jurors as absolute infantile idiots to suggest that they do not clearly understand from that that anyone or someone is Gary Eye. And it violates Bruton under the most liberal interpretation from the government's point of view of Bruton.

Another point, Your Honor. It was originally my intention to have Mr. Eye testify. I, obviously, would have done that in a separate trial. I'm now forced to re-evaluate my defense in this case because it's a joint trial. And based on things that the co-defendant stated in opening statement, it has caused me to re-think my strategy seriously. Now, I seriously doubt at this point that I'll put Mr. Eye on. So any suggestion or thinking it will all be cured in the long run by the fact that Mr. Eye testifies is no longer necessarily an accurate prediction for the government or for the co-defendant. I'm leaning the other direction now, based on what I've heard on the witness stand and in opening statement from both the government and the defendant, co-defendant. So if there's any thinking perhaps this will cure itself, that is not necessarily

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accurate thinking.

MR. KETCHMARK: What I think --I don't know if Charlie was going to talk. If you'd like to go first.

MR. ROGERS: On behalf of Mr. Sandstrom, first of all, we do not have an objection to the manner of presentation. I would point out there was a motion to suppress both of these statements which has been overruled. We'll, of course, need to approach and make an objection to preserve the record at the appropriate time.

Having said that, I don't know that Mr. Eye testifying, what Mr. Osgood raised, would make any difference any way. I think if Mr. Sandstrom would testify and be available for cross-examination by Mr. Eye, that might alleviate their objection. But I don't think Mr. Eye's testimony has anything to do with this, the right to confront and cross-examine the maker of these statements. That's basically and with regard to the issues regarding Mr. Sandstrom in terms of other redactions other than attempting to obscure the identity of Mr. Eye, we don't have a problem with those redactions.

MR. OSGOOD: I agree with Mr. Rogers. I didn't mean to misstate the law in Bruton. I realize Sandstrom is the problem but what I pointed it out for, if Eye testifies that forces Sandstrom to testify. If Eye doesn't testify, there's a substantial likelihood that Sandstrom won't testify, probably

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more than substantial. So that's my rationale.

MR. KETCHMARK: Your Honor, if I might, a couple things I might note. This was the subject of pretrial litigation on the motion to sever as well as the issue of the form of the redactions that was ruled on by this Court in pretrial pleadings.

The other thing I would point out in that regard is the law is clear from the Supreme Court on down that what you look at is the statement and contextual implication is not a problem. It is where it is facially incriminating of the other defendant. The Supreme Court has said that and it is clear that that's the manner and way in which we proposed redactions that this Court has already looked at with Judge Larsen and this Court by adopting the report and recommendation. So I think the law is clear that there is not the manner in which they're being presented or going to be presented any problems on the confrontation because it's clear that we have removed Mr. Eye and the issue of his contextual, taking the context in light of the other testimony and putting it together. And the Courts have been clear on that, that's outside the scope if the statement is in a form that doesn't reference and not facially incriminating as to the defendant or the co-defendant then it's not a problem. And that's the manner and means in which we propose. So I think that is sufficient. I think the Court has already addressed that in the pretrial pleadings. And the

Court was well aware at the time there were severance motions. Mr. Osgood pled his defense in the severance motion and that was included in the same motion with the issue with the Bruton statements.

THE COURT: Okay. First, with respect to the manner of presentation, without objection, that's fine with me. And it seems to be the safest and most cautious way to proceed.

With respect to the statement itself, I think Mr. Osgood makes a good point and that is that it's pretty clear who the other person is. Nevertheless, under the law of the Circuit as I understand it, this is an acceptable way to proceed, followed by an instruction or admonition to the jury that the statement can only be used against Mr. Sandstrom and not against Mr. Eye. So I will allow the statement to be read to the jury.

The Defendant Eye's objection is noted and if the defendants wish to approach and make an objection to the statement following their motion to suppress, they may do so. However I'll treat that as an ongoing objection and declare that that issue is preserved for appeal, if you think that -

MR. ROGERS: Could I have that continuing objection, too, Your Honor? I have done too much habeas work in my life.

THE COURT: That's fine.

MR. OSGOOD: The Eighth Circuit chastised the defense lawyers in the firefighter case a little bit, which I was an

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attorney in, for not getting up and griping about each Bruton violation. I do not propose, unless the Court requires me to, to object each time the word someone or somebody is read while he's reading the statement. I will, if it's permissible, lodge an objection at the end of the statement presuming it goes the way and flows the way it's suppose to. And I certainly object to it now. If that's sufficient to preserve my error I think it is because we're putting the actual statement in itself.

THE COURT: I'll not advise you on whether it's sufficient or not. I'll allow you to make your objections whenever you feel like you need to. I think, however, if I declare that your objection is recognized as ongoing, it not need be repeated at every interval, that should be sufficient but you do what you feel you must.

MR. OSGOOD: That was a much longer record, 10,000 page record. But I think that serves my purpose, Your Honor.

THE COURT: Anyone need a break before we bring the jury in?

Let's take a quick three-minute break then we'll bring the jury in then we'll start.

(Recess)

(The following proceedings were had OUT OF THE

PRESENCE AND HEARING OF THE JURY:)

THE COURT: All right. Shall we bring the jury in?

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Good morning, ladies and gentlemen. Welcome back.

Mr. Ketchmark, you may resume your examination of

Mr. Deleon.

MR. KETCHMARK: Thank you.

VINCENT DELEON, RESUMED

CONTINUED DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Mr. Deleon, when we broke for the day yesterday we were talking about the events back in May of 2005 and you being brought over from Jackson County on a subpoena and a writ to testify before the federal grand jury. Do you recall that?

A Yes.

Q And to help the jury kind of get back to where we were at, we had covered that when you were brought over, that our office got you appointed counsel and that was Ms. Burns, correct?

A Yes.

Q And we also covered at the end of the day, did we not, Mr. Deleon, that prior to your grand jury testimony on May 18th of 2005, you met with Special Agents of the FBI, in particular Special Agent Gothard and Special Agent Janke on a couple of occasions, is that correct?

A Yes.

Q And when you met with the agents on those two occasions,

Ms. Burns was always present with you?

A Yes.

Q And you were informed, were you not, sir, that the meetings were to try to discuss with you information that you may or may not have, obviously, in preparation of your appearance before the federal grand jury. Is that a fair statement?

A Yes.

Q And, Mr. Deleon, during those two occasions that you met with the agents, did you initially always come out and just tell them the information that you testified here about today?

A No.

Q Were you at times reluctant to provide that information?

A Yes.

Q And at times did you, in fact, withhold or lie about some of the information that you provided today?

A Yes.

Q But in the end did you, in fact, provide them with the information that is consistent with what you're testifying here today about?

A Yes.

Q Is it the truth?

A Yes.

Q And in terms of the statements and the quotes that you testified about today, is that accurate information?

A Yes.

Q And it might be obvious, Mr. Deleon, but what was your reluctance then and what is your reluctance now in being here as a witness?

A I don't want to be here.

Q Is it because you're friends with these two gentlemen?

A Was.

Q Was friends with them?

A Yes.

Q After you testified in front of the grand jury on May 18, 2005, were you returned to Jackson County?

A Yes.

Q And upon your return, Mr. Deleon, were these defendants, Gary Eye and Steven Sandstrom, concerned with the fact you had left Jackson County and had gone into federal custody for a period of time?

A Yes.

Q They knew that you had been taken out of Jackson County on a federal writ and taken to CCA?

A Yes.

Q And did you, in fact, write Gary Eye a letter on May 26th of 2005 explaining to him that you had been taken into federal custody? Do you recall writing him a letter about that?

A Yeah, I remember a letter.

Q A letter?

A That I wrote, yes.

Q Would you remember in that letter, Mr. Deleon, you talked about that you were brought to the federal system or CCA and it was about him and that you were brought to go in front of a grand jury. You told Mr. Eye that in the letter, did you not?

A Yes.

Q And at the time, did you also tell Mr. Eye in that letter -

MR. OSGOOD: Excuse me, Your Honor. He's leading him about what he said in the letter.

THE COURT: Try not to lead, Mr. Ketchmark.

BY MR. KETCHMARK:

Q Mr. Deleon, the letter that we're talking about here, this May 26th letter of 2005, before you testified or before you came in, did we meet with you on a couple of occasions?

A Yes.

Q And at one point, Mr. Deleon, did I provide you with a copy of a letter that was in my possession that was turned over from the defense attorney and is that the May 26, 2005 letter we're talking about?

A I don't know.

Q I'm having Ms. Marko,--

Mr. Deleon, I'm showing you what has been marked as Defendant's Exhibit 53. And you would agree with me it's a several page document?

A Yes.

Q And in the back of Defendant's Exhibit 53 there is a two-page letter, front and back, is that correct?

A Yes.

Q Do you recognize that as your handwriting?

A Yes.

Q And, again, on the envelope, who does it indicate it's from?

A Me.

Q Who is it going to?

A Gary.

Q If I could -MR.

OSGOOD: For the record, Your Honor, I had my

secretary type that letter. I'm not vouching for the exact 100 percent accuracy of the typed copy because there's slang in it and what not. So if there's any dispute or question, they should go to the original letter, if he questions it at all because it is there. I just typed it for ease of use in court.

THE COURT: Okay. Thank you.

BY MR. KETCHMARK:

Q Mr. Deleon, what I would ask is, can you see this typed -I have no dispute with the portion I'm referring to because I compared it. But on Defendant's Exhibit 53, you see where it says anyhow?

A Yes.

Q Can you read that out loud to the jury?

MR. OSGOOD: Did he offer the exhibit?

MR. KETCHMARK: I have no objection if he wants to

offer it.

THE COURT: Without objection, Defendant's Exhibit 53 will be admitted.

THE WITNESS: Anyhow, I go to Court on the 2nd of June, cuz. They didn't have me at CCA for me. It was for you. And for me to go in front of a grand jury.

BY MR. KETCHMARK:

Q Keep reading, please.

A They said they didn't believe me when I told them I was at Christina's house and that we split up for different reasons. They were just trying to scare me. They said they were going to give me 18 months if I didn't talk. So I told them what they wanted to hear which was a lot of lies. I hope they don't try to hold it against you, cuz.

Q And this would have been written on May 26th of 2005, correct?

A Yes.

Q Shortly after you were returned to Jackson County custody from your appearance in front of the grand jury?

A Yes.

Q And in that letter you indicated to Mr. Eye that what you told us and the grand jury at the time was a lie. Would you

agree with me? Is that a correct characterization?

A Yes.

Q And you're here now telling the jury that what you told us
and what you told the grand jury and what you're telling them
is, in fact, the truth, correct?

A Yes.

Q Mr. Deleon, why did you write that letter then to Mr. Eye
on May 26th of 2005?

A I don't know.

Q Well, is that letter the truth?

A Somewhat.

Q What do you mean by that?

A I mean, I did go in front of the grand jury.

Q And my point is -

A What I told the grand jury was the truth.

Q What you told the grand jury was the truth?

A Yes.

Q And what you told these agents was the truth?

A Yes.

MR. KETCHMARK: Do you have Defendant's Exhibit 14,

John, please?

BY MR. KETCHMARK:

Q Mr. Deleon, I'm going to show you another Defendant's

Exhibit 14. And would you agree with me that this is also a

rather lengthy document?

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A Yes.

Q And would you agree with me that the first three pages of this document appears to be typed out?

A Yes.

Q And the last pages appear to be photocopies of a letter, correct?

A Yes.

Q Do you recognize the handwriting in that letter?

A Yes.

Q Whose is it?

A Mine.

Q And do you recognize who the letter is sent to?

A Gary.

Q Do you recognize the date? Can you tell the ladies and gentlemen?

A Yes.

Q What's the date?

A May 16th of '07.

Q And have you, did you write this letter?

A Yes.

MR. KETCHMARK: Your Honor, at this time I would move

the admission or have Mr. Osgood not oppose the admission of

Defendant's Exhibit 14.

MR. OSGOOD: No objection.

THE COURT: Without objection, Defendant Eye's

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Exhibit 14 is admitted.

BY MR. KETCHMARK:

Q Mr. Deleon, would you agree with me, well, Defendant's Exhibit 14, tell me if this is what you wrote in one of the paragraphs.

About that statement, they put words in my mouth. Like I said before, they just wanted to hear my side of you-all's story. That's what I told them. I didn't have nothing to do with it and don't want nothing to do with it. Then they just said, let's talk. We'll ask the questions and you tell us yes or no, if it's true. I told them, you guys already know what happened so why am I here? Then they said that was a problem because Stevie and Regennia said I was the one with you all when it happened. I was like, they're lying. I never had nothing to do with nothing. But in the end they made up their own statement and had me sign it which I never wanted to. But my lawyer was like, it's nothing if you sign it. It won't matter. You'll just get to go back to the county and nothing's going to happen to your family, to you, I, my sisters, so I was fricking, give me that pen. That's when, after I knew I had made a mistake doing that because they was using me to get to you. Because they knew that we were brothers and how important it would be coming from me. But, shit, I'm a convicted felon and I ain't never going to be no type of witness for their ass. And if you talk to your lawyer,

all that shit they made up and I'll testify to that, that they put words in my mouth. I may --me say shit that wasn't true. They threatened me and scared me. Says all kinds of hateful ass shit. I'll help you with whatever, cuz, that's what they're doing is helping each other. So I'll tell your lawyer I said you want to do that same. So at least one of us gets to go home.

Was that a portion of the letters you wrote?

A Yes.

Q That was on May 16th of 2007?

A Yes.

Q And, again, Mr. Deleon, that didn't happen, did it?

A No.

Q You weren't threatened?

A No.

Q Words weren't put in your mouth?

A No.

Q The information, well --Mr. Deleon, after you testified in Jackson, or excuse me, here May of 2005 and you were returned to Jackson County, did you eventually get released at some point?

A Yes.

Q On October 15 of 2005, some five months after you would have testified, were you arrested and charged with murder for a shooting that happened on that date, October 15th?

A Yes.

Q And, Mr. Deleon, were you subsequently convicted by a jury in Jackson County in June of 2006 of second degree murder and armed criminal action?

A Yes.

Q Following that conviction were you sentenced to 20 years in the Missouri Department of Corrections on those two charges?

A Yes.

Q And back in, following that sentence, did you ever actually get to the Missouri Department of Corrections?

A No.

Q While you were in Jackson County, Mr. Deleon, did you have some concern that you might be harmed if you got to the Missouri Department of Corrections?

A Some.

Q Had you heard some rumors that you might have problems once you hit the yard in the Missouri Department of Corrections?

A Some.

Q Well, obviously, let me ask you this. You weren't ever turned over to the Missouri Department of Corrections. Do you also have a charge pending in federal court that you pled guilty to for being a felon in possession of a firearm?

A Yes.

Q And is that charge stemming from the gun that you

possessed on October 15, 2005, at the time of your arrest?

A Yes.

Q And, Mr. Deleon, when you were charged federally with that, were you taken into federal custody?

A Yes.

Q And have you since pled guilty to that federal charge?

A Yes.

Q And as part of that plea agreement, sir, is it required that you come in and you continue to truthfully cooperate in the case against your friends, Mr. Eye and Mr. Sandstrom?

A Yes.

Q And was that plea done in front of this judge, Judge Smith?

A Yes.

Q And is it your understanding, Mr. Deleon, that as part of that plea agreement that the government has agreed to recommend that a sentence that you receive on that weapons offense would run concurrent or at the same time with your 20-year state sentence?

A Yes.

Q And there's no parts of the agreement and we've told you that we are not going to ask nor request nor say anything to the state prosecutors on that 20-year sentence because that was wholly unrelated, correct?

A Yes.

Q So you have that 20 years?

A Yes.

Q Was it part of your understanding, Mr. Deleon, that the reason that we brought you into federal custody on that weapons offense and part of the understanding and agreement is that we're recommending that that concurrent time sentence for whatever you get on the weapons offense, that you can serve that portion of your sentence in a federal facility?

A Yes.

Q And, Mr. Deleon, was part of the reason that was set up because you had expressed to our office and the FBI as well as your attorney your concern that if you went to the Missouri Department of Corrections you could be harmed for being a snitch?

A Yes.

Q And for being a --by snitching -

MR. OSGOOD: Your Honor, really just spoon feeding.
I object.

THE COURT: That objection is sustained.

BY MR. KETCHMARK:

Q What does snitching mean, Mr. Deleon?

A Telling on something you know.

Q Telling something that you know?

A Yes.

Q So by coming in here as a witness and testifying, would

that qualify as snitching on the streets?

A Yes.

MR. OSGOOD: Objection. This is all speculative.
There is no basis for the question.

THE COURT: The jury will understand that it is this witness's perception. So the objection will be overruled.

BY MR. KETCHMARK:

Q Mr. Deleon, in your opinion would coming in and taking the witness stand in this case be considered snitching on the streets?

A Yes.

Q What about testifying before a federal grand jury? Would that be considered snitching?

A Yes.

Q What about talking to agents with the FBI? Would that be considered snitching?

A Yes.

Q Mr. Deleon, in addition to writing letters have you also received letters while you've been in custody?

A Yes.

Q Have you ever received a letter from Mr. Sandstrom?

A Yes.

Q Did you recognize his handwriting?

A Yes.

Q Mr. Deleon, I'm going to show you what has been marked as

Government's 244. Would you agree with me it's a one-page document?

A Yes.

Q And is Government's 244 a photocopy of what appears to be a letter?

A Yes.

Q And do you recognize Government's Exhibit 244?

A Yes.

Q What is Exhibit 244?

A It's a letter from Stevie.

Q Is it a letter from Stevie addressed to who?

A Me.

Q Did you provide through your attorney this letter to government counsel, to myself, on one of the occasions we met with you before you testified today?

A Yes.

Q And I'm going to show you now, Mr. Deleon, what's been marked as Government's Exhibit 244A. And would you agree with me that this is a copy of certain excerpts of that letter?

A Yes.

Q And this, again, 244A would be excerpts of the letter that was written by who?

A Stevie.

Q To you?

A Yes.

MR. KETCHMARK: Your Honor, at this time I move the admissions of 244A.

THE COURT: Without objection, 244A is admitted.

BY MR. KETCHMARK:

Q Mr. Deleon, I direct you to the screen in front of you. In the first portion that appears on the screen, does it say, Vince, 11-6, and it looks like the date is a little obscured possibly, '05?

A Yes.

Q But nonetheless it's November 6th. And does the first portion read, if you would have listened to me and not said shit, I wouldn't have gotten caught. Nobody would have. What really pisses me off is how you told them we was playing some game, nigger, nigger. That's fucked up. I expected you to breakdown but not how you did it. Fuck it.

Is that accurate?

A Yes.

Q Going on to the next portion. Don't go telling Gary I'm going to tell on him because I'm not. I'm just stressed. I miss my girl and every time she has come up to see me she starts crying, telling me to come home. That shit has fucked me up. When she starts crying, saying, baby, I want you home, you know, what I mean? So who, so who did they say you smoked?

And would that be a reference to the homicide charge you had pending at the time?

A Yes.

Q Next portion. I told you not to tell nobody when shit like this happens. Your big ass mouth. Why did you tell Larry Stanley about this shit? Since you helped me get caught, why don't you help me get home to Kristina?

Is that accurate?

A Yes.

Q Who is the Kristina he's referring to in that letter?

A Chirino.

Q Is that your cousin?

A Yes.

Q Next portion. She's got somebody who loves her. I need your help, Vince, between me and you. Correct?

A Yes.

Q Then at the bottom does it say, one way or another we're going to be family so don't hate on me. Just help me. A few people want you gone but I said no. Regardless, I'm not going to let nothing happen to you but I need your help. You know what kind of help, too, correct?

A Yes.

Q The reference to a few people want you gone but I said no, what did you understand Mr. Sandstrom --what was your understanding of what he was meaning at that point?

A I don't know.

Q Well, a few people want you gone. What did you take that

to mean?

A Dead.

Q In addition to that letter, Mr. Deleon, did you receive other correspondence from Mr. Sandstrom? Is it possible you don't recall?

A Yes.

MR. KETCHMARK: 246, counselor.

BY MR. KETCHMARK:

Q Mr. Deleon, I'm going to show you another two-page document that we have just marked as Government's Exhibit 246. And do you recognize, one-page, double-sided. Do you recognize this document?

A Yes.

Q And, again, what is contained in Government's Exhibit 246?

A A letter.

Q And this letter isn't addressed to anybody. Would you agree with me?

A Yes.

Q But is this a letter you would have received?

A Yes.

Q And who is the letter from?

A Stevie.

Q And you recognize the handwriting?

A Yes.

Q And, Mr. Deleon, on 246, would you agree the date

reflected is March 23 of '06?

A Yes.

Q I'm going to now show you what has been marked as Government's Exhibit 246A. And would you agree with me that that contains excerpts out of the letter as set forth in 246?

A Yes.

MR. KETCHMARK: Your Honor, at this time I move the admission of Government's Exhibit 246A?

THE COURT: 246A is admitted.

BY MR. KETCHMARK:

Q Again, Mr. Deleon, if I'd could direct your attention to the screen in front of you. And, again, we talked about the date. It's March 23 of '06, correct?

A Yes.

Q First paragraph, I tried to set shit straight and if your ho ass would have listened to me when I said, do not say shit, nobody would know shit but you had to brag to everybody. Right?

A Yes.

Q Next portion. Already know I'll have you drinking through a straw so when I come back if you want to be tough then I'll not fuck up to bust your shit for you. Do you see that?

A Yes.

Q Next section. Saying you didn't say shit, fool, you did more than a little bit. I expected your lame ass to breakdown

but, damn, you done set out more than needed.

Correct?

A Yes.

Q What did you take Mr. Sandstrom to be referring to when he makes that statement about he expected you to breakdown but you set out more than needed?

A That he expected me to tell, I guess.

Q What's that?

A He expected me to tell.

Q Expected you to tell but not as much as you told, would that be a fair characterization?

A Yes.

Q Next, read this statement, nigga, N-I-G-G-A. You ran your mouth so don't say it's not your fault.

Then, lastly, and when I get home, I'm still going to be with your cousin so, nigga, fuck you.

Correct?

A Yes.

Q Now, the reference to a statement, do you remember, Mr. Deleon, did you receive anything with this letter?

A Yes.

Q And what would have been included with that letter, if you recall?

A Like a paragraph of my detective statement.

Q A paragraph from your detective statement?

A Yes.

Q The statement that you would have given on March 30th of 2005?

A Yes.

MR. KETCHMARK: One moment, Your Honor.

That's all I have at this time, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Mr. Deleon, my name is John Osgood. Have you ever heard my name before?

A Yes.

Q All right. Did your attorney tell you that I wrote her a letter requesting to have my investigator interview you?

A Yes.

Q And did you decline to be interviewed?

A Yes.

Q Okay. Can you scoot up a little bit, sir? Thank you.

Now, if I ask you a question and you don't understand it, would you ask me to repeat it?

A Yes.

Q And in cross-examination I have the right, unlike direct, to suggest answers to you. You okay?

A Yes.

Q Okay. If you need a break or something, just tell the

Judge. Okay?

A I'm fine.

Q You seem to be in pain or something?

A No, I'm fine.

Q If I ask you a question or suggest an answer to you and it's not accurate, I want you to tell me. Okay?

A Yeah.

Q My job is not to put words in your mouth. My job is to probe a little bit about what you said on direct examination and what you told the government and what you have told different people at different times. Do you understand that?

A I understand.

Q What we're trying to do is get at what really happened here. Understand that?

A Yep.

Q All right. Now, what does running wild mean? Ever heard that term? In connection with serving time, running wild?

A Oh, well, that's, you have two sentences and they don't run together. They run wild. That means you serve one, serve one then serve the other.

Q So under your plea agreement --you need to scoot up a little bit. I know it's uncomfortable but they need to hear you and your voice tends to trail off a little bit. Would you help me on that, please?

A Yes.

Q Thank you. Running wild then means that they're not concurrent, is that right?

A Yes.

Q And concurrent means that they run together, is that right?

A Yes.

Q Now, under your plea agreement your ten years on federal time is concurrent, isn't it?

A Yes.

Q So you don't have to do the ten years, up to ten years that you can get from this judge, whatever he gives you. You don't have to do that on the back side of your state time, do you.

A No.

Q And you get to be in a federal prison?

A Yes.

Q Would you agree with me that your perception is that federal time is a little easier and a little better than state time?

A No time is good.

Q Well, I understand that. Nobody wants to do a day in jail but if you got your preferences, you would prefer feds, wouldn't you?

A It doesn't matter to me.

Q Okay. At any rate as long as you keep your end of the

bargain, you get that recommendation from the government, don't you?

A Get what?

Q That your time will run concurrent?

A Yes.

Q Okay. What I want to do is I want to start back at kind of the beginning, Mr. Deleon, and we're going to take you back to March 21st of '05. And where were you picked up by a Detective Steinbock at that time?

A I don't know.

Q Well, did somebody pick you up?

A Yes.

Q From the police department?

A Yes.

Q And what happened?

A I was took in for questioning.

Q What did they ask you?

A About a homicide.

Q Which one?

A Gary and Stevie's.

Q Well, the McCay homicide?

A Yes.

Q Did they mention Gary and Stevie?

A They mentioned Stevie.

Q And what was the nature of the conversation?

A They just, I don't really remember. It's been a long time.

Q Would it help you if you see that statement?

A Yes.

Q Okay. It's not that long so if you just kind of take a look at it.

A This isn't me.

Q Pardon?

A This isn't me.

Q It isn't?

A It's my sister.

Q I'm sorry. I gave you the wrong one. It is your sister. Your sister is Adrianna?

A Yes.

Q After I handed it to you, I saw this other one. I wondered if that was the same. Here it is. Is that the one we're talking about?

A This isn't me either.

MR. KETCHMARK: Mr. Osgood, if you like, I have his transcript of his statement marked as Exhibit 294.

MR. OSGOOD: I think what happened, I flipped the book to the wrong page. I apologize for taking everybody's time here. I have a lot of records and a lot of-

Here we go, now we're getting somewhere.

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BY MR. OSGOOD:

Q I guess there's no harm because you said you didn't remember what you said any way. But here's the statement I'm talking about. A Detective Blehm, do you remember him?

A No.

Q Remember the name?

A No.

Q Okay. You did meet with him on that day then?

A Yes.

Q All right. Now, where was this interview at, Mr. Deleon?

A Police headquarters.

Q And they were asking you about this homicide, is that right?

A Yes.

Q How long did you sit in custody before they talked to you? Do you remember?

A No.

Q Do you know what a 20-hour hold is?

A Yes.

Q Have you been held on 20-hour holds before?

A Yes.

Q Isn't it the routine normally they let you sit in the cell for about 16, 17 hours to cool your heels before they interview you?

A Yes.

Q Give you time to think and stew?

A Yes.

Q It's a single cell. You're usually isolated by yourself?

A Yes.

Q Not a tank?

A No.

Q And did that happen in this case?

A I don't remember.

Q Okay. Now, you had some conversation with your little sister that day, didn't you, about the police looking for you?

A I don't remember.

Q Pardon?

A I don't remember.

Q Okay. Read this paragraph right here. See if that helps you refresh your memory.

Does that refresh your memory a little bit?

A Yes.

Q Okay. Now, so -

MR. KETCHMARK: Counsel, could I ask what you

referred to?

Okay. Thanks.

MR. OSGOOD: Sure.

BY MR. OSGOOD:

Q So how is it they picked you up?

A I don't know.

Q And did you talk to your little sister that day?

A I don't remember.

Q Well, would this report from this Detective Downing and Detective Blehm be accurate? Do you have any idea? I mean, have you been shown this before you came to court?

A No.

Q Any of these reports?

A No.

Q Have you seen your grand jury transcript before you came to court?

A Yes.

Q You read it?

A Yes.

Q Okay. Did you, for example, tell these detectives during this interview that early in the morning, the three --that two people, Stevie Sandstrom and Gary Eye, were in the house over at the Stanleys?

A Yes.

Q And that was in the morning, is that correct?

A Yes.

Q How many times did you go over that day to the Stanley house?

A Once.

Q Just once?

A Yes.

Q In the morning?

A Yes.

Q Now, if Mr. Stanley says you didn't come over until the afternoon, and that you were there a couple of times, would that be inaccurate?

A It was a long time ago.

Q I understand that. And that's part of the problem here is trying to remember what happened, I guess.

Did you tell the detectives at that time that somebody else was involved that they didn't know about?

A I don't remember.

Q Did you imply to the detectives at that point that the murder was your fault in some way?

A Probably did.

Q You did?

A Yes.

Q Okay. Did you tell them at any point in time that you were a meth user?

A Yes.

Q Did you tell them that you're the one that introduced Mr. Eye to methamphetamine and the type of people that are involved with methamphetamine?

A Yes.

Q Did you tell them that you had been with Gary and Stevie before the murder?

A I don't remember.

Q Earlier in the hours between, let's say, early evening of March 8th and through the early morning hours of March 9th?

A I don't remember if I did or I didn't.

Q Well, if you don't remember these things you told the detective, how was it you were able to remember all of the details you later gave to the FBI and all of the details, precise details you gave to the grand jury?

A I don't know.

Q Well, let's talk a little bit about that. Or we'll get to that in a minute. But your memory got better as the statements went along. Would you agree with me?

A Yes.

Q Could that be in part because you were being told things by people that you were confirming? I think on direct exam, I think you said they suggested things they knew to you and asked you if that was true and you just responded yes?

A I told the truth.

Q Well, I guess that's what we're here to figure out.

Did you tell them, tell these detectives that they dropped you off at a truck near the Sheffield Church?

A Yes.

Q Now, what was this truck about again and the deal with the meth?

A I got shorted some dope or somebody had took some dope

from me and I was going to go take his car.

Q Was this Brandon?

A No.

Q All right. Now, the morning that you were or the day, let's just say the day because there's some dispute how many times you were there and when you were there. The day you were at the Stanley's, did you meet with a person named Brandon?

A Yes.

Q Did you do a dope deal with Mr. Brandon?

A Yes.

Q What's Brandon's last name?

A I don't know.

Q How long did you know him?

A I didn't know him at all.

Q All right. Now, Mr. Stanley is an adult male, is that correct?

A Yes.

Q How many children does he have? He and Mrs. Stanley?

A I think like four.

Q And their names are what, sir?

A Mike, Shelly, Christina and Jason.

Q Now, Christina and Jason are involved in this case to some extent, aren't they, as you understand it? Or do you know?

A I don't know.

Q Okay. And did Mr. Stanley allow dope deals to go on in

his house?

A Yes.

Q And in front of his children?

A Yes.

Q And so you were going to do a dope deal with this Mr. or with we'll call him Brandon. What was the extent or nature of that deal?

A I don't remember. I was going to front him.

Q Front him some dope. Tell the folks what front means.

A Give it to him and let him pay me later.

Q That's the same problem you had with this other guy that you decided to go take his truck. Did you front him dope he hadn't paid for?

A No.

Q What was the situation with that?

A I had some dope on the table and I was busy running around the house. And when I came back, the dope was gone and he had been the only one who left.

Q Now, do you remember them questioning you about the attitudes of Mr. Eye about race at some point during that first interview?

A No.

Q Would it help you if I show you that statement?

A Yes.

MR. KETCHMARK: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. KETCHMARK: My concern -

THE COURT: Watch your papers with the mike.

MR. KETCHMARK: The subject of their motion in limine was to preclude questions of whether or not a witness believes them to be racist or not racist. And I know Mr. Osgood is going to show he indicated in his opinion to the detectives that Mr. Eye was not a racist. And I think it's impermissible for them to want to come over to the other side and ask the question they're precluding us from asking their family and friends about, whether or not they believe or disbelieve whether or not they're racist. And if he wants -

MR. OSGOOD: I'm not going to ask, the term racist is not going to come out.

MR. KETCHMARK: It just did.

MR. OSGOOD: Attitudes which you have already asked already in the trial, what his attitude -

MR. KETCHMARK: I didn't ask attitudes. I used specific instances of using the N word and manner and means.

THE COURT: Don't ask his opinion about whether Mr. Eye is a racist or not. You can ask him about specific things that he observed or things that Eye said to him about whether he is or is not.

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MR. OSGOOD: That's precisely where I'm going.

MR. KETCHMARK: Maybe I misheard his question. I thought he asked if Mr. Eye was a racist.

MR. OSGOOD: Attitudes. Did they discuss attitudes of Mr. Eye.

MR. KETCHMARK: I wanted to do a clarification, we're all on the same playing field.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q Now, I had asked you a question and maybe I'm going to show you something here and read this to yourself right here. This sentence right here.

A (Witness complies.)

Q Okay?

A Yes.

Q Now, do you remember having that conversation and don't tell me what it was, just, first, do you remember having that conversation?

A Kind of.

Q All right. Now, and I don't want you to use that term there. I'm not interested in your opinions or anything. Okay?

A All right.

Q Let me ask you this. You live in a mixed neighborhood, don't you?

A Yes.

Q You grew up with Gary Eye, didn't you?

A Yes.

Q Are you aware that his mother --do you know his mother?

A Yes.

Q She's a quite dark-complected lady, isn't she?

A Yes.

Q Darker than you?

A Yes.

Q Could pass maybe for being part black?

A Yes.

Q And are you aware that his family is Ogallala Sioux,
Sioux Indian?

A Yes.

Q From the north?

A I know that they're Indian.

Q And Gary is at least a quarter Native American or better?

A Okay.

Q I'm, again, don't let me put words in your mouth. Do you
know that?

A No.

Q You know his mother is Indian?

A Yes.

Q And very dark-complected?

A Yes.

Q When did you first meet Gary?

A I think at my grandfather's.

Q How long ago?

A Probably about 14 years ago.

Q And you would have been how old then, sir?

A Seven.

Q And so have you both lived in the northeast area all that time?

A No. Well, he has. I haven't.

Q All right. Did you move away and come back?

A Yes.

Q When you were kids and up, in particular closer to the time of these events, did you from time to time associate with black people?

A Yes.

Q Run with them? Do deals with them?

A Yes.

Q You, I mean.

A Yes.

Q And Mr. Eye, has he been around them, too?

A Yes.

Q And get along with them?

A Yes.

Q Now, maybe this sounds ridiculous but did you guys ever talk politics or anything when you were growing up?

A No.

Q Did you ever talk about the Kansas City School District, for example?

A No.

Q Ever have any discussions about African-Americans having any kind of advantage in society because of their color of their skin?

A No.

Q That they get more benefits or any of the stereotype things. Do you know what I'm talking about? I'm not saying this is true but there's a lot of people that would say that they're all on welfare, for example. Did you ever hear Mr. Eye say anything like that?

A No.

Q That they do various things that white people don't do or that's different, ever hear him say that?

A No.

Q Did you ever sit down and have those kinds of philosophical discussions about his attitudes?

A No.

Q And by mixed neighborhood, we've got Hispanics in the northeast, is that right?

A Yes.

Q And by Hispanics we include both Mexicans and Nicaraguans and all kinds of South Americans, don't we?

A Yes.

Q And also I believe there's some Vietnamese that have moved into that area. If you know?

A I don't. I mean, I'm sure there is. Yes.

Q There's white people there, is that right?

A Yes.

Q And that was, originally, I think an area where a lot of people worked at the oil refinery and other places over in that area, is that right? And at the steel mill when it was opened?

A I don't know.

Q Okay. Do you know whether or not there were a lot of Polish people that lived in that area at one time?

A I don't know.

Q Okay. Are you Catholic or raised Catholic?

A No.

Q Okay. Lot of Catholics in that area?

A I don't know. I'm not Catholic.

Q Okay. So when the detectives talked to you, and you were talking about things like we have just talked about and they asked you some questions about that, did you just, did you answer them, Gary is just a white boy with a big mouth?

A Yes.

Q Okay. But you, at that time, didn't tell them he was going around calling people niggers?

A I don't remember.

Q Okay. It's not in the statement, is it?

A I don't know.

Q Now, there's been a lot of talk about the distinction between nigger and nigga in the courtroom, right, with you even?

A Yes.

Q Now, when you're among yourselves and talking to each other, there's not a lot of, great deal of difference between those terms, is there?

A No.

Q How you doing, nigger? How you doing, nigga? What's up, nigger? What's up, nigga? That goes on all the time, doesn't it?

A Yes.

Q You've got a girlfriend. What's her name?

A I don't have a girlfriend.

Q You did at the time. What's her name?

A Christina Stanley.

Q All right. And I believe in one of your letters, if not, certainly you heard your friends, you probably called her a bitch ass ho, didn't you?

A Probably.

Q When you get a little angry at her, fuck you, you bitch ass ho. You nigga bitch. I'm going to kick your nigger ass. That's common talk, isn't it? It's not nice.

A I wouldn't say it but -

Q Well, maybe not to her but to each other over the course of time you have heard those kinds of statements all the time, haven't you?

A Maybe with black people.

Q Pardon?

A Maybe with black people.

Q Well, your own letter that he asked you about, in these

letters that we talked about, it's got the word nigga in it numerous times?

A Yes.

Q Got the word ho in it a couple times?

A Yes.

Q Do you listen to rap music, Mr. Deleon?

A Yes.

Q And that's popular music among people your age, isn't it?

A Yes.

Q Just like it was rock and roll when I was a kid, right?

A Right.

Q And my parents thought I was going to hell because I was listening to Chuck Berry and to Buddy Holly. Because the music was cutting edge in those days, if you know that. Do you know that?

A No.

Q But the music, the rap music now is considered by a lot of folks to be cutting edge and on the far outside, isn't it?

A Yes.

Q And it's got some pretty raunchy stuff in it, doesn't it?

A Yes.

Q And it is full of things like the word, ho? Yes?

A Yes.

Q And the word bitch?

A Yes.

Q The word fuck?

A Yes.

Q The word nigger and the word nigga?

A Yes.

Q That's all in rap music, isn't it?

A Yes.

Q And you had these CDs in these stolen cars, some times were playing them when you were riding around, weren't you?

A Yes.

Q Now, some of those CDs even talk about killing cops, don't they? Ever heard any of those?

A No.

Q You're familiar with Trick Daddy?

A Yes.

Q Who is Trick Daddy?

A A rapper.

Q Pardon?

A A rapper.

Q A black rapper?

A Yes.

Q All right. You like his music?

A No.

Q Okay. What are your rap groups you listen to?

A I don't really listen. I don't really have any.

Q Okay. But you would agree with me there's that kind of crazy language in some of those CDs?

A Yes.

Q And so there was some conversation supposedly in a car over by the stadium. Do you remember that?

A Yes.

Q And Mr. Sandstrom had a .22 revolver?

A Yes.

Q And your testimony was that he said, I'll kill a nigga quick?

A Yes.

Q Gary said, according to you, well, I'll kill a nigger quick, too. You said, I would shoot the nigger in the legs but I wouldn't kill him?

A Yes.

Q Is that not uncommon language you hear on these rap music and crazy stuff like that, crazy talk, meth talk?

A It's not meth talk but I mean -Q

It's crazy talk, isn't it?

A Yes.

Q Doesn't mean it's true, does it?

A No.

Q Pardon?

A No.

Q So you got a gun and you're playing with it and, well, I'll kill a nigger quick. You weren't discussing any of these things we talked about during those conversations, were you, about black people having a greater advantage over white people because of their race or color?

A No.

Q You weren't talking about there were too many black people moving into the northeast, were you?

A No.

Q You weren't complaining because your neighborhood was not 100 percent pure white?

A No.

Q In fact, you guys are minorities yourself, aren't you?

A Yes.

Q You're Hispanic?

A Yes.

Q Gary is part Indian, right?

A Yes.

Q I don't know, is Stevie any kind of minority? I don't know.

A I don't either.

Q So we've got a Native American; we've got a Hispanic guy; and we got a white guy talking about I'll kill a nigger quick. You weren't talking about a race then, though as we understand it, were you? You weren't talking about problems between races, were you?

A No.

Q There was no such discussion, was there?

A No.

Q Now, you carried a gun some times, didn't you?

A Yes.

Q For protection?

A Yes.

Q Isn't that a tool of the trade of the drug business, unfortunately?

A Yes.

Q And if you're stealing cars, it's a tool of the trade, isn't it?

A Yes.

Q And probably as a matter of bravado, even though it's not true, have you heard you or your friends or associates say, for example, well, I won't be taken alive? I'll shoot it out. I'll shoot their ass?

A Yes.

Q I'll shoot their cop asses?

A Yes.

Q Son of bitches will never take me, stuff like that?

A Yes.

Q Doesn't mean it's true, does it?

A No.

Q Okay. At some point in time after you had been at the police department for awhile, they took a videotaped interview, didn't they?

A Yes.

Q And did they tell you they were going to videotape you?

A Yes.

Q And did you agree to that?

A Yes.

Q And you knew what they were going to talk to you about, didn't you?

A Yes.

Q And one of the questions they asked you was, can you describe what happened in this case, didn't they?

A Yes.

Q And did, on that videotape, you state that you seen Gary the next day when you went to the house and that he was over there?

A Yes.

Q Do you remember that?

A It's been a long time.

Q Well, let's look at your videotape. Does that refresh your memory?

A Yes.

Q And this homicide was on the news, is that right?

A Yes.

Q Is your recollection?

A Yes.

Q You think it was in the morning?

A It was in the morning.

Q Okay. Now, if other witnesses say it was in the afternoon, I'm certainly not calling you a liar but would you agree with me that that means that people, when they think about things and recall them later, they get confused?

A Yes.

Q And at any rate we're talking about an event that occurred some time that day, aren't we?

A Yes.

Q About the homicide?

A And they asked you the direct question, while Mr. Eye was there, did he make any statements to you at that time and your answer was no.

MR. KETCHMARK: Counsel, where are you referring to, please?

MR. OSGOOD: Halfway down the page on the second page.

BY MR. OSGOOD:

Q And then you state, did he say or they asked you, did he say anything in passing that, something to the effect of if the individual didn't die very quickly and you say yeah. Do you remember that?

A Yes.

Q And supposedly you then respond what?

A I don't remember.

Q You don't remember?

A No.

Q Did you remember it in grand jury. Pardon?

A I don't know.

Q Would you get up to the microphone, please?

A I don't know.

Q Okay. Then you were asked the question, why did he say that and you said, I don't know. Is that your answer?

A Yes.

Q Now, was there some conversation about the term, playing some game at this point?

A Yes.

Q What was the game?

A Nigger, nigger, nigger.

Q All right. And what did you understand that to mean?

A I don't know. To beat up black people, kill people. I don't know.

Q Would you scoot up to the microphone a little closer?

A Kill black people, beat them up.

Q Could it also mean, could the term have been, nigga, nigga, nigga?

A No.

Q Why do you say no?

A Because it was, nigger, nigger, nigger.

Q Okay. Now, would you agree with me there was a lot of discussion that you had with the FBI the day you went down and met with them, with your attorney, about the distinction between those two words?

A Can you say that again?

Q All right. You met with the FBI for --either the same day or the day before, along with your attorney, and you had a several hour session, didn't you?

A Yes.

Q And they were stressing the difference between those two words, weren't they?

A Yes.

Q Now, you just previously testified to me just a little bit ago that on the street there's not a whole lot of difference between those words. They're used interchangeable. How you doing, nigger? How you doing, nigga? Didn't you?

A Yes.

Q They're the ones who suggested to you there is a

difference between those terms, didn't they? And tried to make something out of the difference between the two terms?

A Yes.

Q And so it, in truth, could have been, nigga, nigga, nigga, some game, couldn't it?

A No.

Q Why do you say no?

A Because it was nigger, nigger, nigger.

Q I don't care which word was used but it could have been either one, couldn't it?

A It could have been, yes.

Q And it wouldn't make any difference to you, would it, based on what you previously just told me that there's not a lot of difference between those words?

A No.

Q And so if you're Hispanic and you call white people nigga or nigger and black people, I mean, and white people call you as a Hispanic, nigga, nigger, the game could have been nothing more than or the word could have been used nothing more than in the context of something involving slang about people, couldn't it?

A Yes.

Q Just something we're going to go do. And it could have been a person of any race?

A Yes.

Q It did not necessarily mean anything about black people, did it?

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

Q Okay. That's the point. We don't know, do we? But we know there were no discussions about the neighborhood was filling up with black people and we need to get them out of the neighborhood, was there?

A No.

Q There wasn't any discussion about they have taken over the Kansas City School District and they aren't educating their children or anything like that, was there?

A No.

Q And that's not true by the way but those are things that when people get in discussions about race they talk about, don't they?

A I wouldn't know. I'm not racist.

Q I understand that. You're locked up at CCA, aren't you?

A No.

Q Are you in one of the federal facilities?

A Yes.

Q Do you have access to the T.V.?

A Yes.

Q Are you watching the election coverage right now?

A Yes.

Q And if you watch CNN or some of those news stories,

probably not because you want to but you have to?

A Yes.

Q And isn't there a lot of discussion about people are even afraid to talk about race with each other some times?

A Yes.

Q In the election right now?

A Yes.

Q And, in fact, have from time to time you heard older folks, people my age, talk about these very things I'm talking about. Talking about we've got to move out of northeast and move to Johnson County to get away from niggers. People say that kind of crude stuff, don't they?

A Yes.

Q You didn't hear Mr. Eye ever say anything like that, did you?

A No.

Q Okay. Now, in this conversation with the detective, the gun came up, didn't it?

A Yes.

Q And when did you first see the gun?

A When did I first see it?

Q Yes, sir.

A I don't remember.

Q Okay. Can you describe the gun for me?

A Revolver, nine shot, black. Pretty much it. .22.

Q Was it, you know what an alloy is on a gun? Alloy frame. Where the frame is one color and the barrel may be another color. Seen guns like that?

A Yes.

Q Do you remember the gun being that way?

A No.

Q Do you remember the gun being all blued or dark?

A Yes.

Q Do you know what I mean by blued? You know guns come in blue, and they come with blue alloy frame, some of them. They'll be almost kind of a stainless steel or silver looking?

A Yes.

Q Some people would say chrome but it's actually alloy or light-colored metal?

A Yes.

Q Okay. This gun to your recollection was a totally black gun with black grips or dark blue?

A I don't remember what color the grip was.

Q Okay. Now, you guys went over there to the stadium to steal a car, right?

A Yes.

Q And that's when you didn't want, I guess, to do a drive off on the gas?

A Yes.

Q Now, tell the folks what a drive off is. Probably not a

bad idea with gas prices the way they are but?

A Pump gas and take off.

Q Okay.

A Don't pay.

Q So when you steal a car, you hope it's got a full tank?

A Yes.

Q This one didn't?

A No.

Q So it's almost on empty?

A Yes.

Q And, now, was your motive actually to steal that truck or just punish that guy to get your money?

A Steal his truck.

Q Pardon?

A To steal his truck.

Q Okay. Now, most of these cars that you and, candidly, Mr. Eye and Mr. Sandstrom were stealing from time to time, they were just a ride, weren't they?

A Yes.

Q What do I mean by a ride to the jury?

A To get a car to go from one place to another.

Q Then later ditch it?

A Yes.

Q You weren't stealing them and selling them, for example, to chop shops or anything like that?

A No.

Q And you weren't stripping them, yourself?

A No.

Q You, basically, were hot wiring them or busting the ignition and driving around for a while until you figured they were too hot then you would get another one?

A Yes.

Q And they were a means of transportation from point A to point B for you guys who didn't have cars in your own name?

A Yes.

Q Now, going along in the conversation, did Detective Blehm in that videotape ask you while the T.V. was on and Gary was there, and he says they, I guess he's referring to Stevie and Gary, did they ever make the statement to you that, quote, the nigger got what he got or did you ever hear him make the statement in the family room that the nigger got what he got?

A No.

Q They didn't make that statement, did they?

A No.

Q Now, as a matter of fact, what word -

MR. KETCHMARK: Counsel, where are you referring to, please?

MR. OSGOOD: I'm sorry. Page 7, about the fourth question down by Blehm.

BY MR. OSGOOD:

Q Blehm, himself, the detective, he's using the word nigger, isn't he?

A Yes.

Q Freely. It's an ugly word and we're using it in court here a lot. But they used that term frequently with you in these interviews, didn't they?

A Yes. I don't remember but -Q

Well, it's in the videotaped transcript. You would agree with me, this is the transcript?

A Yes.

Q And they're asking you, again, about Mr. Eye and he says, did you hear him make any statement to the fact that he was the one responsible for shooting the guy at 9th and Brighton? Do you remember what your answer was?

A No.

Q Well, your answer was no. I mean, is no, you don't remember or no was the answer?

A No, I don't remember.

Q Would this help refresh your recollection?

A Okay.

Q And having refreshed your recollection, what was your answer on the videotape to the question, did you hear him make any statement to the effect that he was the one responsible for shooting a guy at 9th and Brighton, what was your answer?

A No.

Q And he asked you then the follow-up question. Okay. Did you hear Steve make any statement in the house or to the effect that he was the one responsible or was at 9th and Brighton when the shooting happened, what was your answer to that question?

A I don't remember.

Q Would this help refresh your memory if you see the answer?

A No.

Q Well, again, your answering my question no or was your answer to the question itself no?

A The question.

Q So you told the detective no again?

A Yes.

Q Now, you did tell them something that the government contends is accurate in this case and that was about what happened to the gun, didn't you?

A Yes.

Q In this interview?

A Yes.

Q What did you tell them happened to the gun?

A I didn't know what happened to the gun. I just had heard.

Q Now, we're getting somewhere. Where were you hearing this stuff from?

A I think I heard from Stevie. I did hear from Stevie.

Q What did he tell you happened to the gun?

A That it was left at my cousin's house.

Q Is that Kristina?

A Yes.

Q Last name?

A Chirino.

Q C-H-I-R-I-N-O, I believe?

A Yes.

Q And it was, in fact, in the basement?

A Yes.

Q Did he tell you that?

A I heard it from somebody else.

Q Okay. Who did you hear that from?

A My cousin.

Q Okay. Now, incidentally, in these first interviews you don't ever mention Regennia Rios, do you?

A No.

Q You don't mention her being with them at the house, do you?

A No.

Q You don't get her involved in any way at all, do you?

A No.

Q Had you had a relationship with Ms. Rios at one time?

A Yes.

Q And was that a sexual relationship?

A Yes.

Q How old was she?

A How old was she?

Q At that time?

A I had a sexual relationship with her since I was 12.

Q Since you were 12. Is she your age?

A Yes.

Q All right. And did that go on for some time before she broke up with you and took up with a Jason Stanley?

A She never broke up with me.

Q Never broke up with you. Was she at one point in time though also in a relationship with Jason Stanley?

MR. KETCHMARK: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: And, again, I don't know for certain, my suspicion is where this is going is what we had foreshadowed outside the presence of the jury on other instances.

Mr. Stanley is one of the deceased individuals. They're trying to suggest that Mr. Deleon had involvement and this is another uncharged bad act. In fact, it was ruled a suicide. It was looked at. I think Mr. Osgood is going to try to imply that Mr. Deleon somehow had involvement in Mr. Stanley being dead now or going down that road, I don't think is permissible.

MR. OSGOOD: No. I'm just going to ask him, was he distraught and committed suicide when he went back.

MR. KETCHMARK: What's the relevance of whether or not Mr. Stanley was distraught and committed suicide?

MR. OSGOOD: He is, ties into the fact that letter that, the motive for Mr. Stanley and Mrs. Stanley and the other family members to testify the way they're going to testify and there is animosity between your government witnesses. So this is a fact that needs to be brought out to explain the relationship between the Stanleys and Deleons.

MR. KETCHMARK: Your Honor, he can bring that out with Mr. Stanley when he testifies. If he wants to bring Mr. Deleon back, that's the other thing. I didn't object as we were going into this. There's been times in this cross where I have given him latitude and Mr. Osgood is clearly testifying. He's not following the proper procedures and asking him questions. He's, in fact, testifying and then saying, have you ever seen anything like that and things of that nature. So I just ask at this point since we're at the bench that Mr. Osgood curtail improperly examining this witness on cross-examination. I mean the way he's doing it is improper.

THE COURT: I will allow him to ask if Jason Stanley took his life. Stop at that point. You are testifying a bit, John. It's okay to lead him but don't testify for him.

MR. OSGOOD: Okay.

MR. KETCHMARK: Thank you.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

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BY MR. OSGOOD:

Q You knew young Jason?

A Yes.

Q Did he at some point in time take his life?

A Yes.

Q Where did that happen at?

A At his house, his mom's house.

Q Okay. Were you there?

A No.

MR. KETCHMARK: Your Honor.

THE COURT: What's your objection?

MR. KETCHMARK: Yes, I do have an objection.

THE COURT: Sustained.

MR. OSGOOD: Okay.

BY MR. OSGOOD:

Q I asked you a moment ago about whether or not you had talked about Ms. Rios. Do you remember that?

A Yes.

Q In the interview, the videotaped interview, were you asked the question, do you have any information or belief that Ms. Rios was in the vehicle at the time of the murder? Do you remember that question?

A No.

Q Do you remember that was the gist of the conversation that you were having with this detective about who was there and

what happened?

A Kind of.

Q Okay. Did you tell them, no, you didn't have any such information? Obviously, you weren't there.

A Yeah, I wasn't there.

Q And the information you were getting was from other people, is that right?

A Yes.

Q Had you been told, in fact, she was with them? By the time of this interview?

A I knew -Q

Pardon?

A I knew she was with them.

Q Because they showed up in the car at the Stanleys altogether?

A Yes. Right.

Q And they had been together before?

A Right.

Q And so you denied that she was with them?

A Right.

Q And that was not true, was it?

A Right.

Q So you were adding another lie to this, in this videotape?

A Yes.

Q This videotape has a number of misstatements, untruthful

statements and outright lies, doesn't it?

A Yes.

Q For example, they asked you if you had any firsthand information about who burned the car, didn't they?

A I don't remember.

Q Did you know who had burned the car?

A Yes.

Q How did you know that the car was burned and who burned it?

A Because they told me.

Q They, they both didn't say it simultaneously. Who told you?

A Stevie.

Q All right. Stevie told you he had burned the car?

A Yes.

Q So when they asked you this question, this conversation was before you gave this videotaped statement, wasn't it? That's how you found out about all of this, conversation with Stevie and being there at the house?

A I don't remember.

Q Would you agree with me that you told the detective you didn't know who burned the car? Does that help refresh your memory?

A Yes.

Q So what did you tell them when the question was asked, who

burned the car?

A I didn't know.

Q That wasn't true, was it?

A No.

Q At least based on what Mr. Sandstrom had told you?

A Right.

Q So that was also a lie, wasn't it?

A Yes.

Q Now, there was some conversation about chasing Mr. McCay down. Do you remember that?

A Not really.

Q Would it help you if you read your transcript again?

MR. KETCHMARK: Counsel, what page, please?

MR. OSGOOD: We're on page 13.

MR. KETCHMARK: Thank you.

MR. OSGOOD: About three quarters of the way down.

BY MR. OSGOOD:

Q Do you remember that conversation?

A Yes.

Q All right. You said something to the effect that Mr. Eye said that they had to chase him down because he wouldn't die?

A Yes.

Q Didn't say how far they had to chase him?

A I don't remember.

Q Did the detectives ask you anything about events that

occurred at 9th and Spruce, which is about a half mile back up the road from 9th and Brighton?

A No.

Q Okay. So this conversation about chasing him down was centered and focused on the homicide at 9th and Brighton?

A Yes.

Q Okay. Now, after this videotaped interview -

Your Honor, I'm about to go into the grand jury transcripts. Do you want to break here or -

THE COURT: Are you folks good for another 30 minutes over there? Or do you need a break? Anyone need a break? Okay.

MR. OSGOOD: Okay. Fine.

BY MR. OSGOOD:

Q After the videotape was completed, Mr. Deleon, do you remember them coming back and getting you again and taking you back down into the interview room?

A No.

Q That would have been about 10:30 in the morning on March 30th. Take a look at this statement. See if that helps refresh your memory. Do you remember that?

A No.

Q Did this happen or did this not happen or you just don't remember it?

A I just don't remember it.

Q So you never had any conversation with the detectives about the words eanie, meanie, minie, mo?

MR. KETCHMARK: I think his answer is he doesn't remember.

MR. OSGOOD: That's what I'm saying. He doesn't remember.

THE COURT: I'll allow the question.

BY MR. OSGOOD:

Q Did you have the conversation or you just don't remember?

A I just don't remember.

Q Now, all of these events occurred in early March, would you agree with me, Mr. Deleon, these interviews we just talked about?

A Yes.

Q Then you got out of jail, didn't you?

A Yes.

Q And you were in Jackson County? Well, were you just at the police department?

A When I got out?

Q Yes, sir.

A I was in Platte, I think.

Q Platte. Okay.

A Or might have been Jackson. I don't remember.

Q That was on what? Some misdemeanor stuff or?

A I don't remember.

Q Okay. Now, you have some other prior convictions besides this murder case and federal --I notice you're wincing. Are you uncomfortable?

A No. I'm fine.

Q Need a glass of water or anything?

A No. I'm fine.

Q I lost my train of thought. I'm sorry. At any rate, I was asking, you've got another felony conviction or two besides the murder case that you just recently caught, don't you?

A Yes.

Q And what was that for?

A Unlawful use of a firearm.

Q Okay. And how old were you when that happened?

A 18 or 19.

Q And that involved --well, what did that involve?

A A gun.

Q Discharging it?

A No. Just possession.

Q Possessing it. Okay. Now, I'm going to take you forward now to May of '05. When the federal government got actively involved, they appointed you an attorney. Is that right? Ms. Burns?

A Yes.

Q With the Public Defenders Office?

A Yes.

Q And they brought you in and gave you what is called a proffer letter. Do you remember that?

A Yes.

Q What was your understanding of what a proffer letter was?

A I didn't know.

Q Well, did Ms. Burns explain it to you?

A Yes.

Q Well, what did she tell you? Strike that. I don't want you to tell me what Ms. Burns may have told you in confidence, that's any attorney-client privilege information.

Did she discuss the proffer letter with you and did the agents and the prosecutors discuss the proffer letter with you when you were all sitting down together at a big table?

A Yes.

Q In that setting, what did they tell you, either Ms. Burns or the government lawyers, here, what the proffer letter was and what it meant?

A I don't remember.

Q Do you remember who was present at that interview?

A No.

Q Do you recognize any of these prosecutors or agents at this table that would have been present?

A Yes.

Q Which ones were present?

A Mr. Ketchmark. Both of them FBI agents.

Q For the record that would be Agent Gothard and Agent Janke?

A Yes.

Q And what about the prosecutor in the middle here? Was he there?

A No. He was there.

Q Mr. Green was there, on the far left here. And your attorney?

A Yes.

Q What about a lady from the Department of Justice, female attorney? Was she there?

A No.

Q Okay. And so you're all around the table in the U.S. Attorney's Office, is that right?

A Yes.

Q And that is a little interview room on the fifth floor here in the back, is that right?

A Yes.

Q And what is your recollection of how long that session took?

A I don't remember.

Q Was it several hours?

A Yes.

Q And so I'm getting back, again, to this proffer letter. What was your understanding? By proffer letter, it's a letter

the government provided you signed by Mr. Ketchmark?

A Yes.

Q What was your understanding of the terms of that letter.

What were they agreeing to do and what you were agreeing to do?

A I wasn't agreeing to do nothing but they was. They wanted me to agree to talk to them and I guess me not be charged with.

Q Did you at some point say, well, okay, I'll talk to you?

A Yes.

Q Did you want to?

A No.

Q Okay. Now, did you, again, in that interview provide false and incomplete information a number of times in the interview?

A Yes.

Q And were they all firing questions at you?

A Yes.

Q Was there any organized manner of inquiry such as there was in the grand jury or in this courtroom where one person would ask you questions, you would answer, or was it everybody just throwing questions out on the table?

A At one point in time it was one person asked me a question, I answered.

Q All right. Now, had you ever been in any kind of setting like that before?

A No.

Q This was, for want of a better term, it ratcheted it up a little bit from your interviews with the detectives. Do you know what I mean by that?

A No.

Q It was a little more intense than your interview with the detective?

A Yes.

Q And were you dressed and shackled the way you are now?

A Yes.

Q And so the only person in there that you thought was on your side was Ms. Burns?

A Yes.

Q All right. Was she urging you to answer their questions? In the interview room? I don't want you -A

She told me if I didn't, I mean, if I didn't know, I didn't know.

Q All right. Now, what does it say in the report? What kind of false information and incomplete information did you tell them?

A I don't think so.

Q Pardon?

A I don't think so.

Q You don't think you told them anything false?

A Oh, yeah. I did.

Q What did you tell them?

A I don't remember.

Q They weren't happy with what you were telling them?

A No.

Q Were they suggesting answers to you during that interview?

A No.

Q Were they telling you what they thought the answer should be and what other people they believed said or would say?

A No.

Q Is this the first time that you then told or gave the testimony or made the statement about the events in the car going over to the stadium where this conversation about I'll kill a nigger quick came up?

A I think so.

Q And had you said that during your initial interview with the detectives?

A No.

Q Had you said that during your initial interview with these agents until they started suggesting you were lying, well into the interview?

A No.

Q So, now during this interview you also then, for the first time, told the agents, did you not, that Sandstrom and Eye were laughing when the news was on?

A Yes.

Q You told the detectives they said nothing, didn't you?

A Yes.

Q Now, were you told before this interview started that you were going to be charged with something in this case?

A I don't remember. When I was interviewed by who?

Q The feds. What did Ms. Burns tell you the charges were going to be?

A She didn't tell me I was going to be charged with anything. She told me I would be held until I decided to.

Q What?

A She didn't tell me I would charged with anything. She just told me that I would be held until I decided to.

Q To what?

A Talk.

Q So she said you were going to be held until you decided to talk?

A Yes.

Q What did you think that meant?

A What do you mean, what did I think that meant?

Q How did you, did you think she meant exactly what she said? That you were going to be locked up away in a cell somewhere until you talked?

A I was already locked up so.

Q You were looking to get out, weren't you?

A No.

Q You liked it there? I thought you told me earlier in your

testimony, nobody likes doing a day in there?

A Of course, I didn't like doing no time but I was there.

It's either there or there. Same thing.

Q But if you talked, you would be let out. Is that your understanding?

A No.

Q Now, have you ever used the term "smoking" somebody?

A Yes.

Q And what does that mean to you?

A Killing somebody.

Q And is that a common term in the hood?

A Yes.

Q So when you see in the paper, for example, a report of a --of a homicide in the neighborhood of somebody you know, would that be common or uncommon to say the person got "smoked"?

A It would be common.

Q Did you use that term in this interview or did the FBI suggest that term?

A I don't remember.

Q Now, you testified on direct that after you left the Stanley residence, you drove back down near the Brighton intersection, is that correct?

A Yes.

Q And were you on 8th Street or 9th Street?

A 9th.
th

Q So 9th was not cordoned off at that point?

A No.

Q The crime scene had been cleared?

A No. It's the street that goes, you know what I'm saying.

Q It's an east-west street. I understand what you're saying. My point is, there was some yellow tape over it while the police were investigating. Was that tape gone?

A Not on 9th Street. It was on Brighton.

Q Well, it was all around 9th and Brighton, the yellow tape was. So 9th Street was open again by the time you guys got down there?

A 9th and Brighton is like, it's like blocked off. You know what I'm saying? Brighton stops. You know what I'm saying? 9th keeps going. Brighton stops right there. And it happened on Brighton, I guess.

Q Yeah. Brighton comes down and goes -A

You can go straight through without having to end.

Q But what I'm saying is there was no yellow tape around that whole intersection when you got there?

A No.

Q So you drove on through, straight through?

A Yes.

Q And what was it you say that Mr. Sandstrom said about what happened at the intersection?

A Something like --I don't even remember what he said, his exact words.

Q You reviewed your transcript of the grand jury before you came in here and testified, is that right?

A No.

Q They've never shown you your transcript of the grand jury testimony?

A Yes.

Q You have gone over it with them?

A Yes.

Q How many times?

A A few.

Q Well, what's a few? One? Two? Three? Four?

A Probably twice. But I've been asked a lot to go over it but I didn't want to.

Q Now, when you were in the grand jury did they put this 8-page FBI report in front of you and have you repeatedly look at it during the grand jury testimony?

A No.

Q That was not in front of you?

A Not that I remember.

Q By the way, this was not a signed statement, was it?

A No.

Q It wasn't like with the police where they videotaped you, was it?

A No.

Q Which we have a transcript of?

A Right.

Q This is just something they wrote up after the fact, is that right?

A Yes.

Q Have you seen or were you shown this statement before you went into the grand jury?

A Yes.

Q And who showed it to you?

A I think it was -Q

Pardon?

A Ketchmark and Anita, my attorney.

Q So you went over this statement with them that the agents had dictated three days after the interview?

A Yes.

Q And so on March 16 they dictate what supposedly you said at this interview and then they put this under your nose and you go over it again and read it?

A Right.

Q You don't remember saying most of this stuff in here?

A No.

Q Then when you went into the grand jury, they, basically, used this as a script, don't they?

A He asked me some questions and I answered.

Q Okay. I'm going to talk about your grand jury transcript now.

First thing they asked you about was cutting off your bracelet. And you testified on direct about that. Why was it you cut off your bracelet?

A To get high. Or because I didn't want to go to jail, that and go get high.

Q Tell the folks, I don't know that we explained that, what does that bracelet do and what were you required to do when you wore that bracelet?

A I was suppose to stay at home, not go nowhere.

Q And is it some kind of electronic sending device?

A Yes.

Q You need to speak up now, sir.

A Yes.

Q And what happened? Do you go to the phone and they call you or I don't know how it works. Explain to us how it works.

A The phone rings once or something. You let it ring and then you keep letting it ring. You know what I'm saying. That way it knows where you're at.

Q Okay. Some how the phone and the gadget talk to each other?

A Yes.

Q All right. And if you're not there then they know?

A Yes.

Q So you cut the bracelet off and left it at the house?

A Yes.

Q Where did you go to acquire methamphetamine?

A A friend's.

Q Who was that?

A Jonnie Renee.

Q Jonnie Renee Chrisp?

A Yes.

Q Is Jonnie Renee, is Renee her middle name?

A I don't know.

Q Everybody just called her Jonnie Renee?

A Yes.

Q And where did she live at?

A I don't know the exact address. I just know it's on

Garner.

Q Now, there was a question in the grand jury about you

asking Mr. Sandstrom why he had a gun. Do you remember that?

A Yes.

Q And what was your response?

MR. KETCHMARK: Your Honor, may we approach again,

please?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: And, again, I'm going to object to

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the form. I think it's improper. If he wants to ask -

MR. OSGOOD: I'll rephrase it. I agree.

MR. KETCHMARK: My point is I let him get away with it in the police statements. He's belaboring his cross. If he wants to say did Mr. Sandstrom ever make a statement about the gun or if Mr. Deleon's grand jury is inconsistent, he can use it to impeach him, using the grand jury. And the question in the grand jury, you were asked this. What was your response? That's not proper. The grand jury memorializes what his recollection is and his testimony at that time. And if he wants to ask him a question, if it's inconsistent with the grand jury, he's welcome to pull it out and use it. But to sit here and ask him specifics about grand jury and the police statement.

MR. OSGOOD: I concede the objection.

MR. KETCHMARK: I'm just trying to -

THE COURT: I'm going to sustain it. And going forward -

MR. KETCHMARK: That's my whole point in making the added emphasis on the objection.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q On direct examination you were asked a question about why

Mr. Sandstrom had the gun. Do you remember that testimony yesterday?

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A Yes.

Q And what was your answer?

A For protection.

Q Did he say anything else about why he had the gun?

A What do you mean?

Q What is your recollection of, was there any follow-up on that conversation?

A Yes.

Q What did he say?

A That he would kill a nigger quick.

Q Pardon?

A He would kill a nigger quick.

Q That was his conversation going over to the Blue Ridge Mall?

A Yes.

Q And you just now said, we can read it back, he would kill a nigger quick, didn't you?

A That's just how I talk. You know what I'm saying.

Q That's how you all talk, isn't it?

A Yeah.

Q Pardon?

A Yes.

Q Okay. And what was it that or what do you remember that Mr. Eye might have said during that conversation?

A Not him. He would kill a nigga quick, too.

Q He would kill a nigga quick, too?

A Yes.

Q All right. Now, after the homicide, you're all back over at the Stanleys at some point in time during the day, is that right?

A Yes.

Q Do you and Mr. Eye go out on the porch?

A Yes.

Q Was Mr. Stanley present during any of that interview? I don't mean interview. I mean during that conversation?

A No.

Q Anybody else present?

A No.

Q Just you and Mr. Eye?

A Yes.

Q Okay. Now, kind of jumping around a little bit but I want to take you back to when you left there and you're driving by the 9th and Brighton location. Do you remember that?

A Yes.

Q Who was in the car?

A Me, Gary, Stevie and Regennia.

Q And so that would be you, Vincent Deleon, Steven Sandstrom, Gary Eye and Regennia Rios? Is that right?

A Yes.

Q And as you get to the intersection, is there some

conversation about what happened at the intersection?

A Yes.

Q Did you at some point in time ask Regennia Rios what happened?

A Yes.

Q Now, where is Gary sitting at this point? Gary Eye?

A He's in the front passenger.

Q Where are you?

A I'm in the back behind the driver.

Q And where is Ms. Rios?

A She was behind the passenger in the back.

Q And it's what kind of vehicle?

A A Jeep Cherokee.

Q Bucket seats?

A No.

Q Bench seat?

A No, I mean, regular seats.

Q Okay. Is there a conversation going on in the front between Mr. Sandstrom and Mr. Eye?

A Yes.

Q Is there a conversation going on in the back between you and Ms. Rios?

A Not really. I just asked her.

Q What did she say about what happened?

A She didn't answer me. She just looked at me kind of.

Q Did she state anything about how it happened?

A I don't remember her saying -Q

Pardon?

A I don't remember her saying anything about how it happened.

Q That's your best recollection today?

A Yes.

Q And you're under oath today, you understand?

A Yes.

Q And you have this plea agreement, this deal?

A Yes.

Q And you do not remember her saying anything?

A No.

Q And you've had a long time to think about this, haven't you?

A I try not to think about it.

Q But you have to because you're here, don't you?

A Now I do, yeah.

Q And it's your recollection she said nothing?

A Yes.

Q All right.

A If she did, I don't remember.

Q Okay. You testified before the grand jury, did you not?

You were under oath there?

A Yes.

Q And you had reviewed the full FBI statement before you went into the grand jury, didn't you? The one we're talking about where you met with these guys. You've had a chance to go over that statement?

A Yes.

Q Now, then, I'm going to show you the transcript at page 48, line 17. Did this answer and were these questions asked and this answer given. We drove by. Stevie just said -

MR. KETCHMARK: Counsel, if I might, page 48, line 17, I had with respect to a conversation between Mr. Eye on the front porch. Mr. Eye making the statement.

MR. OSGOOD: No. No. I'm there. I'm down.

MR. KETCHMARK: You said line 17.

MR. OSGOOD: Line 17.

MR. KETCHMARK: That is line 17, counsel.

MR. OSGOOD: Oh, okay. Just a moment. Instead of

the excerpt I'll get the actual transcript.

THE COURT: This would be a good time to take a break.

Let's take about 15 minutes, folks. Please remember not to discuss the case among yourselves or with anyone else. If anyone tries to talk with you about the case, please report that to me immediately. Keep an open mind until you have heard all the evidence. We'll see you back here in about 15 minutes. We're in recess.

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(Witness temporarily excused.)

(Recess)

(The following proceedings were had OUT OF THE

PRESENCE AND HEARING OF THE JURY:)

THE COURT: Are we ready to resume?

MR. OSGOOD: We are.

THE COURT: Bring the jury in.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Osgood.

MR. OSGOOD: Thank you, Your Honor.

VINCENT DELEON, RESUMED

CONTINUED CROSS-EXAMINATION

BY MR. OSGOOD:

Q Mr. Deleon, I have about 10 or 15 minutes more of questioning with you. And before the break we were talking about the fact that you did not remember Ms. Rios saying anything in the car when you drove by 9th and Brighton?

A Yes.

Q Did this conversation, in fact, take place in grand jury between you and the Assistant U.S. Attorney?

MR. KETCHMARK: Your Honor, may we approach?

MR. OSGOOD: Page 51.

THE COURT: Yes.

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(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. KETCHMARK: Two things. And I meant to bring this up during the break and I neglected to do this. Where he's going, this is a discussion about discussion Ms. Rios made to Mr. Deleon. I think they're hearsay. He can inquire with Ms. Rios, if she denies making the statements when she takes the stand. If he wants to cross Mr. Deleon about that, that's permissible. But I think right now to ask him about statements she may or may not have made because they support his defense theories, it's an impermissible basis and object to the hearsay basis of the question.

MR. OSGOOD: I agree.

You want to?

MR. GROMOWSKY: I want to. They brought it up in their direct examination and the context, didn't you originally tell us that Stevie Sandstrom is the one who made and I corrected those during the grand jury transcript. He's the one who already brought it up. We're allowed to ask the same questions.

MR. KETCHMARK: I have the actual transcript if the Court would like. I don't know what Mr. Osgood is giving you.

THE COURT: If this were in the arena of a conspiracy, wouldn't Rios be an unindicted co-conspirator whose

statements would be excluded from the hearsay rule?

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MR. KETCHMARK: I think, yeah, I think the Court could view it as such.

THE COURT: I think I'm going to allow the examination of both Mr. Osgood and Mr. Gromowsky then.

MR. KETCHMARK: The other thing I would note, I think he was going into reading to him the exchange. I think it's an improper use. I think he can ask him if he remembers and if he said he doesn't recall, if he wants to show him the grand jury to refresh his recollection, to inquire whether that refreshes his recollection. Then if he disagrees with the grand jury he can impeach him. But to allow Mr. Osgood in effect to testify, isn't the question this and your answer that, I think that's an improper method on which to use the grand jury.

MR. OSGOOD: They did this on direct exam themselves, repeatedly.

THE COURT: Without objection.

MR. OSGOOD: Well, there was objection, I believe, Your Honor.

THE COURT: I don't recall it. The procedure that David outlined is the correct procedure.

MR. OSGOOD: I'll do it.

THE COURT: Okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q As I said before the break, we have talked about the fact

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that you did not recall her saying anything in the car. Do you remember that?

A Yes.

Q I'm going to show you your grand jury transcript, page 51, and ask you to read to yourself the part I have drawn around right here. And see if that helps you refresh your memory.

Does it?

A Does it what?

Q Refresh your memory?

A Yes.

Q Did you say that in the grand jury?

A I don't know if I did or didn't. I don't know if I did or didn't.

THE COURT: Mr. Deleon, you're going to have to speak into the microphone, please.

BY MR. OSGOOD:

Q Well, let's, it's a transcript, Mr. Deleon. Let's just go to the heart of the matter. Now that you read that, do you remember her saying something in the car?

A Yes. Not in the car but I remember her saying that to me.

Q So when you said it was in the car, you told the grand jury it was in the car, it didn't happen in the car?

A Not that I remember, it didn't.

Q Where did it happen?

A At a motel, I think at a motel after all this had

happened.

Q So you were talking about how the shooting happened at 9th and Brighton?

A Yeah.

Q Under oath in the grand jury you told them though that it happened, that she made those statements at 9th and Brighton, driving by laughing?

A I mean I just remember her saying that.

Q Later? Well, who suggested to you or did somebody suggest to you that those conversations took place at 9th and Brighton?

A No.

Q Did you talk about that in that interview before you went into the grand jury? It's in your interview?

A No.

Q Okay. I'll leave that. I'm about done.

You wrote these two letters to Mr. Eye, didn't you, that we talked about?

A Yes.

Q The first one was on the 16th of May. I'm sorry. The first one was on the 26th of May of 2005 then again on the 16th of May 2007. Do you remember those two letters?

A Yes.

Q And the prosecutor read them rather quickly. Would you read, please, or I'll read it to you and you tell me if this is what you wrote in your letter and then I'll ask you why you

wrote that. Maybe.

Anyhow, I go to court on the 2 of June, cuz. They didn't have me at CCA for me. It was for you and me to go in front of a grand jury.

Stop right there. What's the word "cuz" mean?

A It's like -Q

Talk into the microphone.

A It's like dude.

Q Cuz and dude?

A Dawg. Same thing.

Q Cuz, dude, dawg, nigga. All those terms are the same?

A Yeah. Yes.

Q Use them interchangeably?

A Yes.

Q How you doing, dawg?

A Yes.

Q How you doing, nigga?

A Yes.

Q What's up, nigga?

A Yes.

Q What's up, cuz?

A Yes.

Q And you even write that in your letters, don't you?

A Yes.

Q Don't think anything about it?

A No.

Q They said they didn't believe me when I told them I was at Christina Stanley's house and that we had split up for different reasons. They were just trying to scare me. They said they were going to have, give me 18 months if I didn't talk. So I told them what they wanted to hear, which was a lot of lies. I hope they don't try to hold it against you, cuz, but that's why I'm back, you know. So who, I believe you, of course. Anyhow, you know, you know, so on.

You wrote that in that letter, didn't you?

A Yes.

Q To Mr. Eye?

A Yes.

Q At the 100 South Cherry, which is the Jackson County Jail, correct?

A Yes.

Q Where he was being held at that time facing just regular state murder charges on this case?

A Yes.

Q Before it moved over here to federal court because of the race thing?

A Yes.

Q All right. And then did you write him again on 16 May of 2007?

A Yes.

Q And by the way that was, for the record, that I just read

from Defendant's Exhibit 53.

I'm now referring to Defendant's Exhibit 54.

About that statement, they put words in my mouth.

Like I said before, they just wanted to hear my side of you all's story. I --that's what I told them. I didn't have nothing to do with it and I don't want nothing to do with it. Then they just said, let's talk. We'll ask you, and you tell us yes or no, if they're true.

Was that the way they questioned you? You tell us yes or no, if it's true?

A No.

Q I told them you guys already know what happened so why am I here? And they said that was the problem. Steve and Regennia was saying I was the one with you all when it happened. And I was like, they're lying and I never had nothing to do with nothing. But in the end -

You weren't there, were you?

A No.

Q But in the end they made up their own statement and they had me sign it, which I never wanted to do. But my lawyer was like, it's nothing if you sign it. It won't matter. You'll just get to go back to the county. Nothing is going to happen to you or your family, to you and my sister. So I said frick it, give me the pen. That's when after I knew I had made a

mistake doing that because they was using me to get you because they knew we were brothers and how important it would be coming from me. But, shit, I'm a convicted felon and I ain't never going to be no type of witness for their ass. And if you talk to your lawyer, all that shit they made up, I'll testify to that.

So they made up a bunch of shit according to this letter?

A No.

Q That's what the letter says though, isn't it?

A Yes.

THE COURT: Mr. Osgood, just for clarification your Defendant's Exhibit 54 is identical to Defendant's Exhibit 14 which has been admitted.

MR. OSGOOD: I'm sorry. I said 54. It's 14, Your Honor. I apologize.

BY MR. OSGOOD:

Q If you talk to your lawyer, all that shit they made up, I'll testify to that. They put words in my mouth. They made me say shit that wasn't true. They threatened me and scared me to say all kinds of hateful ass shit. I'll help with you, whatever, cause that's what they're doing, helping each other. So I'll tell your lawyer I said we want to do that.

You and I never talked by the way, did we?

A No.

Q First time you ever met me or I've ever met you, first time we've seen each other is today?

A Yes.

Q When I attempted to have you interviewed by my private investigator, you declined to do so, didn't you?

A Yes.

MR. OSGOOD: I believe that's all I have, Your Honor.

THE COURT: Mr. Gromowsky?

MR. GROMOWSKY: Thank you, Your Honor.

May it please the Court?

THE COURT: Go ahead.

MR. GROMOWSKY: Counsel.

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q I'm going to start off with talking about a little bit about your background here. Now, we already discussed here in this court that you are currently under an indictment in this very courtroom. Is that true?

A Yes.

Q And what is that charge?

A Felon in possession of a firearm.

Q That felon in possession of a firearm charge has to do with a shotgun that you were caught with on October 15, 2005, is that correct?

A Yes.

Q And that shotgun has a body on it, true?

A Yes.

Q In other words, you killed somebody with that shotgun. Is that true?

A No.

Q What body is on that gun then?

A Somebody that was killed.

Q Okay. Somebody was killed and a Jackson County jury -

MR. KETCHMARK: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: I'm going to object. I have no idea where Mr. Gromowsky is going or what his basis of foundation or relevance is as to this.

MR. GROMOWSKY: Well, Your Honor, I think where I'm going with this is we're trying to establish his credibility. And this guy is under their thumb. Part of it has to do with this particular charge. He was charged with a simple felon in possession. There is other, as you know, other paragraphs under that same statute that would allow them to have felon possession or body attached to it, increase his base offense level tremendously, taking him from facing a maximum ten years to maximum life sentence. If they are cutting him a deal, we get to inquire.

MR. KETCHMARK: I don't know where he's getting the information. It's not in my police reports or that I recall about another individual being killed with that particular gun.

MR. GROMOWSKY: That didn't come from me. It came from him.

MR. KETCHMARK: Where did you get the information?

MR. GROMOWSKY: I don't have that information. It came from him.

MR. KETCHMARK: What my concern is, Judge, that my suspicion is maybe he's talked with his client and to suggest that the government is trying to give him some consideration for the type of charge, I think it would have to be information in the government's possession. I think this is a situation where they're trying to bootstrap an end around to try to paint Mr. Deleon as a bad person and he's got a gun that's got a body on it. I can represent to the Court I'm not aware of that and -

THE COURT: The gun that he had on October 15, 2005 is not the gun that he killed someone with?

MR. KETCHMARK: I think it is, Your Honor, but that's --he was charged with the homicide and was convicted of that. I think Mr. Gromowsky is asking him questions about a body on the gun and it being another body. What I'm telling him is, I don't know that's the case.

Now, he's representing that it goes to the weight of

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the deal the government has brokered in terms of if there is a body on the gun we could charge him with a more serious offense. What I'm telling the Court and telling him, the government wasn't in possession or if I was, I wasn't in terms of that, in terms of the police reports. So I don't think it establishes any basis to get into this other than to try to dirty up Mr. Deleon.

MR. GROMOWSKY: Your Honor, I wasn't trying for a second body on it. He's the one who said it's not the gun after earlier testifying it was. So I only asked him once. He said no, this isn't the gun or had a body on it. But I asked him what body is it. Because it was my understanding that this was the gun, as Mr. Ketchmark just said. This is the gun that was involved in the murder. All I was establishing is the fact this was in fact that gun and that he could be facing a different type of charge over here in federal court which would carry a much steeper sentence. But instead the government decided to go with a lower charge on him as part of a deal.

THE COURT: It's very unlikely you're going to be able to get that kind of answer out of this witness, John. But I'll allow you to ask. But once he says no, again, you're bound by that.

MR. GROMOWSKY: I understand. Yeah, he surprised me with the response.
(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q All right. So I may have confused you with my question. I apologize for that. We've already heard in this courtroom that the shotgun with which you're charged being a felon in possession of, was the same weapon that was used in the homicide that you were charged with in Jackson County, Missouri and convicted of, is that correct?

A Yes.

Q But when you came over here to federal court, instead of charging you with any sort of weapons offense that had a killing attached to the weapon, you just got charged with a base offense level of being a felon in possession, is that true?

A Yes.

Q So instead of facing potentially a maximum of life in prison, because of their largess, you're only facing a maximum sentence of ten years. Is that true?

A Yes.

Q Additionally, when this case was first charged over here in federal court, it was in front of a different judge. Is that true?

A Yes.

Q And the government filed a motion in this case to get this case moved over in front of this judge, so you could plead guilty in front of him and get sentenced by him. Is that true?

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A I don't know.

Q Has your attorney shown you the pleadings that were filed in this case? In other words, has she shown you the papers that were filed in this case?

MR. KETCHMARK: Your Honor, may we approach again?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: It's my belief that I followed the proper procedure to get this in front of the judge and that's the procedure that the Western District wants.

MR. OSGOOD: I object also.

MR. KETCHMARK: So I don't think and the witness will

already tell you, he's not aware why it happened.

THE COURT: What are you trying to establish?

MR. GROMOWSKY: Your Honor, I'm trying to establish

you'll be the final person to decide, the amount of 5K1 departure is your decision. That's the reason I have to establish first he came over here, that you guys moved it here so this judge could sit in judgment of -

THE COURT: They did exactly what they're suppose to.

MR. GROMOWSKY: I understand.

THE COURT: Notify me there is a related case and

under our practice, I accept those related cases.

MR. GROMOWSKY: And I understand that, Judge. I'm

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just establishing it, that it got here in front of you so I can ask him that he understands that you're the one who is going to make the determination of how much departure he gets.

MR. KETCHMARK: I think he could ask that question. Now I'm concerned it might --it looks like we're doing something we shouldn't have done. I would ask the Court entertain, basically, establishing or saying that it's the practice. Then if he wants to ask him, he's already established it's pending in front of you. Now, he's --I'm concerned he's making it look like something.

THE COURT: It kind of makes me look like a wimpy judge that doesn't sentence very hard, which may be true. But the jury needs to know that it's a standard practice. I'm going to tell them that and I'll let you ask him about it.

MR. GROMOWSKY: That's fine. I was going --the motion, it has a line in it that says that you're the best person to do it because, you know, you're involved. I'm just going ask him.

THE COURT: Rehabilitating me or you?

MR. GROMOWSKY: Well, I guess both of us at this point.

THE COURT: All right.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Ladies and gentlemen, you've heard that the case was transferred from the original judge to me. I will

tell you that it is the standard practice in this case so that the judge who presides at the trial will then be the one who sentences a defendant. Because that judge is in the best position to judge the truthfulness of the testimony and the nature and extent of the cooperation. There's nothing improper about that. It's done on a daily basis or weekly basis in this courthouse.

Mr. Gromowsky.

MR. GROMOWSKY: Thank you, Your Honor.

BY MR. GROMOWSKY:

Q And, sir, as part of your plea agreement in this case you did, in fact, agree to cooperate, is that true?

A Yes.

Q And you agreed to do what you were talking about earlier which is, basically, to be a snitch, is that correct?

A Yes.

Q And based upon your cooperation here you have the potential for getting a sentence even less than what the sentencing guidelines in federal court would mandate, is that true?

A Yes.

Q And the only people that get to decide whether or not you're being, quote, unquote, truthful and deserving of this departure or this break in your sentencing are the people right here at this table for the government, is that correct?

A Yes.

Q So if they don't think you're telling the truth in here yesterday and today, they don't have to file the motion that let's the judge give you a lighter sentence, is that true?

A Yes.

Q Likewise, even if they file the motion, this particular judge that you're sitting in front of also gets to judge how much he believes you're being truthful and how much departure you get, is that correct?

A Yes.

Q So as you sit in here yesterday and today, it's in your best interest to tell the story as they want it to go, is that correct?

A I'm going to tell the truth regardless.

Q But the fact of the matter is it benefits you if they believe you, correct?

A It doesn't matter whether they believe me or not.

Q You don't care if you get the extra time?

A No. Just ran concurrent on my 20.

Q Now, you were advised before you went to the grand jury

that if you lied under oath you could pick up additional charges, is that correct?

A I think so.

Q And you're aware that you're under oath today?

A Yes.

Q You were under oath yesterday?

A Yes.

Q And so if they think that you're lying in here, they can charge you with perjury in federal court, is that true?

A Yes.

Q So, again, it benefits you to make sure they believe your story, is that correct?

A Like I said, regardless of, I'm going to tell the truth.

He ain't -Q

Now, we talked about earlier you were being held originally over in Jackson County Jail until they filed the writ and brought you over here to federal court, is that correct?

A Yes.

Q Where are you being held now?

A Lexington.

Q Lafayette County Jail?

A Yes.

Q And you do, in fact, have a civil lawsuit against a guard up there at Lafayette County Jail, is that correct?

A Yes.

Q Have you asked the government with any help with regard to that civil lawsuit?

A I don't understand what this has to do with this.

Q I think the jury and I will decide that, sir. You're just

suppose to answer the questions. Did you ask them to help with your lawsuit or did you ask them to get moved out of Lafayette County Jail?

A No.

Q Now, as part of your plea agreement, it's my understanding that the government will recommend that you serve your time in a federal penitentiary as opposed to a state penitentiary, is that correct?

A Yes.

Q And why is it that you want that?

A Because I'm trying to get housed in California.

Q Didn't you testify earlier because you had concerns about going down to state jail after being a snitch?

A I'm really not concerned about that.

Q You're not concerned about that now?

A No.

Q Who was it that told you that the federal government had the authority to sentence you to a federal sentence or to a federal penitentiary when you're already in state custody?

A What do you mean?

Q Well, you are, in fact, originally in state custody, is that correct?

A Yes.

Q You did not, you have not completed the 20-year sentence over there, is that true?

A No. I'm on a writ.

Q You have not been paroled over there, is that correct?

A No.

Q You still have time to do on your state sentence?

A Yes.

Q So you are in state custody. Then when you got writted, the government over here in federal court just borrowed you. Is that correct?

A Right.

Q So if you didn't have federal charges pending against you, presumably when you got done testifying, the writ would be extinguished and you would be headed back to state court, is that true?

A Yes.

Q Okay. So you are, in fact, in the original custody of the state court. Do you understand that now?

A Yes.

Q Now, who is it told you that the federal government has the authority to hijack your sentence away from state Department of Corrections and put you in the Federal Bureau of Prisons?

A It's part of my plea agreement.

Q Who told you that it can happen?

A My lawyer.

Q Did the lawyer, did your lawyer, that's Ms. Burns, is that

correct?

A Yes.

Q Did she say that based upon some representations of these gentlemen at the table over here?

A What do you mean?

Q Did Mr. Ketchmark have an agreement with her that that would happen?

A I don't know.

Q But in any event, it's your understanding that the federal government has that authority?

A Yes.

Q Would it be upsetting to you to find out that they don't?

A No.

Q So you don't care at all about going back over to state custody, despite what you said earlier?

A Not really.

Q Okay. Sir, there was mention of a proffer letter that you had read earlier, is that correct?

A I didn't read it but there was mention of it, yeah.

Q Okay. Back in May of 2005, specifically, on or about May 13 of 2005, did you have the opportunity to read the proffer letter that was presented to you before you sat down with all these gentlemen and were interviewed?

A I don't remember.

Q I'm showing you what has been represented to us as a copy

of that proffer letter. On the third page of it there is a signature block. Is that your signature?

A Yes.

Q And underneath it the signature of Anita Burns, is that correct?

A Yes.

Q That's your attorney?

A Yes.

Q Over here is the signature of David Ketchmark, the Assistant United States Attorney on this case, is that correct?

A Yes.

Q Take a minute to look at this please.

Have you had the opportunity to look at it?

A Yes.

Q And you, from my observation, only looked at the first page of it, is that correct?

A Yes.

Q But that was enough to refresh your recollection as to whether you've seen this before?

A Yes.

Q And you have, in fact, seen this. Is that true?

A Yes.

Q The reason you put your signature on the last page is because you read it, understood it and agreed to it?

A Yes.

Q And because of this letter, you then went ahead and agreed to sit down with these gentlemen and be questioned by them. Is that true?

A Yes.

Q Now, in this letter, you just read the first page, is that correct?

A Yes.

Q The very first paragraph of it, it specifically says and it's written by Mr. Ketchmark and he's talking about a discussion that he had with your attorney. And this is actually addressed to her. And it says, as I'm sure you will recall from our discussions, I am -

THE COURT: Step up, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: We're reading from a letter that is not in evidence.

MR. GROMOWSKY: I'm just trying to establish what the contract is.

THE COURT: I know but you're reading from a letter that is not in evidence.

MR. GROMOWSKY: I'll ask him what his understanding

is then.

THE COURT: I mean, is anybody going to offer it?

MR. OSGOOD: I would object to it, to the document.

THE COURT: Okay. Well, you can ask him his understanding but don't read the letter.

MR. GROMOWSKY: Okay, Your Honor.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q Sir, this proffer letter came to you after you had already sat down and talked with the police a couple times about this case, is that correct?

A Yes.

Q And as you just read in this letter, it's your understanding, based upon it, that Mr. Ketchmark had serious concerns about whether or not you were being truthful, is that correct?

A Yes.

Q And when he wrote this letter to you he said he wanted to sit down with you but he didn't understand at that point whether or not you would be a target of this investigation as opposed to just a cooperating witness. Is that true?

A Yes.

Q And by sitting down with them that would enable them to decide that you were, in fact, a cooperating witness and not a target of the investigation. Is that correct?

A Yes.

Q And based upon this proffer letter it was your understanding that nothing you said to them would turn around

and be used against you to bring new charges against you. Is that correct?

A Yes.

Q So you had free leave to tell them anything you pleased and it wouldn't come back to bite you?

A Yes.

Q Also part of the agreement, did you understand that they were going to talk to the state authorities for you and let them know what a great and cooperating person you were so it would benefit you in your state court cases?

A Yes.

Q And then, of course, with the caveat that if you withheld information or if they thought you were falsifying information, they could file obstruction charges, is that correct?

A Yes.

Q Now, when you sat down with them on May 13th and again on May 16th, 2005, to do this proffer, to do this interview with these gentlemen at this table, they, in fact, believed that you were giving false and incomplete information. Is that true?

A Yes.

Q And from your understanding of the proffer letter if they did not believe you, they could charge you with obstruction. Is that correct?

A Yes.

Q Not only that but if they did not believe you then any

potential you could get for a benefit at the state level in the state courts, that would be off the table as well. Is that correct?

A I guess.

Q And this was filed or the proffer took place well before your charges over here. At that time did you understand you were going to be charged over here with felon in possession?

A No.

Q And it's my understanding from the agent's report of this proffer that you had to be reminded of the importance of truthfulness and you had the opportunity to consult with your attorney multiple times over the course of these two days. Is that correct?

A Yes.

Q So, basically, any time you said something that they didn't believe or they thought was contrary to the truth, they confronted you on that and you had to go meet with your attorney, come back in and change your story. Is that true?

A Yes.

Q Now, you already stated that you had the opportunity to review the whole 8-page proffer memorandum describing what the final story was that you told them over this two day period. Is that correct?

A Yes.

Q And isn't it in fact true, none of that information, none

of these falsehoods, these supposed falsehoods you told show up in that proffer memorandum. Is that correct?

A Yes.

Q So the only thing that remains here is what they excised out and decided was the truth and worthy of being put in this proffer memorandum?

A Yes.

Q So when you go and talk to the grand jury and they come back and say, didn't you say back there in your proffer and didn't you read this, again, and don't you agree that that's the truth, that's the truth that was finally boiled down after all the editing they did. Isn't that correct?

You told them other things, it just didn't show up here?

A Right.

Q Government was kind enough to give us some information about you as well regarding some other priors. We have talked about the murder charge, is that correct?

A Yes.

Q And you had mentioned earlier with Mr. Osgood that you had been convicted of unlawful use of a weapon. Is that true?

A Yes.

Q You talked about the murder charge carried with it a sentence of 20 years over at Missouri Department of Corrections. Is that correct?

A Yes.

Q Your unlawful use of a weapon was a four-year sentence. Is that true?

A Yes.

Q And then there is a couple more that I'd like to make sure are accurate. In case number 16CR02-002591-01 over in Jackson County, Missouri, were you in fact convicted of possession of a controlled substance, felony?

A Yes.

Q You received a three-year sentence on that one, too?

A I don't remember.

Q Any reason to dispute the three-year sentence?

A No.

Q Over in Jackson County, Missouri 16CR03-00349001, you were convicted of burglary in second degree, a felony. Is that correct?

A That's not me.

Q That is not you?

A No.

Q I'm sorry. I actually read the wrong one. It was resisting arrest?

MR. KETCHMARK: May we approach a second?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: And, again, I probably should have checked this. I inquired of Mr. Deleon, I got that information off of the Case Net information. I thought that those were him. I believe it might be another Vincent Deleon. I don't know if it's his father or something. I asked him the same thing. My response was similar to Mr. Gromowsky because I honestly thought it was. So I'm kind of here to say that was a mistake on my part but I think to now hammer it home with Mr. Deleon when I don't believe it's him or Mr. Gromowsky doesn't believe it's him.

THE COURT: Mr. Gromowsky made the same mistake. I accept that.

MR. KETCHMARK: I think the resisting might be the same thing I asked him about, that it's all tied into the -MR.

GROMOWSKY: May I inquire --information they provided to me.

THE COURT: On the resisting arrest.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q So the resisting arrest felony, is that yours or not?

A I don't know.

Q You don't know?

A I don't think so.

Q Okay. Then they have one more listed. You can tell me if that's accurate as well, burglary second felony. Do you have

that one?

A No.

Q So we do know however you've been convicted of murder second degree and armed criminal action over in Jackson County?

A Yes.

Q You've been convicted of possession of controlled substance over in Jackson County?

A Yes.

Q And you've been convicted of unlawful use of a weapon up in Platte County. Is that correct?

A Yes.

Q Now, you've known Steven Sandstrom since you guys were roughly about twelve years old. Is that true?

A Yes.

Q Earlier you said Gary, both of you, hung out with African-American kids growing up?

A Yes.

Q Up until you got locked up, you continued to hang out with African-American people?

A Yes.

Q Even while you're in custody now you still hang out with African-American people?

A Yes.

Q And while you and Mr. Sandstrom were over in Jackson County together, you both still continued to hang out with

African-American people, is that correct?

A Yes.

Q And backing up before he got into custody, growing up, he and you hung out with African-American people. Is that true?

A Stevie?

Q Stevie, yes?

A Yes.

Q He continued to up until he was locked up, right?

A Yes.

Q Now, since you've known Steve since he's been twelve years old, you've come to know that he's one of these guys that is

pretty much all talk and no action. Is that right?

A I wouldn't say that. I mean -Q

Well, you're not afraid of him. Is that true?

A No.

Q He talks a good game but can't back it up?

A I've never seen Stevie do anything so.

Q That's right. And, in fact, in this correspondence we've seen a couple letters here this morning back and forth and you've seen some letters that Mr. Sandstrom wrote to you and he talked in there about he's going to be kicking your ass and things like that, is that correct?

A Yes.

Q You're not afraid of him, are you?

A No.

Q Can't do it, can he? No?

A I don't know.

Q In fact, you wrote back to him, nigga, you act like you're big, too, but we all know that ain't the case, correct?

A Yes.

Q And Mr. Osgood pointed this out, but the letters both you exchanged with Mr. Eye and ones you exchanged with Mr. Sandstrom, all three of you are using nigga, nigga, nigga, throughout the whole thing. Is that correct?

A Yes.

Q Nigga, cuz, bro? Just the way you guys talk?

A Yes.

Q Mr. Sandstrom and Mr. Eye, you knew Mr. Sandstrom since twelve. You knew Mr. Eye even longer. Is that correct?

A Yes.

Q And Sandstrom and Eye knew each other through you and through Ms. Rios but they really didn't run together when they were growing up?

A No.

Q In fact, they didn't start running together until just very shortly before this March 9th incident. Is that true?

A Yes.

Q And that occurred while you were locked up?

A Yes.

Q And while you were locked up, then when you got out, you

heard they just started running together?

A I knew they were running together.

Q Now, on the evening of March 8th or maybe even close to the early morning of March 9th, you called Mr. Eye because you needed to steal a truck from someone, is that true?

A Yes.

Q That is true?

A Yes.

Q And this person apparently stole some meth off the table, is that correct?

A Yes.

Q Is that meth that you had available for sale to him if he had come up with the money?

A Yes.

Q That brings me to another point. In the grand jury you start talking about this information about you dealing drugs, is that correct?

A I don't remember.

Q You told the story during the grand jury, someone shorted you?

A Yes.

Q And you were told during the grand jury, go ahead, feel free to talk about that. We're not interested in your drug affairs. Is that true?

A Yes.

Q So despite confessing to being a drug dealer, they let that slide?

A Yes.

Q You testified earlier that they, they being Gary and Steven Sandstrom and Regennia Rios, came over and picked you up over at Ms. Chrisp's house. Is that true? Jonnie Renee's house?

A Yes.

Q When they picked you up, Stevie was driving?

A I don't remember who was driving.

Q All right. But the car was equipped with a CD player?

A Yes.

Q And music was kicking?

A I don't remember.

Q Do you remember, well, when you guys normally drive around in the car, you leave the radio off so you guys could have a nice little conversation?

A No. It was on.

Q So the music is playing?

A Yes.

Q Mr. Sandstrom, as you're aware from hanging out with him, liked rap music, is that true?

A Yes.

Q Had rap music in the CD that night?

A Yes.

Q When he plays rap music, he's got the bass booming, doesn't he?

A I don't know.

Q One of those cars you can pull up next to and you can hear it going?

A No.

Q But the radio was going?

A Yes.

Q Rap music?

A Yes.

Q I think we're going to hear some testimony at some point Mr. Eye had his window rolled down. When they came and picked you up, at this point, windows down?

A Pick me up from where? Jonnie Renee?

Q Yes, sir.

A I don't remember.

Q Could have been though?

A Could have been.

Q During the course of going out there with Mr. Eye and Mr. Sandstrom that night, you saw Mr. Sandstrom with a gun. Is that true?

A Yes.

Q You explained that he took it out and you saw it right there in the car?

A Yes.

Q And that surprised you. Is that correct?

A No, it didn't surprise me. I mean, kind of but not really. Sort of.

Q Do you remember being asked in the grand jury about this same thing?

A Yes.

Q And do you recall telling them that, the question, were you surprised? You said, yes, I was surprised. Do you recall that testimony?

A Yes.

Q And, in fact, you had never seen Mr. Sandstrom with a gun before and that's why it surprised you. True?

A Yes.

Q And so when you testified yesterday that you don't recall whether or not Stevie ever had a gun before, that was a mistake in testimony. Is that correct?

A Say what?

Q Yesterday you testified you couldn't recall whether or not you had ever seen Stevie with a gun before. That's incorrect, correct?

A That's true. I don't remember ever seeing him with a gun. Just that one.

Q Just that one. First time you've seen him with one. So yesterday's testimony was in error. It was wrong?

A I don't know. What did I say yesterday?

MR. KETCHMARK: I think he said yesterday he doesn't remember. Mr. Gromowsky, I don't think that's --it's not an error.

I would object to the question and characterization as to what his testimony was yesterday. I don't think it's inconsistent.

THE COURT: The jury will recall his testimony from yesterday. Objection sustained.

BY MR. GROMOWSKY:

Q Like we said, you've been running with him since he was twelve years old and this is the first time you ever saw him with a gun, correct?

A Yes.

Q Now, while you guys were running around in the car that night, Mr. Eye and Mr. Sandstrom were actually passing the gun back and forth between them. Is that true?

A I don't remember.

Q Do you recall whether or not you ever said that to anyone?

A No.

Q Sir, I'm going to show you that 8-page proffer memorandum that you've seen before. Page 2, about halfway down the page, read, not out loud, but read the highlighted portion to yourself.

Does that refresh your recollection, sir?

A Yes.

Q Mr. Eye and Mr. Sandstrom passing the gun back and forth between each other that night?

A Yes.

Q When you guys went out to steal a car out in Raytown, you and Mr. Sandstrom got out of the car to go do it. Is that correct?

A No. I don't remember who got out. I know Stevie did. I don't think I did.

Q But at that point Mr. Eye had the gun?

A I think so.

Q When you testified originally yesterday, you were talking about after stealing this car, after deciding not to steal gasoline and then going back to Jonnie Renee's house, you decided to separate from the rest of them. Is that true?

A Yes.

Q And, originally, you testified you didn't know why you separated, is that correct?

A I mean it was, yeah.

Q And, in fact, when you originally testified at the grand jury you said the same thing, don't know why we separated. Is that correct?

A Yes.

Q And both yesterday as the jury got to see, then during your grand jury testimony, once the government got that response they decided they were going to try to back you out of

it and change your story. Is that correct?

A I don't know.

Q But, in fact, you did say, originally, both instances, both before the grand jury and here yesterday you didn't know why you separated. Is that true?

A I don't -Q

And to this day you don't know why you separated?

A No.

Q Later on in the early morning hours of March 9, 2005, you went over to a friend's house over in Kansas City, Kansas. Is that correct?

A Yes.

Q And we heard that you waited over there for about an hour, she never showed up. Is that true?

A Yes.

Q While you were out heading over to Kansas City, Kansas or maybe in the time frame when you're coming back from Kansas City, Kansas, you got a call from Gary on your cell phone. Is that true?

A I don't remember.

Q Do you remember testifying in the grand jury about this?

A No.

Q Read these highlighted portions between line 3 and line 16 to yourself, please.

Sir, does that refresh your recollection?

A Yes.

Q Did you get a call from Mr. Eye?

A Yes.

Q What was the purpose of the call?

A To see if I got dope.

Q And, in fact, he was bragging to you that he was getting high and you weren't, is that correct?

A I guess.

Q Kind of making fun of you?

A I guess.

Q Ragging on you a little bit?

A Yes.

Q Or as you described it, bull shitting?

A Yes.

Q Same type of thing as you had seen going on in the car when you were with Gary Eye and Steven Sandstrom earlier in the evening, is that correct?

A Yes.

Q And you left Kansas, eventually, because your friend over there didn't show up and you drove back to Jonnie Renee's house and dropped her off. Is that true?

A Yes.

Q Sir, you testified yesterday that back at the Stanley house after everything took place and Regennia and Gary and Stevie came over, they came into the family room and there were

some other people there. Is that correct?

A Yes.

Q News was on. The news reported that police were looking for three black males. Is that true?

A I think so.

Q And you said that the two of them laughed. Is that true?

A Yes.

Q And when you talked to the police about that incident, you did not, in fact, or what you said to them was Gary stated the police think it's three black guys. Do you remember telling them that?

A Yes.

Q And you actually used those words, three black guys. Is that true?

A Yes.

Q And then when you gave the videotaped statement after this pre-videotape statement interview with the police, once again you said something to the effect of Gary said the police think it's three black dudes. Is that correct?

A Yes.

Q He didn't say three niggers. Is that right?

A No.

Q When you went out to the porch to talk to Gary, at some point Steve came out. Is that correct?

A Yes.

Q And you testified yesterday I think it was just some confusion over the question but you said that Stevie was laughing again about the incident. That's what you testified to yesterday. Do you remember that?

A Yes.

Q Okay. That's not consistent with your grand jury testimony, is it?

A I don't know.

Q Sir, start reading at page or line 19 to yourself.

And actually continues on to the next page about the first five lines, six lines.

Sir, does that refresh your recollection?

A Yes.

Q At the grand jury you did not say that Stevie was laughing when he came out on the porch. Is that true?

A No, I didn't.

Q Larry Stanley was never out on the porch with you guys. Is that correct?

A No.

Q You said that Steven Sandstrom said something to, while out on the porch after he had heard Gary tell you that they had been involved, said, like it, love it or leave it. Do you remember testifying to that yesterday?

A Yes.

Q That's just another way of saying what's done is done,

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correct?

A Yes.

Q Bell has been rung. Can't undo it now.

Your Honor, may I have one moment?

THE COURT: Yes.

MR. GROMOWSKY: Your Honor, may we approach?

THE COURT: You may.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GROMOWSKY: Your Honor, I'm about to get into some testifying that was concerning to them. It has to do with this game, nigger, nigger, Black Raymond and the shooting in the leg comment that Mr. Deleon made yesterday. I think they opened the door for us to get into this inquiry because the issue here is where this game, nigger, nigger, nigger came from. And I think what we're going to find out is it came from this gentleman right here. It came when he was looking for Black Raymond, who he had a problem with. He and someone else were going around, driving around saying, here, nigger, nigger, nigger. So it's his game. They opened the door about it and specifically the evidence could be that Black Raymond eventually got shot in the leg by Mr. Deleon. So his comment in the car, response to I'll kill a nigger quick, I didn't kill a nigger quick but I'll shoot one in the leg. The reason that was funny to everyone is because they knew the background.

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MR. KETCHMARK: I don't know that it's relevant to what they said they were going to do the night in question and the game they were playing when they're out. It's another way to try to get into other bad acts of Mr. Deleon.

MR. GROMOWSKY: Your Honor, the letter they put in evidence this morning specifically talks about how Stevie wrote back to him. I can't believe you said something about that game, nigger, nigger, nigger. So not only did they get into it yesterday but they got into it today. That door is kicked wide open.

MR. KETCHMARK: Your Honor, again, I don't think it's relevant. It's other bad acts as relates to Mr. Deleon.

THE COURT: I don't see it as bad acts as much as an explanation. The jury is, and the Court, we're curious as to what this game is and what the source of it is so I'll allow it. Overruled.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q Sir, you're familiar with someone named Raymond Smith, also known as Black Raymond?

A Yes.

Q At some point in time did you have some sort of beef or disagreement with Mr. Smith?

A No.

Q At some point in time were you going around looking for

Mr. Smith?

A No.

Q At some point in time did you, in fact, shoot Mr. Smith in the leg?

A No.

Q At some point in time when you had this disagreement with Mr. Smith, were you driving around in a car and you were saying, here, nigger, nigger, nigger?

MR. KETCHMARK: I'll object. He said he didn't have a beef or disagreement. He wasn't looking for him.

THE COURT: I think you're bound by that answer, Mr. Gromowsky.

MR. GROMOWSKY: Very well, Your Honor. Thank you.

BY MR. GROMOWSKY:

Q Sir, when you spoke to the police on March 31, 2005, you actually explained to them how this game was played. Is that true?

A Was I explained how the game was played?

Q You explained the game to the police?

A No.

Q Have you ever played nigger, nigger, nigger?

A No.

Q You've never seen it played?

A No.

Q So you would have no way of knowing how it was played?

A No.

MR. GROMOWSKY: One more moment, Your Honor, please.

No further questions at this time, Your Honor.

THE COURT: Redirect, Mr. Ketchmark.

REDIRECT EXAMINATION

BY MR. KETCHMARK:

Q Mr. Deleon, starting with this felon in possession charge and a question Mr. Gromowsky ended with, he said at the time you were in grand jury back in May of 2005, did you know you were going to be charged with being a felon in possession, I think your answer was you didn't. Is that correct?

A I didn't.

Q Maybe you can help me because I'm confused with the time because the charges from the felon in possession stem from the same time you got your homicide case which was October of 2005, correct?

A Correct.

Q So that's five months removed from when you're in grand jury. Am I missing something or is that accurate?

A That's right.

Q You didn't have a crystal ball to look into the future to see what you were doing in five months when you were in grand jury, did you.

A No.

Q And this discussion about coming into federal custody and

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you're concerned for your safety, have you ever heard the phrase, snitches get stitches and end up in ditches?

A Yes.

Q What is your understanding of what that means?

A If you tell, you get, you know, somebody is going to eventually, somebody's going to fuck you up.

MR. OSGOOD: Objection, foundation -MR.

KETCHMARK: I think my question was, has he heard

the phrase. He said he has and I'm asking -MR.

OSGOOD: Where, when, under what context?

THE COURT: I'll hear his answer.

BY MR. KETCHMARK:

Q What does the phrase, snitches get stitches and end up in ditches, mean to you, Mr. Deleon?

A If -Q

Lean into the microphone, please, so the jury can hear you.

A If you talk to the police or tell about something, eventually going to get you.

Q Somebody is going to get you?

A Yes.

Q And by get you, what do you mean?

A You die. You get beat up.

Q Is that a code of the hood. Is it pretty common, known, that, don't cooperate, don't talk?

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A Yes.

Q And you talked about where you're at right now in custody in the county jail you're in and did you have concerns about this information getting back to the jail that you're in here as a witness? Is that something we talked about?

A Yes.

Q And when we met and we talked about moving you into federal custody and charging you with this concurrent time offer, you were at that time concerned and you told me and you told these agents and your attorney that you had heard that you might be harmed if you ended up in the Missouri Department of Corrections because you snitched.

MR. GROMOWSKY: Objection, Your Honor. He's leading again.

THE COURT: Sustained.

BY MR. KETCHMARK:

Q At the time we talked, were you concerned about what might happen to you if you went to the Department of Corrections because you snitched?

A Some.

Q And did you relay that to us? Did you tell us that?

A Yes.

Q Mr. Deleon, we talked about these letters, the two letters that we admitted as defense exhibits that you wrote to Mr. Eye. Do you remember me talking with you about those as well as the

defense?

A Yes.

Q And there was this discussion about how you used cuz and bro and nigga and that language in those letters, correct?

A Yes.

Q Did you ever use the word nigger, N-I-G-G-E-R, in those letters?

A In those letters, no.

Q And there was some discussion about the proffer session and how this, we sat down and we proffered you in the manner in which that session took place. Do you remember those discussions with the defense?

A Some.

Q They asked you about meeting with us before you went into the grand jury, right?

A Yes.

Q And they asked you about these 8 pages that were generated, that Mr. Gromowsky used a few times in talking to you, didn't he?

A Yes.

Q And you talked, well, let me ask you this. Did I give you an opportunity to review that 8 pages when we met in the lock up before you went into grand jury?

A Yes.

Q And did I also ask you in grand jury if that 8 pages was

accurate and truthful?

A Yes.

Q And did you tell me in grand jury that it was?

A Yes.

Q And is that, in fact, because it was truthful information?

A Yes.

Q And this discussion about the Kansas City Police Department and your interview with the detectives, that occurred on March 30 of 2005. Does that sound right?

A Yes.

Q That was with a couple of homicide detectives, correct?

A Yes.

Q And there's been some discussion from both defense attorneys about information that was provided in there and whether it was true, truth or a lie. Do you remember those series of questions?

A Yes.

Q And some of the information you provided to them was truthful, fair to say? You told them some truths?

A Yes.

Q And you also told them some lies?

A Yes.

Q And about the information about these defendants when they saw the T.V. the defense attorneys refer you to page 2 but did you also tell them in the videotaped statement that when Gary

and Stevie saw what the news was reporting as three black guys, they started to laugh?

A I don't remember.

MR. KETCHMARK: Counsel, going to refer to the videotape transcript, page 7, third question down.

BY MR. KETCHMARK:

Q Starting with Blehm, all right, and continue through the next section. Do you see that?

A Yes.

Q Did you tell the detectives in the videotaped statement that these two defendants, Mr. Eye and Mr. Sandstrom, were laughing when they saw the news reporting it was three black males as the suspects?

A Yes.

Q Did you also tell the detectives that these defendants were playing the game, nigger, nigger, nigger?

A No.

Q You don't remember telling the detectives that?

A No.

MR. KETCHMARK: Counsel, top of page 3. Bottom of page 2 leading over to page 3.

BY MR. KETCHMARK:

Q See the question starting with, Blehm, okay, what. Read that, Mr. Deleon, and continue through the bottom of the page.

And the top.

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Does that refresh your memory about whether or not you talked to the detectives in that video statement about the fact that these defendants were playing the game, nigger, nigger, nigger?

A Yes.

Q And did you tell them that?

A Yes.

Q Mr. Deleon, we're here now, almost May of 2008. It's April 29th.

A Yes.

Q We're talking about stuff that happened around March 9th of 2005, right?

A Yes.

Q And when you talked to the detectives it was March 30th of 2005, a couple weeks after that, right?

A Right.

Q And when you talked to these agents and the federal grand jury, it was March, or excuse me, May 18th of 2005?

A Right.

Q A few months removed?

A Right.

Q And what you told these agents and what you told the grand jury and when you're talking about specific language, language that these defendants used in conversations, was that accurate information? Was it truthful?

A Yes.

Q So about the conversation going out to the stadium and Stevie making a statement, and I'm thinking Mr. Osgood's cross of you, you said, Stevie said, I'll kill a nigga quick. Do you remember saying that to Mr. Osgood?

A Yes.

Q He stopped. Said, wait a minute, Mr. Deleon, wait a minute. You said, I'll kill a nigga quick. And your response was, well, that's how I talk?

A Right.

Q That's how you talk but that's not what he said, is it?

A No.

Q He didn't use nigga, did he?

A No.

Q He used nigger, N-I-G-G-E-R, did he not?

A Yes.

Q Mr. Deleon, you were friends with these two defendants at that time?

A Yes.

Q Do you still consider them friends?

A No.

Q Is this fun for you?

A No.

Q Are you doing this because you're considering that the government is going to take away your recommendation of

concurrent time? Is that what is motivating you here?

A No.

Q If you had your choice, would you even have walked in and taken the witness stand?

A No, I wouldn't.

Q And Mr. Gromowsky asked you and you said repeatedly, that's not what is motivating you to tell the truth, regardless. Is that a fair statement?

A Yep.

Q And your testimony here is truthful?

A Yes.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Mr. Osgood?

RECROSS-EXAMINATION

BY MR. OSGOOD:

Q I just have one question, Mr. Deleon. What you're telling us three minutes till twelve after starting at 8:30 is that you're doing this solely and only because you feel it's your civic duty as a good citizen, is that right?

A Not citizen.

Q You're not?

A No.

Q Well, you're not a U.S. citizen? Well, you're doing it as your civic duty, as a resident alien then to help the criminal justice system, is that right? Because you think it's

important that you stand up and do it?

A No. I'm doing it because I got to do what I got to do,
just like everybody else do what they got to do.

Q That's what I thought. You got to do it because there is
a great big old anvil hanging over your head, isn't there?

A No.

Q Are you a resident alien?

A I'm American.

Q I thought you said you weren't a citizen?

A I'm not.

Q Okay. You are a citizen you just can't vote any more?

A Right.

Q Because of convictions?

A Right.

Q But you're a citizen?

A Yes.

Q You're sure you are a U.S. citizen?

A Yes.

Q Okay. I think that's all.

Oh, one last question. I'm sorry. You were

protecting Regennia Rios during all those early interviews,

weren't you?

A Yes.

Q Why?

A I don't know.

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Q Pardon?

A I don't know.

Q You were kind of picking and choosing who you would protect and who you thought you could help and who you could hurt?

A No. Because if I could have protected anybody I would have protected Gary. But, you know what I'm saying. I just really, Regennia, didn't nothing point to her so why am I going to openly say she was there? Didn't nobody ever say nothing about her. Why am I going to say?

Q I thought she made a bunch of admissions to you about what happened?

A Of course, she made them to me but the police didn't know nothing about that. So -Q

So you're only telling the police what they think they know?

A I'm only telling the police what they're asking me. I'm only giving answers to what they ask me.

Q Where they ask you a question and they'll ask you a question and you say --is it true, say yes. If it's not, say no?

A Yes.

Q So that's the way the questioning went, didn't it?

A Yes.

Q Okay. Thank you, sir.

THE COURT: Mr. Gromowsky.

MR. GROMOWSKY: Yes, Your Honor.

RECROSS-EXAMINATION

BY MR. GROMOWSKY:

Q Sir, Mr. Ketchmark just got done asking you whether or not you're familiar with the term "snitches get stitches". Do you recall that?

A Yes.

Q At some point didn't you go with Regennia Rios to talk to your cousin Kristina Chirino about Ms. Rios' belief that Ms. Chirino might have been snitching and you told her, specifically, "snitches get stitches"?

A I don't remember that.

Q But if she testifies to that, you have no reason to dispute it, do you?

A No.

Q And you are not, in fact, facing witness tampering charges like Mr. Sandstrom is?

A No.

Q Mr. Ketchmark also said you used the word nigga and not nigger in the letters that you exchanged with Sandstrom and Eye. Is that true?

A Yes.

Q You said you never used the word nigger in those letters and you said not in those letters, is that correct?

A Yes.

Q When have you used the word nigger?

A Just, I mean, I mean we've used it before. I've used it before.

Q Okay. So like Mr. Osgood discussed with you earlier today, nigger, nigga, they're interchangeable in the way you guys talk out on the street. Is that correct?

A Yes.

Q Now, for the second time in two days Mr. Ketchmark has gotten up here after you, under oath, told this jury that when Mr. Sandstrom said, I'll kill a nigga quick, it was nigga.

You've said that yesterday, now again today, under oath both times. Is that true? You have said it in this courtroom?

MR. KETCHMARK: Your Honor, I'm going to object. I think that's a mischaracterization.

THE COURT: I'm not sure I understand the question. Would you state it again?

MR. GROMOWSKY: Yes, Your Honor. Thank you.

BY MR. GROMOWSKY:

Q Sir, you remember yesterday, that when you first testified about this conversation that took place in the car on the late, late of March 8th, early March 9th when Mr. Sandstrom supposedly said, I'll kill a nigga quick. Yesterday when you testified to it, you specifically said, I'll kill a nigga quick with the A on the end. Do you remember giving that testimony

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yesterday when you first spoke about this?

A I don't remember.

Q Do you remember yesterday when Mr. Ketchmark then had to back you out of it and remind you, you said in the grand jury nigger instead of nigga?

A I don't remember.

Q You don't remember it occurring yesterday but the rest of us saw what happened here. You would agree with that?

A Yes.

Q Now, when you gave your grand jury testimony on this same topic, didn't you, in fact, at that point not use the word nigger when you first told them about it under oath then?

A Yes.

Q And despite what may have occurred at the proffer, despite what may have occurred in the police interviews, the very first time you were placed under oath and were doing your civic duty as a citizen, you did not use the word nigger in describing that conversation, did you?

A No.

Q And that was the first time that if you told a lie there were going to be repercussions? In other words, you could get in trouble if you lied under oath?

A Yes.

Q And you did, in fact, not use the word nigger when you raised your hand that first time in the grand jury, is that

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correct?

A Yes.

Q And do you recall at that time Mr. Ketchmark backed you out of that testimony, changed it all the way around and then by the end of it -

MR. KETCHMARK: May we approach?

THE COURT: Yes.

MR. KETCHMARK: I'm going to object to this.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: Object to the form of the question, saying I'm backing him out of it, I'm twisting him around. What happened in the grand jury, the transcript reflects is, he said, nigga. That was inconsistent with what he told the agents. I asked him if that's not what you said in the --when you met with the agents. That's not what is reflected in the

302. And he indicated that was, in fact, the case. I think that the form of question is improper.

THE COURT: Mr. Ketchmark backing him out is improper. Ask him if he changed his -MR.

KETCHMARK: I'll move to admit his grand jury, 294, if they want to take it back there and Mr. Gromowsky wants them to read it. Government offers 294.

MR. GROMOWSKY: It is hearsay, Your Honor. We object to that.

MR. KETCHMARK: That's my point, Judge. They don't want the jury to see it. They want to characterize it the way they want to characterize it.

MR. OSGOOD: Could I offer a defense summary of my records to go along with the transcript? We'll admit both.

THE COURT: We're far afield. The objection is as to the form of the question. That objection is sustained.

MR. KETCHMARK: Thank you.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q Yesterday when you said nigga instead of nigger in relationship to this conversation, you eventually, Mr. Ketchmark kept asking you questions and you changed it from nigga to nigger. Do you recall doing that yesterday?

A I think I would look at the transcripts of the grand jury testimony.

MR. GROMOWSKY: Your Honor, may we approach?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GROMOWSKY: Obviously, Your Honor, we haven't asked for dailies on this thing and I'm not going to sit here and have her transcribe something to impeach him with.

MR. KETCHMARK: He's requesting it then?

THE COURT: You've just worn this out.

MR. KETCHMARK: I think so. I'm going to object to

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the repetitive nature of it. He can argue what he wants. It's been asked and answered.

THE COURT: The jury has heard him and the jury has heard him three or four times so I think we'll just move on.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q Sir, we discussed a little bit earlier when this whole conversation was going on in the car March 8th, March 9th, radio was on, rap music is playing. Is that correct?

A I believe so.

Q Conversation is going on. Is coming from the front seat to the back seat. Is that correct?

A Yes.

Q Mr. Sandstrom was sitting in the front seat. Mr. Eye was sitting in the front seat. You were sitting in the back seat. Is that true?

A Yes.

Q So you're traveling down the road, got the wheel noise going, is that true? Do you drive a car?

A Yeah.

Q Okay. So you hear the wheel noise going, the engine noise, is that correct?

A Yes.

Q Got that rap music playing, is that correct?

A Yes.

Q You're sitting in a place different in the compartment of the car than they are, is that true?

A Yes.

Q And is it possible, you said it yourself earlier, if they were actually saying nigga instead of nigger.

MR. KETCHMARK: Objection. Repetitive nature. He answered what he remembered hearing.

THE COURT: I'm going to let him answer this question one more time. Overruled.

BY MR. GROMOWSKY:

Q It's possible they said nigga instead of nigger?

A It's possible.

Q Thank you.

THE COURT: Mr. Deleon, you may step down.

(Witness excused.)

Everybody okay until 12:30 over here?

All right. Call your next witness.

MR. GREEN: United States calls Sharon McWhorter.

SHARON MCWHORTER, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREEN:

Q Ma'am, would you, please, state your name for us and spell

your last name?

A Sharon Lee McWhorter. M-C-W-H-O-R-T-E-R.

Q And what city do you live in?

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A Raytown, Missouri.

Q And how long have you lived in Raytown?

A Twenty-nine years.

Q I want to direct your attention back to early March of

2005. What type of car did you drive up until the early March part of 2005, what type of vehicle were you driving?

A 2003 Dodge Intrepid.

Q Do you remember the color?

A Red.

Q How long had you had that car as of early March of 2005?

A Approximately two years.

Q Now, I want to direct your attention to March 7th of 2005.

Do you recall something happening that day?

A Yes.

Q What happened on that day?

A My car was stolen.

Q And where was it stolen from?

A The HyVee parking lot in Raytown, Missouri, on Blue Ridge Cut-off.

Q Now, describe for the jury, was March 7th, as you recall, was that a weekday?

A Yes.

Q And what brought you to the HyVee on that day?

A I was having lunch or not lunch, a coffee break with a friend. We went just to have a cup of coffee and visit for

awhile.

Q Do you recall approximately what time of day this was?

A Approximately 10:00, 10:05 a.m. in the morning.

Q Now, and you said you had a friend with you?

A Yes.

Q Now, when you and your friend got out of the car, what did you do to the car?

A I locked the car and I also alarmed the car.

Q And so and this may seem like a very obvious question but did you take your keys with you?

A Oh, yes.

Q So where did you and your friend go?

A We went into the little cafeteria inside the HyVee and had a cup of coffee and visited.

Q About how long were you inside the HyVee?

A Approximately, half an hour, 25 minutes, something like that.

Q When you were done having coffee, what did you do?

A Walked outside and saw my car was missing.

Q And did this cause you concern?

A Yes.

Q So what did you do next, ma'am?

A Ran into the HyVee and went to the customer service and had the lady behind the counter dial 9-1-1 for me.

Q And who responded to the scene?

A Raytown police officer.

Q And did you talk to the Raytown police officer?

A Yes, I did.

Q And did you give him the particulars of your vehicle?

A Yes, I did.

Q Do you recall giving him your insurance ID card?

A Yes.

Q Now, and, again, this happened on March 7th of 2005?

A Yes.

Q Did you later learn that that car had been recovered?

A Yes.

Q And do you recall who informed you of that?

A Yes.

Q Who's that?

A The television.

Q Well, beyond that, so you saw a news account with your car mentioned in it?

A Yes. I saw a news account from the helicopter flying over the top and I recognized the vehicle at that time.

Q Did you later have contact with law enforcement?

A Yes. The Raytown Police Department contacted me.

Q Did you later have occasion to actually view your car?

A Yes, I did.

Q And where did you go to view your car?

A I went to the police tow lot to view it.

Q And what condition was it in?

A Bad.

Q What did it appear to you any way, just looking at it, happened to it?

A The whole inside of it was gutted with fire.

Q But you were still able to recognize that vehicle as your car?

A Oh, yes.

MR. GREEN: Your Honor, I would like to display to the witness and the jury what is already in evidence as Plaintiff's Exhibit 21A?

THE COURT: You may do so.

BY MR. GREEN:

Q It's on your monitor, ma'am.

A Yes.

Q What is that a picture of?

A My car, my 2003 Dodge Intrepid.

MR. GREEN: Those are all the questions I have, Your

Honor.

THE COURT: Cross-examination?

MR. SANDAGE: No questions, Your Honor.

MR. ROGERS: Just one, ma'am.

CROSS-EXAMINATION

BY MR. ROGERS:

Q You had the car for two years?

A Approximately, two years. I'm not real sure.

Q So you had obviously licensed it?

A Yes.

Q Did you ever see your license plates again?

A No.

Q Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. GREEN:

Q Actually, that raises a good question I should have asked you. When you locked your car and walked away from it on March 7, 2005, was it properly licensed? Did you have your tags on it.

A Yes. I had personalized plates on it.

MR. GREEN: No further questions.

THE COURT: Any redirect or recross rather?

MR. ROGERS: No, Your Honor.

THE COURT: Thank you, Ms. McWhorter. You may step

down.

MR. GREEN: May this witness be excused?

THE COURT: Without objection, Ms. McWhorter is

excused.

(Witness excused.)

THE COURT: Let's go ahead and move forward.

MR. KETCHMARK: With another witness, Your Honor?

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THE COURT: Yes.

MR. KETCHMARK: Government calls Sheila Rafferty.

Your Honor, she stepped out to put change in the

meter so I'll go with another witness.

MATTHEW WILLIAMS, GOVERNMENT'S WITNESS, SWORN

MR. OSGOOD: Your Honor, would you register my objection on the matter we talked about?

THE COURT: Yes. Objection noted.

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Sir, would you, please, introduce yourself to the ladies and gentlemen of the jury?

A Detective Matthew Williams.

Q And are you employed with the Kansas City, Missouri Police Department?

A Yes, I am.

Q How long have you been with the Kansas City Police Department?

A Since January of 1996.

Q What is your current assignment?

A With the homicide unit.

Q How long have you been a detective in the homicide unit?

A Since, I believe, September of 2002. So almost six years.

Q Directing your attention, if I might, Detective Williams, back to March of 2005, little over three years ago, do you

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remember a homicide investigation that Kansas City was undertaking regarding a William David McCay who was shot and killed at 9th and Brighton?

A Yes, I do.

Q And was it your squad that was responsible for conducting the investigation of that homicide?

A Yes, it was.

Q Can you explain to the ladies and gentlemen of the jury, generally, who would be responsible for doing that investigation of a homicide of that nature? Would it be one detective or multiple detectives? Explain how that works.

A Typically, like for this one, overnight people would have went out, realized it was going to be a homicide. They would have called my boss. We're on call. My boss would have called probably four of us out. And then we responded. And had we needed more people out of my squad, I don't know if we had eight back then, but now we have seven. But he would have called more, if needed. And we would have just came to the scene and went to, one would have started doing the crime scene. If, I believe on this case there was at least a person to talk to, area canvass, knocking on doors, things of that nature.

Q And would all, would there be a point detective or a person who would be assigned as kind of the lead detective on a particular homicide?

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A Yes.

Q Do you recall on this particular homicide who that lead detective would have been?

A It would have been Detective Blehm.

Q Can you spell Blehm for the court reporter?

A B-L-E-H-M.

Q And then all of the other detectives would basically just be assisting Detective Blehm in the investigation?

A Correct.

Q Are you aware, Detective Williams, at some point of a gentleman named Steven Sandstrom who was in police custody that you all were wanting to interview in connection with this investigation?

A What was --I didn't understand the question.

Q I'm sorry. Bad question. At some point in time did you become aware of somebody by the name of Steven Sandstrom and was there a desire to interview him in connection with this investigation?

A Yes.

Q Did you take part in the interview of Mr. Sandstrom?

A Yes, I did.

Q And do you remember what date that would have occurred on?

A I want to say it was March 18th of 2005. Possibly.

Q Where would that interview happen?

A At our police headquarters.

Q And in addition to yourself, who else would have participated in that interview or would you have done it by yourself?

A No. It was me and Detective Blehm.

Q Is that standard procedure that you have two detectives participate in the interviews?

A Typically.

Q Detective Williams, did you and Detective Blehm inform Mr. Sandstrom of his rights and have him execute a Miranda Waiver form before you did the interview?

A Yes, we did.

Q And do you have a standard procedure that you use when interviewing somebody if you're going to use a Miranda form?

A Yes. Me, personally?

Q Yes.

A Yes.

Q Can you explain to the ladies and gentlemen of the jury what you typically will do in connection with advising somebody of their Miranda Rights?

MR. ROGERS: Objection, irrelevant. May we approach?

THE COURT: No. The question, the objection is relevance, sustained.

BY MR. KETCHMARK:

Q Let me ask you this, Detective Williams, I'm going to have Ms. Marko show you on your screen there what has been marked as

Government's Exhibit 62. Do you see that?

A Yes, I do.

Q Do you recognize what is contained in Government's Exhibit 62?

A It is the front and back portion of our Miranda Waiver that, what I'm looking at now has been put on one piece of paper.

Q So Miranda Waiver that you normally use is double-sided, has a front and back?

A Right. Currently I'm looking at the front side of one now.

Q And then the next page coming up, is that the back? Or I'm sorry.

Ms. Marko, if you could go back.

This is the front and back?

A Yeah, that's the front and back on one piece of paper.

Q And does that appear to be a fair and accurate copy of the Miranda Waiver form that would have been executed with Mr. Sandstrom on March 18th of 2005?

A Yes, it is.

MR. KETCHMARK: Your Honor, at this time I move the

admission of Government's Exhibit 62.

MR. ROGERS: No objection.

THE COURT: Without objection, 62 is admitted.

BY MR. KETCHMARK:

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Q Now, Detective Williams -Publish
to the jury.

Detective Williams, you see, do you not -MR.

OSGOOD: Well, excuse me. I objected to 62 not

as to the form but as to the substance agreement.

THE COURT: We'll show that objection overruled.

MR. OSGOOD: I don't object to the document itself.

BY MR. KETCHMARK:

Q Detective Williams, on that document it indicates in the
upper left the name Steven Sandstrom, is that correct?

A Yes, it does.

Q And below that it says, Kansas City, Missouri Police
Department Miranda Waiver?

A Yes.

Q Then there is a paragraph and there is a mark in front of
the beginning of that and the mark at the end. Do you see
that?

A Yes, I do.

Q Can you tell the ladies and gentlemen --

Ms. Marko is bringing that up.

What is the significance of the marks at the
beginning and the end of that paragraph, if any?

A That's where we say start here and end here and read it
aloud so we know you can, in fact, read.

Q Did you have Mr. Sandstrom do that?

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A Yes, we did.

Q Did he read that aloud to you in your presence?

A Yes, he did.

Q Now, Detective Williams, before you interview anyone, do

you try to determine if they're under the influence of drugs or alcohol?

A Yes, we do.

Q What is your purpose in trying to figure out if they might have ingested some drugs or alcohol?

A Well, I mean, if we're going to talk to somebody and want a legitimate rapport with them, I mean, if they're under the influence it kind of takes away from getting at the truth.

Q And did you inquire of Mr. Sandstrom whether he had used any drugs or alcohol before you sat down to talk with him?

MR. ROGERS: May we approach, Your Honor?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. ROGERS: I think we're now getting into statements that are alleged to have been made by Mr. Sandstrom so I think now is the time to object, based upon the motion to suppress. And I would ask the Court to make, I assume it's overruled based on the motion to suppress. And with that I would ask the Court to allow this to be a continuing objection to any testimony by this witness concerning statements that he

attributes to Mr. Sandstrom during this interrogation.

THE COURT: And, Mr. Osgood, do you join?

MR. OSGOOD: Just my Bruton objection I made several times and am comfortable is preserved.

THE COURT: The motions to exclude or suppress the statement is overruled. I will show your objection as continuing throughout this entire line of questioning.

MR. ROGERS: Thank you.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q Detective Williams, my question a moment ago is whether or not you and Detective Blehm would have inquired of Mr. Sandstrom if he had ingested any drugs or alcohol before you interviewed him?

A Yes, I did.

Q Do you recall what his response was?

A No, he had not.

Q And I also, we talked about this paragraph that's blown up. You said you had him read that aloud?

A Yes.

Q Did you note anything unusual about his speech to suggest that he was under the influence of any drugs or alcohol?

A No, I did not.

Q Was there any slurring?

A Not that I recall.

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Q Did it appear that he was articulating the proper words?

A It was clear that he understood what he was reading.

Q And similarly I would assume, or am I correct in assuming, that there would have been an opportunity for you to observe his behavior and demeanor before you actually present him with and sign the Miranda Waiver form. Is that true?

A That's correct.

Q Did you notice anything about his appearance or demeanor during this period of time as you're preparing and having him sign the Miranda Waiver form that concerns you about whether or not he was impaired to the point you couldn't talk with him?

A No.

MR. KETCHMARK: Ms. Marko, if you could go back to the full exhibit, please.

BY MR. KETCHMARK:

Q Now, detective, underneath the portion that Ms. Marko had brought up, there appears to be a signature and a date and time. Do you see those lines?

A Yes, I do.

Q And whose signature is that?

A It would be Mr. Sandstrom's there at the X.

Q And is that the signature that Ms. Marko blew up?

A Yes.

Q And is the date and time the warning given also noted as 3/18/05 at 1819 hours?

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A That's correct.

Q And below the date and time the waiver was signed would have been a minute later at 1820, is that correct?

A That's correct.

Q Now, at the officers line there is two individuals noted and is that you and Detective Blehm?

A That's correct.

Q Would both of you have been present when he would have executed this waiver form?

A Yes.

Q On the other side there is also information that is contained there that is some background information regarding the suspect that you're interviewing, in this case Mr. Sandstrom, is that correct?

A Yes.

Q And what information do you obtain on that other side? Ms. Marko is bringing it up?

A I mean, most of it is just general information that we would already know. I mean, we also ask, you know, education level, but the rest is mainly just factual.

Q And you also note in this case that Mr. Sandstrom indicated, would that be --how would you get his education level?

A Ask him.

Q And in this case did he indicate to you junior high?

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A Yes.

Q If at any point, Detective Williams, you would have had a question about whether or not Mr. Sandstrom understood what was going on, what would you have done?

A Well, first of all, I would have asked him if he understood what was going on.

Q Did you tell him at any time he could ask you questions or was that ever, was he ever informed of that?

A I didn't understand the question.

Q Did you ever let him know that if he had questions he could ask you them?

A I mean, it was free flowing back and forth between both of us and Detective Blehm.

Q At any point does Mr. Sandstrom request an attorney?

A No.

Q Had he done that, what would you have done?

A I guess provided him one. I mean, he wasn't under arrest.

Q Well, but and that brings up, I guess, kind of towards the end but after you interview him, what do you do with him?

A We asked where he wanted to go and he said to his parents' house. So, he asked us not to drop him at his parents' house. He just said near there.

Q Why did you use the Miranda form with him if he wasn't under arrest?

A At that time I guess we thought he was a subject of

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interest in the case and had he, you know, we just wanted to make sure we covered the bases in case he started to implicate himself.

Q Detective Williams, would there have been a report in a summary format that would have been generated based on yours and Detective Blehm's interview of Mr. Sandstrom on that March 18th day?

A Yes.

Q And I'm going to show you, detective-

I'm going to show you what has been marked as Government's Exhibit 295 for reference. And would you agree with me this is a copy of that report and summary?

Is this a copy of the report and summary with you and Detective Blehm on the interview in question that we talked about?

A Yes.

MR. KETCHMARK: And, Your Honor, at this time I would ask that he be allowed to read the report and summary as it relates to his interview on 3/18 with Mr. Sandstrom.

MR. ROGERS: No additional objection.

MR. OSGOOD: No additional objections, Your Honor,

that --Is that being offered?

THE COURT: I'm sorry?

MR. OSGOOD: It's a Court exhibit already so you're not offering it?

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MR. KETCHMARK: I'm not offering it. Just for reference.

THE COURT: It is not admitted into evidence however I will allow the witness to read the statement.

Ladies and gentlemen of the jury, you are about to hear a summary of statements given by Defendant Steven Sandstrom. You may consider those statements only in the case against him and not in the case against Defendant Gary Eye. What that means is that you may consider Defendant Steven Sandstrom's statement in the case against him and for that purpose, rely on it as much or as little as you think proper. But you may not consider or even discuss that statement in any way when you are deciding if the government has proved beyond a reasonable doubt its case against the other defendant, Gary Eye.

You may proceed.

THE WITNESS: On 3/18/05 Detective Blehm and I responded to 1300 Cherry and contacted the above listed subject who is being released from custody. Sandstrom was transported to police headquarters and escorted to interview room No. 2. Sandstrom was presented with a Miranda Waiver, Form 340, where he read aloud, understood and signed the waiver at 1820 hours. Sandstrom agreed to talk to us. I asked him if he knew Vince Deleon and he stated that he did.

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I asked him who Deleon's cousin was and he stated her name was Kristina.

I asked him where Kristina lived and he stated somewhere on Van Brunt near Smart.

THE COURT: Might slow down just a little.

THE WITNESS: Sorry.

I asked him what Kristina's last name was and he stated that he did not know but it might be Deleon.

I asked him how he knew Kristina and he stated that he was fucking her.

He stated that he had been at her house when the police had arrested him the other day.

I asked Sandstrom what he knew about the homicide that occurred on 9th Street and Brighton and he stated that he had heard some guy got shot.

I asked him if he had heard anything else and he stated no.

I asked Sandstrom if he had ever stolen a car and he stated yes.

I advised him that I knew he had been involved with a homicide that occurred on 9th and Brighton and he stated that he was not there.

I told him that he did not have to be there when the shooting happened to be involved. Sandstrom finally stated that he had been at Kristina's, Vince's cousin's house the

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morning of the homicide.

He stated that the phone rang and Kristina answered the phone. He stated Kristina told him to go meet somebody at Steven's parents' house at 12th and Ewing. He stated that he went over there and met that person.

He stated that the person he met was driving a red Dodge Intrepid.

He stated this person asked him to follow him because he had to get rid of the car because it was hot.

He stated he followed the guy down to the area of 23rd and Manchester where the other person tried setting the car on fire.

He stated that when the other person got out of the Intrepid, he observed that he was holding a dark-colored handgun.

He stated that the other person tried several times to light the car on fire.

He stated that he, himself, Mr. Sandstrom eventually went over to the car with a torch-like lighter and set the seats of the Intrepid on fire.

He stated they got back in his vehicle and left.

He stated while in the Jeep, the other person placed the dark-colored gun next to the passenger seat.

He stated that he got mad at that person for not telling him that he had the pistol.

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He stated that that person then went over to Vince's girlfriend's house, Christina Stanley, over off 16th Terrace. He stated as they pulled up that Vince was pulling up behind them in a truck.

I asked Sandstrom what did the pistol look like. He stated it was a revolver and he thought it was a .38 caliber but was not sure on the caliber.

I asked him to tell me what type of vehicle he was driving. And he stated it was a stolen Jeep.

I asked what color it was. And he stated that he thought it was black or blue.

I asked him if it could have been a dark purple. And he stated it could have been.

I asked him if he could describe the Jeep. He stated that it was nice inside.

Detective Blehm asked him if there was anything special about it. And he stated that there was a device on the front of the Jeep that had not been on other Jeeps he had stolen. He stated that he did not know what the device was but when asked if the device could be used to tow the vehicle, he stated yes.

I asked him if he knew where he stole the Jeep and he stated no.

I asked him if he had ever stolen cars from north of the river and he stated that he had.

I asked him if he remembered how long he had had this particular Jeep and he stated he had it for a couple of days. I asked him what he had done with the Jeep and he stated that after he had left the other person and Vince at Stanley's house, he ended up selling it to a black guy for a hundred dollars.

I told Sandstrom that I found that Jeep. And asked him if he had written all the graffiti in it and he stated he had not.

I asked Sandstrom if he had ever asked the other person why he was burning the red Dodge Intrepid and he stated no.

I asked him if he thought it was a little odd, out of all the stolen cars they have stolen, to be setting this one on fire. He stated that it did not surprise him at all.

I asked him if he was surprised to see the other person with a gun and he stated, no, not really.

I told Sandstrom that someone had told me that he and the other person had shown up to Stanley's house with a couple girls. He stated that they had picked them up near the Service Oil on Hardesty.

I asked him who they were. He stated he did not know but one of them might have been named Jessica. He stated that he was having a hard time remembering. He stated that several days can go by and he will not

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even know it.

I asked him several times if he had shown up with girls to the house or not and he stated he could not remember. I asked Sandstrom if the other person had told anyone else what he had done and he stated that he was bragging to everyone.

He stated that he had told some girls over in KCK and people inside of Stanley's house.

I asked who was inside the house at the time that he was bragging. And he stated that Vince, Vince's sister Nessa, Shelly Stanley and Christina Stanley were there.

I told Sandstrom that I found it hard to believe that he was not with the other person when the homicide took place. And he really could not give me an answer to me.

I told him that I could sense he was withholding information from me and asked him to tell me what it was.

He stated that he could not. He stated that he owes the other person from way back and he would not rat him out. He stated that he had surprised himself with telling us as much as he did.

I asked him if he knew where the gun that was used to kill the victim was now and he stated that it was probably in the river.

I asked him how he knew this and he would not tell me.

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Sandstrom stated that he had needed something done when he went to jail and that other person had taken care of it for him.

I asked him what it was that the other person, I'm sorry, I asked him what it was he had the other person do. He would not tell me.

Sandstrom stated he would take a case for that other person if he had to.

After questioning, Sandstrom asked to be dropped off by his parents' house.

MR. KETCHMARK: That's all I have at this time, Your Honor.

THE COURT: Before cross-examination, let's go ahead and take our lunch break. Please don't discuss the case. Don't let anyone else discuss it with you. If anyone tries to talk with you about the case, please let me know that immediately. Don't make up your mind yet.

We'll see you at 1:40.

(Witness temporarily excused.)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: See you in an hour.

(Noon Recess)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

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THE COURT: Thank you. Be seated.

Is everyone ready.

MR. OSGOOD: Judge, could I have a minute to run around the corner?

THE COURT: Uh-huh.

(The following proceedings were had IN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Cross-examination? Mr. Osgood?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Detective, I'm John Osgood. I represent Mr. Gary Eye, one of the defendants in this case.

Taking you back to March 9th of 2005, did you get involved in the case at that time or at a later date?

A From the onset.

Q From the outset. Did you have any report or did you investigate any incident at 9th and Spruce, which is about a half mile back east of the location of 9th and Brighton?

A On that same day?

Q Yes.

A Investigate something?

Q Yes. Have any report of any shooting there?

A None that jumps to mind unless you have a report.

Q No, I don't. Thank you. That's all.

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THE COURT: Mr. Rogers?

MR. ROGERS: Thank you, Your Honor.

CROSS-EXAMINATION

MR. ROGERS: Ms. Marko, could you pull up Exhibit 62, please?

BY MR. ROGERS:

Q While she's doing that, sir, let's talk a little bit about your conversation with Mr. Sandstrom on March 18, 2005. Okay?

A Okay.

Q Now, you went to 1300 Cherry to get Mr. Sandstrom, correct?

A Yes. We were waiting there for him.

Q Okay. And he had been, that's the Jackson County Department of Corrections, is that what that is?

A Yes.

Q Okay. And he had been processed there and was being released by them?

A Correct.

Q And you did not have a warrant for his arrest. You wanted to talk to him about the death of Mr. McCay?

A Correct.

Q And you, that's approximately a block and a half from police headquarters, is that right?

A Yes.

Q And did you drive there or did you walk there?

A Drove.

Q Okay. So you had a police car. Did you park behind the jail there?

A Inside the sallyport.

Q Okay. And when Mr. Sandstrom was brought down, did you and Detective Blehm then introduce yourselves to him?

A Yes.

Q And did you tell him you wanted to talk to him?

A Yes, we did.

Q Did you tell him that he did not have to talk to you and he was free just to go his merry way?

A I don't know that we specifically said he did not have to talk to us. We just said we'd like to talk to you.

Q And then did you take him down through the interior of the jail structure to the sallyport area where your car was?

A No. We were already at the sallyport. That's where he was brought.

Q He was brought to the sallyport to be released. What time of day was this?

A This would have been, at the time of our contact would have been 6:20 p.m.

Q That's when he signed the waiver?

A Yes.

Q So it takes 10 or 15 minutes to get him transported and situated in the interrogation room?

A I'd say that's a fair statement.

Q And you don't know how long he had been in custody before?

A No. I'm sorry. Do you mean how long he had been in custody prior to us making contact with him?

Q Right.

A No, I don't know.

Q Okay.

And don't worry, Ms. Marko. It turns out I don't

need it. I'm sorry. Should have saved you some time.

Obviously, you did not smell the odor of an alcoholic beverage on him?

A No.

Q Now, you asked him if he was under the influence of drugs or alcohol, correct?

A That's correct.

Q And he told you no?

A Correct.

Q But you don't have any independent knowledge of whether that was truthful or not, do you?

A Just off his answer and my basic observations of him.

Q Okay. And you can observe that he was not, his eyes were not blood shot?

A Yeah. I mean, he was talking coherently. He did not need assistance walking or he was able to read the Miranda out loud by himself. I mean, things like that.

Q Have you seen people under the influence of methamphetamine?

A To say that it was specifically methamphetamine, no, I couldn't be that specific.

Q So you don't know whether methamphetamine would make somebody unable to walk or unable to read or unable to pronounce their words without slurring?

A No.

Q Do you also agree that methamphetamine tends to make somebody want to talk?

A That, I don't have any scientific knowledge of.

Q You haven't had any training about that either?

A No.

Q Okay. And certainly you would agree that if somebody is under the influence of methamphetamine or some other illegal drug and the police detective asks them, are they under the influence, they're probably going to say no, correct?

A No, not necessarily.

Q Probably?

A I guess it's probable.

Q And you certainly did not interrogate Mr. Sandstrom about his drug use in an attempt to get him to change his position that he was not under the influence of drugs?

A No.

Q Now, let's talk about the interview itself. And you and

Detective Blehm were present in the interrogation room along with Mr. Sandstrom, is that correct?

A That's correct.

Q And this is a room on the second floor of police headquarters?

A Yes.

Q And how many other interrogation or interview rooms are there?

A Three.

Q Okay. And only one of those is equipped for videotaping interviews?

A No. All three are.

Q All three are now equipped for taking video?

A Yeah. Back in '05, I don't know that --probably only one was at that time.

Q Okay. But in any event that one wasn't the one you were using?

A If not all three were equipped back then that would have been interview room No. 3 and we were not in it.

Q Okay. And on the, I'll call it the reverse side of the Miranda Waiver form. Now it's up in front of you, Exhibit 62. There is over on the right-hand side, what says statement information. Do you see that?

A I don't have anything on my screen but I know what you're talking about.

Q Can you see it on the big T.V.?

A Yes.

Q Okay. And says, statement information. There are four boxes to be checked, correct?

A Correct.

Q You've done many of these in your career, right?

A Correct.

Q And?

THE COURT: Excuse me, Mr. Rogers.

Ms. Marko, do you control whether or not that comes

up on the witness's -MS.

MARCO: Not on the witness.

MR. ROGERS: We don't need it, Judge.

THE COURT: That's okay. Just leave it up.

BY MR. ROGERS:

Q Four boxes there to check one or more. They are oral, written, video and declined, is that correct?

A That's correct.

Q Now, what you have blackened in there, filled in like the electronically scanned ballots we use these days, is the box for oral, correct?

A Correct. And if I may add, I did not fill this out.

Q Okay. And that was Detective Blehm that filled that out?

A Correct.

Q But that is consistent with your testimony, is that he

gave an oral statement?

A Right.

Q And what happens during the oral statement is the detectives are both asking the questions and taking notes of the answers?

A Yes.

Q And then after the interview is completed, you will sit down and either type out the narrative of the report of the interview or dictate it to a clerical person?

A Like in this case, typically, typically, who ever takes the report is the one writing the notes.

Q So it would be you?

A Right.

Q And it would be then Detective Blehm who is taking the lead in asking the questions?

A Generally.

Q And the reason those other three boxes are there are some times you'll take a statement from somebody and want to memorialize in their words or in writing and have them authenticate what they have told you, correct?

A Correct.

Q And that's called a written statement?

A Yes.

Q And so what happens there is there is a form you use to start it out, correct?

A Well -Q

You didn't do it in this case?

A No. I'm just trying to think. We have an oral statement which is basically memorializing it on a report that I'm doing and then we have the typed statement that a stenographer would do. Basically, I ask a question, she types it. They answer, she types their response. And then we have a video.

Q And the typed statement, what is called, written here on the form, is --starts out with the page that includes the Miranda Waiver and those kinds of things, correct?

A If it's involving a suspect.

Q Yeah. And then however many pages you need to continue the question and answer format?

A Correct.

Q And you don't start initially with the witness statement if that's what you intend to do. You first talk to the person and get an idea of what they're going to be saying so you'll know how to structure the formal written statement, correct?

A I did not. I mean, I did not understand that question.

Q If you were going to take a written statement from a suspect, you wouldn't just go cold and start with the stenographer there, question and answer, would you?

A No.

Q You would have first the oral interview?

A That's correct.

Q And then when it came time when you had reached the point where you felt it was appropriate to memorialize the statement is when you would bring in the stenographer and start over in question and answer format?

A Typically, if it's an eyewitness-type testimony.

Q Okay. Or if it's a suspect?

A Right. I mean, suspect or eyewitnesses, generally when a formal statement is taken.

Q And the video statement is one step further, isn't it?

A I would say so.

Q And when you have a video statement from a witness or suspect or anybody, it's not done from scratch, is it?

A Do you mean from the onset?

Q Yes, from the onset?

A No, it's not.

Q You're familiar with some jurisdictions that require interrogations in certain cases to be recorded either by audio tape or videotape entirely, the entire interrogation?

A Yes, I'm aware.

Q That's not what happens in Kansas City, Missouri?

A Not for now.

Q Okay. And so when we're, and do you know how long there was between your interrogation of Mr. Sandstrom and the time that you actually typed up the report?

A I believe, well, when we talked to him was on the 18th.

And without actually having my, my report that I did, as opposed to this one, I want to say it was like maybe the 20th or 22nd.

Q Let me show you to refresh your recollection, copy of this document.

A Yeah. 22nd.

Q 22nd. So during the meantime you had been doing quite a bit of work on this case and other cases?

A That's correct.

Q And so you were, basically, relying on your notes at the time that you prepared your report?

A Notes and memory, yes.

Q And what did you do with your notes after you prepared the report on March 22nd?

A Once the report is compiled, they get destroyed.

Q Is that standard procedure?

A Yes.

Q Is there a reason for that procedure?

A Just, I don't know the reason. I just assume once you have compiled the report, there's no reason to keep the notes. But, no, I don't know the reason we do that.

Q And you do agree that would preclude anybody down the road in court from comparing the notes to the report and see if there had been a mistake made?

A That's a possibility.

MR. ROGERS: Those are all the questions I have, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. KETCHMARK:

Q Along those lines, Detective Williams, is it important to accurately get from your notes and your memory the information into a report?

A Yes.

Q And to try to make sure there are no discrepancies?

A That's correct.

Q Additionally, Mr. Rogers asked you a question about Mr. Sandstrom and the fact that you met him at the sallyport?

A Correct.

Q Can you explain for the ladies and gentlemen of the jury what a sallyport is? They might not be familiar with that term.

A That's just an area, usually I would say it's covered, that you can drive into that is on the outside. Like if it's completely enclosed, could be inside of a jail or however, I mean, for us and can I speak about that facility in particular?

Q With Kansas City, yes, if you would.

A Okay. Well, for Kansas City, I mean, we, it's like we call it a garage. We just honk the horn. They open the door. We pull in. We can go. Somebody can come in. Come out. Then

we honk a horn and leave, basically. I would say it's still considered a secured area.

Q And in terms of the timing, the Miranda form with Mr. Sandstrom that was --the warning was given at 1819 hours on March 18th. Do you have any reason to disagree with that?

A No.

Q Do you see there where it says 3/18/05 at 1819 hours?

A Yes.

Q And that was the first point you had contact with him on the --that was when you would have picked him up. That's when you, basically, had him execute the form?

A That's correct.

Q Would you have been with him for a long period of time before you would have had him execute the Miranda form?

A No.

Q One of the first things you would have done with him?

A I mean, once we got to our facility, that would have been the first thing.

Q Just been the time from transporting him from the sallyport of Jackson County back to your facility and the first thing you're going to do is sit down and do the Miranda form?

A Correct.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Recross?

MR. OSGOOD: Nothing, Your Honor.

RECROSS-EXAMINATION

BY MR. ROGERS:

Q To illustrate, sir, what we're talking about, about the difference between a report of interview and like a videotaped interview, did you take part in the interview of Vincent Deleon on March 31st of 2005?

A No, I didn't.

Q Did you take place in a videotaped interview of Mr. Deleon on that date?

A No, I did not. Can I help you out with that, sir?

Q Yes.

A That was a mistake by Detective Blehm. He had previously

written my name on the form prior to, I mean, if you go, if you read that towards the end of that statement, I believe Detective Downing reiterates that he is himself and not me.

Q Okay.

A And that's corrected that I was not involved in that at all.

Q So even though the form indicates that you and Detective Blehm and Detective Steinbock were involved, it was actually Detective Blehm, Detective Downing and Mr. Steinbock?

A I believe that's correct.

Q Okay. In that case, you're off the hook.

Thank you.

THE COURT: Thank you, detective. You may step down.

Government may call its next witness.

MR. KETCHMARK: With respect to Detective Williams, may he be excused?

THE COURT: Without objection, Detective Williams may be excused.

(Witness excused.)

MR. KETCHMARK: Government calls Sheila Rafferty.

SHEILA RAFFERTY, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Ma'am, would you, please, introduce yourself to the ladies and gentlemen of the jury and spell your name for the court reporter?

A Sheila Rafferty, S-H-E-I-L-A, R-A-F-F-E-R-T-Y.

Q And, Ms. Rafferty, how are you employed?

A I work for Sprint or Embark, formerly Sprint.

Q You work for Sprint. Now that Sprint and Embark have merged together, it's under the umbrella of Embark, is that correct?

A Yes, sir.

Q How long have you worked for that company?

A For 32 years.

Q What is your current assignment, Ms. Rafferty?

A I'm a program project manager.

Q And can you tell the ladies and gentlemen of the jury what

that means? What are your duties?

A I work with monitoring and recording inmate systems. I go and install them for various counties in state facilities.

Q And are you just back in the Kansas City area as of this last weekend from a project?

A Yes, sir.

Q And what were you doing?

A I was installing all of the phones for the State of Nevada.

Q If I could, ma'am, draw your attention back in time to 2005. Okay?

A Okay.

Q At that time were you working with Sprint in the capacity that you have just talked about?

A Yes, sir.

Q Are you aware if Sprint had a contract with the Jackson County Detention Facility here in Kansas City?

A Yes, they did.

Q Did you have any involvement with that contract, ma'am?

A Yes, sir. I was on-site administrator for the Jackson County Jail.

Q And can you tell the ladies and gentlemen of the jury what that means? What were your job duties and descriptions?

A What I would do is I would check all of the phones and change out the phones as well. If there were subpoenas that

came through for all of the recordings, I would look up the phone numbers and record all of the information from those phone recordings.

Q And you kind of have alluded to it by talking about the phone recordings but did the Jackson County Detention Facility have a monitoring and recording system that was in place?

A Yes, sir, they did.

Q Would that --what would that system capture?

A When the call, the person would pick up a phone, it would start timing. And at that time it would give the announcement of, it would say you have a collect call from the inmate. Would state his name. And it would start recording from that point.

Q And were all calls that originated out of the Jackson County Detention Facility monitored and recorded in the time frame of 2005 that we're talking about?

A All calls are monitored with the exception of attorney calls, legal calls.

Q As part of your job duty and description, ma'am, in connection with Jackson County Detention Facility, were you the one responsible for overseeing the administration of that monitoring and recording system?

A Yes, sir.

Q Had you received prior training on how the system that was in Jackson County worked?

A Yes, sir.

Q And can you tell the ladies and gentlemen about what type of training you might have had on that particular system?

A Well, I installed about 52 systems throughout the State of Michigan so I had job training as well as I would train the administrators that were at the sites to be able to pull up, listen to the calls and record the calls.

Q Was there a particular company who had the equipment that was used for the monitoring and recording of those calls?

A Yes, sir. A company called Securus.

Q Do you know how to spell that for the court reporter?

A Yes. S-E-C-U-R-U-S.

Q In addition to the training that you talked about, ma'am, did you ever take any classes from Securus as to how that system worked?

A I went to some --to their locations and trained on several occasions.

Q And can you explain to the ladies and gentlemen of the jury how the system worked in terms of how it would record and capture calls that were originating from an inmate?

A It would, when I would get a list of phone numbers, I could type in a phone number and it would pull up all of the calls from that phone number. And I could pull them up and then click and listen to them. If the call had been archived, it would come up. And if I tried to listen to it, it would

tell me what archive tape that call would be on.

Q You say all calls from a phone number, are you talking about when an inmate would make a call to a particular number, it was the number that triggered the capturing, that was what was captured in, obviously, in addition to the content of the conversation?

A Yes, sir.

Q You also mentioned briefly, ma'am, that in your work there in Jackson County you also had involvement in handling subpoenas that might be served on the detention facility?

A Yes, sir.

Q Can you explain to the ladies and gentlemen of the jury what your responsibility was with connection with subpoenas that might be served on the facility?

A Captain Robinson, I worked with him at the Jackson County Jail. If he had received a subpoena, he would contact me and give me the subpoena. I would go and I would pull up the calls in question and then I would burn them to a CD. And then I would contact him. And I would personally hand him the calls or --or I would hand him the burned CD with a detail of when the call was received, who was the call, the number it was called from, who it was to, the duration of the call and then it would indicate if the call was complete or not.

Q And in addition to the actual CD with the calls on it, ma'am, this other stuff that you talked about in terms of the

number dialed, the date of the call and things of that nature, did your system provide you with the ability to generate call detail records of that information?

A Yes, sir. I print that out and include that with the CD.

Q And, ma'am, back in, particularly in September of 2005, are you aware of a couple of subpoenas that would have been served on the Jackson County Detention Facility by the FBI in connection with the case that you're obviously testifying here about today?

A Yes, sir. I received one on September 15 and one that was dated September 20.

Q And did you personally, were you the individual who was personally responsible for going through and checking your system to see if there was information in your system that was responsive to the request of the subpoenas?

A Yes, sir. Of the numbers that I was provided --I believe I was provided 19 numbers. And of the 19 numbers on the subpoena I was able to find conversations on eight of those 19 numbers.

Q And based on the facts, ma'am, that you were able to find calls in your system that were responsive to the subpoena request, what did you do?

A I recorded all of the conversations from the numbers that came up, conversations, and I burned them to CD. I believe it's 78 CDs. I attached the detail call record. And put those

in a sealed envelope and gave them to Captain Robinson in Jackson County.

Q And, again, just so I'm clear, what information would be in the call detail records?

A It would have that the pod or the location that the inmate was in. It would come up with the location they were calling from. The phone number that they called to. The duration of the call. And then it would actually tell you if the call was completed or if it had been taped.

Q And did it also include, ma'am, the date the call was placed?

A Yes, sir.

Q And did it also have the time of day that the call had been placed?

A Yes, sir.

Q And that would all have been pulled in connection with the information in the subpoena request?

A Yes, sir.

Q And, ma'am, based on your work in Jackson County at the time, is it your opinion that the system, the reporting system was functioning properly to capture the substance of the conversations?

A Yes, sir.

Q Now, at some point, Ms. Rafferty, is it correct that, well, is there a disclaimer that comes on to the calls?

A Yes.

Q And what is the disclaimer that I'm talking about?

A When you pick up the call it always notifies the called party, it says all calls are subject to monitor and record.

Q And is that a disclaimer that is suppose to be on every call?

A It's, it is suppose to be on every call, yes, sir.

Q And at some point, ma'am, in connection with the 78 CDs that you burned, did it come to your attention that there were some calls that it did not have the disclaimer?

A Yes, sir.

Q Now, that fact, Ms. Rafferty, based on your experience and your training on the system, would that in any way impact the accuracy of the capturing of the actual conversation that was going on between the inmate and whoever they were speaking to?

A No, sir, not at all.

Q So the conversation itself was accurately captured. It just didn't have the disclaimer that was put at the beginning of the call and maybe periodically throughout?

A Yes, sir.

Q And, again, I think you had indicated but what was your normal procedure after you or what was your procedure here after you compiled the information? What did you do with it?

A I would put it in an envelope. And I would make sure the CDs were marked and make sure it included the call detail. Put

it in the envelope and take it to Captain Robinson, Jackson County Jail.

Q And do you know where Captain Robinson would store that information?

A Yes, sir. He secured it in his office until someone came and picked it up from him.

Q And in particular, ma'am, what was your normal procedure on when you would turn that information over to Captain Robinson, if you had it?

A I would make sure I was able to hand deliver it to him or get a secretary to make sure that it was locked up so that it was always secure at all times.

Q Would you often times wait until the subpoena party was wanting to come pick it up from Captain Robinson before you would give it to him?

A Yes, sir.

MR. KETCHMARK: One moment, Your Honor.

That's all I have at this time, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q How are you today, Ms. Rafferty?

A Fine.

Q Guess what? I don't have any questions for you.

A Good.

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Q Thank you.

MR. ROGERS: May we approach, Your Honor.

THE COURT: You may.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. KETCHMARK: --anything with her or the next witness but the witness after we do have.

THE COURT: Let's wait until about 3:15. Will we get by till then? Okay.

MR. ROGERS: Now, why we're here? Your Honor, the recorded phone calls are the subject of motion to suppress which strangely enough was overruled. And I intend to ask her a little bit about, part about the content even though they haven't been offered yet. But I would like to do so subject to the motion to suppress and subject to a continuing objection if and when they are offered based on the motion to suppress.

MR. OSGOOD: I didn't make a record on that because, frankly, I don't think in federal court we have to preserve to rehear the motion. But out of an abundance of caution, since it's a capital, I'll renew my motion to suppress which was overruled.

THE COURT: Show the motion to suppress renewed and overruled. That motion continues throughout this line of questioning. Your objection to him asking about -

MR. KETCHMARK: I don't. We obviously haven't

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offered the calls yet because we began laying the -

MR. OSGOOD: Motion to suppress, she's very happy with me. I beat up on her pretty good at the motion to suppress.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

CROSS-EXAMINATION

BY MR. ROGERS:

Q How are you, ma'am?

A Fine.

Q On these call detail records you mentioned, did they indicate the duration of each call?

A Yes.

Q Were you able to determine or did you determine from looking at them what inmate had made the calls?

A I just was able to pull up the phone number and determine the location they were at when they made the call.

Q By location they were at, you mean what module within the jail or what housing unit within the jail?

A Yes, sir.

Q Okay. And you didn't compare those with the Jackson County Jail roster to see who was there at the time the calls were made?

A No, sir.

Q Okay. And you don't know anything about those numbers other than the fact that they were listed on the subpoena you

got from the government?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Okay. I asked kind of a negative question so it was my fault.

In terms of the 78 CDs that you turned over in compliance with the subpoena, how long was the total duration of all the calls on those CDs?

A Each CD usually holds about 80 minutes worth of conversation.

Q Okay.

A And if it were, if I knew the call was going to be another 30 minute call, I would change CDs. So most CDs probably, if they were 30 minute calls, would only hold probably two calls per CD.

Q So at least then on the 78 CDs, you had at least 78 hours of phone calls because some of them had more than the two 30 minute calls, right?

A Something like that.

Q A lot of time, a lot of phone calls?

A Yes, sir.

Q Thanks. That's all.

THE COURT: Redirect?

MR. KETCHMARK: I don't have anything, Your Honor.

THE COURT: Thank you, Ms. Rafferty. You may step

down.

MR. KETCHMARK: May she be excused?

THE COURT: Without objection, Ms. Rafferty is

excused.

(Witness excused.)

MR. KETCHMARK: Special Agent Arch Gothard, Your Honor.

ARCH GOTHARD, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Sir, would you, please, introduce yourself to the ladies and gentlemen of the jury?

A My name is Arch Gothard. It's G-O-T-H-A-R-D.

Q And, Mr. Gothard, how are you employed?

A I'm a special agent with the FBI.

Q How long have you worked at the FBI?

A Coming up on 13 years.

Q And what is your current duty or assignment at the bureau?

A I am currently assigned to the violent crimes, major offender squad.

Q And you're seated at the counsel table with another fellow FBI agent, is that correct?

A I am.

Q And we've mentioned his name but can you tell the jury,

again, what the other agent's name is?

A That's my co-case agent, Heath Janke. It's spelled J-A-N-K-E.

Q Special Agent Gothard, obviously, you and Special Agent Janke are the co-case agents in this matter. Have you been involved in this case since it's inception of the investigation?

A Yes, I have.

Q Would that include back in September of 2005?

A Yes.

Q And, Special Agent Gothard, are you aware of two subpoenas that were cut and issued to the Jackson County Detention Facility?

A I am.

Q Do you remember when those subpoenas would have been served?

A On September 15th and September 20th of 2005.

Q And do you remember, generally, what information was being requested?

A It was mainly jail calls but also information on several people that were, had come up in our investigation in terms of documentation from the detention facility.

Q And did you and Special Agent Janke take steps to serve those subpoenas on the Jackson County Detention Facility?

A We did.

Q And at some point are you and Special Agent Janke notified that Jackson County has information that's available to be picked up they deem to be responsive to the subpoena request?

A Yes.

Q And do you and Special Agent Janke make arrangements on a couple of days to go over to Jackson County and pick up those items?

A Yes. There are several days.

Q And on those days is there a particular person at the jail that you or Special Agent Janke would have contact with?

A Jackie Robinson.

Q And what is Mr. Robinson's title over at the detention facility, if you remember?

A He's a captain.

Q In total, Special Agent Gothard, do you know how many, well, did you pick up CDs?

A We did.

Q And do you know how many total CDs were given to you and Special Agent Janke pursuant to those two subpoenas request?

A It was 78. But one of those CDs was a, essentially, a recopy of one of the earlier ones that had been unreviewable, if that makes sense.

Q First time you got the CD, it wasn't functioning and so they recopied and gave you another copy of the information. Is that what you're saying?

A Yes.

Q And in addition to those 78 CDs, did you pick up or were you provided with any paper documents as well?

A Yes. We also received call detail relating to the CDs.

Q And, Special Agent Gothard, what would you and or Special Agent Janke have done with these items?

A Made arrangements to check them into our ELSUR Department.

Q Can you explain to the ladies and gentlemen of the jury what ELSUR is?

A Certainly. It's, basically, it stands for Electronic Surveillance and the ELSUR Unit is a facility within the FBI office where we have a couple of employees that are basically responsible for maintaining any electronic surveillance that we get pursuant to subpoenas or through other investigative means.

Q Do you know how the individuals who work in the ELSUR Department would categorize or log in information such as CDs that you would have brought to them?

A Yes.

Q Can you explain that to the ladies and gentlemen of the jury?

A Basically, Special Agent Janke and myself would fill out chain of custody forms which are on an envelope that the original CD is ultimately stored in. We turn those in to the ELSUR clerks. And the ELSUR clerks make copies of them for us and then seal the original CD. And they make a copy for

themselves to be stored with the original as well so that we can, in the event that the agent needs an additional copy later we can minimize cracking open the original envelope, if you will.

Q And are you familiar with what are called 1D numbers?

A I am.

Q Can you explain to the ladies and gentlemen of the jury what 1D numbers are at the Bureau?

A Each CD gets assigned a 1D number when it's checked into the ELSUR Unit.

Q Now, you mentioned that a working copy would be given to the agents, in this case you and Special Agent Janke, is that correct?

A Yes.

Q And would the copy be an accurate working copy of the original?

A Yes. The machine that duplicates it, it's my understanding it's making an exact copy of the original. They, basically, put in the original CD with three blank CDs and it spits out three copies of the original.

Q In this particular case, Special Agent Gothard, with the 78 CDs that were turned over, would it --would there be more than one call typically on a CD?

A Yes.

Q In some cases did the CD contain multiple calls and other

cases maybe not so many but there were various numbers of calls on the various CDs?

A That's correct.

Q And would those be reflected as individual tracks on a CD? Kind of like a CD one might put in the car, there's different selections?

A That would be a good example. They have individual track numbers for each call.

Q In addition, well, did you and Special Agent Janke as well as other people affiliated with the FBI take steps to review those calls on those 78 CDs?

A We did.

Q In addition to reviewing the calls were there steps taken by you and Special Agent Janke to have transcripts made of the various calls or tracks on the CDs?

A Yes.

Q And explain to the ladies and gentlemen of the jury the process or procedure that you would use in having those transcripts made?

A Basically, the CDs were given to several secretarial staff-type people within our office who listen to the calls and made a transcription. And then several people reviewed that transcription. Ultimately, Special Agent Janke and I did a final review of each of the transcriptions before it was complete.

Q And in the reviewing process it might be obvious but what's the purpose behind doing multiple reviews of the transcripts and comparing them to the calls?

A To get as accurate of representation of the content of the call as possible.

Q And before you and Special Agent Janke would sign off on a particular transcript, did you require that it, basically, be to your satisfaction that it was as accurate as you could get it?

A Yes, sir.

Q Now, in addition to, on the transcripts, well, let's do it this way.

Special Agent Gothard, I'm going to show you first what has been marked as Government's Exhibit 79. Do you recognize what is contained?

A I do.

Q What is that?

A This is a copy of 1D4.

Q By 1D4, is that where you were talking about the ELSUR assigning a particular 1D number?

A Yes.

Q When you say it's a copy of 1D4, what is actually contained in the sleeve marked as Government's 79?

A A compact disk.

Q Is there some writing on that compact disk?

A There is.

Q Is there a phone number?

A Yes. There's a phone number and dates.

Q And is there also a case number?

A Yes.

Q 44ACR or KC number?

A There is.

Q I'll have you look now at Government's Exhibit 79B and what is contained in 79B?

A 79B is a transcription of 1D4 track 3. So that would be one of the phone calls on 1D4.

Q And?

A That you just showed me.

Q And just so we're clear and so the jury has an understanding then because this is referenced as 1D in 79, that would be the track 3 of the phone call contained on this CD?

A Yes, sir, that's correct.

Q Is it your understanding that's why we tried to marry up the exhibit numbers to reflect the CD as being the parent exhibit with the sub-letter reflecting transcripts for the calls on that CD?

A That's my understanding of the methodology that was used for the exhibits.

Q In addition, well, in the transcript just using 79B as an illustration, would you agree with me that there is what

appears to be obviously the substance of the conversation?

A Yes, sir.

Q And what I'll refer to at the top is the header portion.

And, again, just for your purpose in looking at it, you see the header portion on that transcript?

A I do.

Q Using 79B as an example, do all of the transcripts that would have been generated in connection with this case contain a header similar to what is contained in the header on 79B?

A Yes.

Q And what information is contained in the header portion of these transcripts?

A It's the file number for this case, the telephone number that was called in this particular call, the location that the call came from, the date the call was placed, the date this call was transcribed, the 1D number and track number and then the participants in the phone call.

Q And with respect to the information contained in the header, would some of that information in terms of the telephone number, the location, the date of intercept, would that all be information that would have been provided to you in the call detail records that Ms. Rafferty just testified about?

A As to the telephone number and the date of intercept, that's correct. I'd have to look at one of the detail logs. I'm not positive it says Jackson County Detention Center at the

top of it but, obviously, Special Agent Janke and I knew all the calls were placed from the jail.

Q Just so it's clear, it doesn't say what particular pod or part of the detention facility but you knew that the only thing subpoenaed were calls from that location, correct?

A Yes, sir.

Q Special Agent Gothard, with the understanding, kind of using 1B or excuse me the Exhibit 79 as the example, I want to show you a few additional ones?

A Okay.

Q Did you review these last night in anticipation of, obviously, testifying about them?

A I did. Let me just flip through them quickly.

Q Have you had a chance to review those?

A Yes, sir.

Q And, again, so we're clear on the record Government's

Exhibit 80, does that appear to be the CD that would have been assigned in ELSUR 1D5?

A It does.

Q And in 80a, does that appear to be the transcript that would be reflective of call 3 on 1D5?

A Yes, track 3.

Q Government's Exhibit 81, is this a copy of the CD that would be contained in ELSUR 1D6?

A Yes, it is.

Q And in 81a, is this a transcript as it relates to track 3 of the call captured on 1D6?

A It does.

Q And 81b, is this the transcript of the call that's reflective of track 4 of 1D6?

A It is.

Q Government's Exhibit 83, is this a copy of the CD that is contained in ELSUR 1D32?

A Yes.

Q And 83d, is this a copy of the transcript of track 6 of the call that's contained on 1D32?

A It is.

Q Exhibit 93, is this a copy of the CD that's contained in ELSUR 1D42?

A Yes.

Q And in 93B is this a transcript of track 2 of the call contained in 1D42?

A It is.

Q Government's Exhibit 94, is this a copy of the CD that is contained in ELSUR Department as 1D43?

A Yes.

Q And, again, or lastly, in 94a is this a transcript of the call that is contained in 1D43, track 2?

A Yes, sir.

MR. OSGOOD: Last track number?

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MR. KETCHMARK: Last track number was 1D43, track 2.
One moment, Your Honor.
That's all I have, Your Honor.
I'm going to give Mr. Osgood-THE
COURT: Cross-examination?
MR. OSGOOD: No questions, Your Honor.

CROSS-EXAMINATION

BY MR. ROGERS:

Q Sir, did you and your colleague, Mr. Janke, listen to all of these conversations?

A There were some CDs that contained jail calls that were prior to the homicide and those calls were not listened to.

Q Okay. None of those involving Mr. Sandstrom, obviously?

A Well, I haven't listened to any of those calls, so I don't know if there were any calls relating to Mr. Sandstrom prior to that time or not.

Q When you went there with the subpoena, was your understanding that those phone numbers listed on the subpoena were numbers associated with Mr. Sandstrom and people that he would be expected to talk to, correct?

A The phone numbers on the subpoenas all came out of our prior investigation so out of our case file would be and the police department's case file so they were related to people that had come up during the investigation.

Q Is that Mr. Sandstrom, Mr. Sandstrom's sister,

Mr. Sandstrom's parents, Mr. Sandstrom's girlfriend?

A I'm not positive whether all of those would have been included in what was on the calls but, yes, that would be good examples.

Q There were a lot of phone calls that when you did listen to them did, in fact, seem to involve Mr. Sandstrom, correct?

A Yes.

Q And do you have any concept of how many hours of conversations involving Mr. Sandstrom were captured on all of those CDs?

A I don't know exactly, no.

Q Be fair to say it's at least 50 hours of him talking?

A I would say it would be more than that probably. It was a lot.

Q Okay. And by the way you indicated you're a special agent with the Federal Bureau of Investigation, correct?

A Yes, Mr. Rogers, I am.

Q Is there anybody who is an agent of the Federal Bureau of Investigation who is not special or is that the title all FBI agents have?

A All agents have the title, special agent, Mr. Rogers.

Q Okay. Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. KETCHMARK:

Q Special Agent Gothard, with respect to the CDs you talked about prior to the homicide, was that information provided by Jackson County but not necessarily requested pursuant to the subpoena?

A Yes. The subpoena requested from March 9th forward and they provided materials in addition to that -Q

And just so we're clear -A

--time frame.

Q Just so we're clear and the jury understands, it's number dialed. It's not particular inmate. It's the number that's being dialed that the capture is coming back on, correct?

A That's correct. In order to get a potential phone call captured, we actually have to give the jail the phone number that was called, not the number at the jail. If that makes sense.

Q It does. And what I'm getting at is there were a substantial number of hours of calls involving Mr. Sandstrom, Defendant Sandstrom, correct?

A Yes.

Q There were also calls that were reviewed that didn't contain Defendant Sandstrom or Defendant Eye for that matter as a party but because it was another inmate who was calling that number, correct?

A That is correct.

MR. OSGOOD: I do have one question, if I'm permitted

to do so since I passed the first time.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. OSGOOD:

Q The exhibits we went through, Agent Gothard, do we know which ones might not have had the preamble on it when the machine wasn't working?

A I can't speak to that effect, Mr. Osgood.

Q I don't mean all of them but just the ones we're going to play here in court?

A I don't know that.

Q Not even that little bundle?

A No. I didn't check that.

Q All right.

THE COURT: Mr. Rogers?

MR. ROGERS: Nothing further, Your Honor.

THE COURT: Thank you, Agent Gothard. You may step down.

(Witness excused.)

MR. KETCHMARK: May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: This is going to require the court system.

THE COURT: Well, I think that everybody can see and hear except the witness and me. Does the witness need to see?

MR. GIBSON: Yes.

MR. KETCHMARK: We have photos that haven't been admitted as well. I think they're going to be viewed by the witness.

THE COURT: Okay. All right. Let's take a break and see if we can get the IT people up here to fix it.

Oh, wait. Before you leave, is there an agreed or stipulated transcript --to of these exhibits that effect the instruction?

MR. KETCHMARK: We've given them copies of the -

MR. OSGOOD: The law is pretty clear. They get to use the transcripts. I don't know of any blatant --as long as the evidence is what they hear and not what they read, I have no objection to the use of the transcripts.

MR. ROGERS: He said it.

THE COURT: Okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: We are going to need the screens from this point forward so we're going to have to take a recess and rather than have you sit here and watch a technician work on the screen, I'll let you go to the jury room and rest for a few minutes. We'll bring you back as soon as the equipment is up and running again.

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Please don't discuss the case. Keep an open mind.
We'll call you back.

(Recess)

THE COURT: All right. Let's see if we have a jury
now. If so, bring them in.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Okay. I think we're repaired, folks. We're going to

try to go straight through until five so if you get
uncomfortable, let me know. We'll take a break. Otherwise, we
won't.

MR. GIBSON: Government calls Kristina Chirino.

KRISTINA CHIRINO, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GIBSON:

Q Good afternoon, Ms. Chirino.

A Good afternoon.

Q And, Ms. Chirino, it's real important everybody be able to
hear you. See that microphone in front of you? It's
stationary. You're going to have to move a little bit closer
to the microphone. I'm still going to need you to keep your
voice up. Okay?

A All right.

Q All right. Ma'am, the gentleman you walked in with, he is

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your attorney?

A Yes.

Q Mr. Hall?

A Yes.

Q Was he specifically appointed to represent you relating to

this matter?

A Yes.

Q Ma'am, how old are you today?

A Twenty.

Q And where did you grow up?

A I grew up in California and then when I was about 8, I moved to Kansas City with my mom.

Q When you were 8?

A Uh-huh.

Q And since you were 8, have you lived in Kansas City?

A Yes.

Q And in March of 2005, were you living in Kansas City then?

A Yes.

Q Where were you living then?

A 337 Van Brunt.

MR. GIBSON: Could I have the witness shown Exhibit

9A, please?

BY MR. GIBSON:

Q Take a look at the screen in front of you. Do you

recognize that location, ma'am?

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A I don't see nothing.

Q I'm sorry?

A I don't see nothing.

Q Let's do it the traditional way. Like you to take a look

at what was marked as 9A. Do you recognize that, ma'am?

A Yes.

Q And what is that a photograph of?

A Of my house where I used to live at.

Q And does that house also have a basement?

A Yes.

Q Is that where your bed was?

A Yes.

Q I'd like to show you what has been marked as 9B. Do you

recognize that?

A Yes.

Q What is that?

A That's the basement, the door to the basement.

Q The door to the basement from the outside?

A Yes.

MR. GIBSON: Your Honor, at this time I would offer

9A and B into evidence.

THE COURT: Without objection, 9A and 9B are

admitted.

BY MR. GIBSON:

Q Now, do you know Gary Eye?

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A Yes, I do.

Q How long have you known Gary Eye?

A Since we were little.

Q How old were you about when you met Gary Eye?

A I'd say about 9 or 10.

Q Do you see Gary Eye in the courtroom?

A Yes.

Q Could you indicate where he is, please, ma'am?

A I can't really see. I need glasses.

Q You're not wearing your glasses, ma'am?

A I don't have any.

Q Do you see the individual standing?

A Yes.

Q Is that Gary Eye?

A Yes.

Q You've known him since you were 8?

A Yes.

Q Did you also know Steven Sandstrom?

A Yes.

Q Do you see Steven Sandstrom in the courtroom?

A Yes.

Q Where is Steven Sandstrom?

A Right there.

Q Indicating by point of the finger the Defendant Steven Sandstrom.

How old were you when you first met Steven Sandstrom?

A Seventeen.

Q Did you ever date Steven Sandstrom?

A Yes.

Q Were you dating Steven Sandstrom in March of '05?

A Yes.

Q And approximately when did that relationship start in reference to March of '05?

A Probably about the beginning of March.

Q Beginning of March?

A Yeah.

Q Now, while you were involved with Mr. Sandstrom --Is that a relationship that's ongoing? Are you still involved with Mr. Sandstrom?

A No.

Q While you were involved with Mr. Sandstrom did you ever have occasion to live with him?

A Yes.

Q When did you live with him?

A After he got out of his 20-hour investigation.

Q When you say his 20-hour, you mean the 20-hour hold?

A Yes.

Q And are you referring to a 20-hour hold that relates specifically to the death of William McCay, that case?

A Yes.

Q After that, you lived with him?

A Yes.

Q Where did you live with him when you were living with him?

A In Westport.

Q And how long did you live with him in Westport?

A A couple of weeks.

Q And did you ever live at his parents' home?

A Yes.

Q And where is that?

A On 1106 Ewing.

Q And how long did you live on Ewing?

A I was just there for, say, a month.

Q When you were staying on Ewing Street was Mr. Sandstrom in or out of custody?

A He was already locked up.

Q Now, while Mr. Sandstrom was being detained, did you write letters to him?

A Yes.

Q Did he write letters to you?

A Yes.

Q Did he call you on the phone?

A Yes.

Q Did you take those calls?

A Yes.

Q Did you talk with him on the phone?

A Yes.

Q Now, did you learn of the McCay homicide before Stevie's 20-hour hold?

A Yes.

Q And how was it that you learned about the homicide prior to the 20-hour hold?

A It was at my house.

Q At your house on Van Brunt?

A Yes.

Q And were you in a particular room?

A The basement.

Q In the basement? And who was in the basement?

A It was me, my brother, my cousin Nessa, Christina Stanley, my brother's friend David Eagle, his sister and his girlfriend.

Q And when you say Nessa, is that Nessa Deleon?

A Yes.

Q And is she related to Vincent?

A Yes.

Q Do you know Vincent?

A Yes.

Q How do you know Vincent?

A He's my cousin.

Q Do you know Regennia Rios?

A Yes.

Q How long have you known Regennia Rios?

A Since my cousin was with her. I think since he was 15.

Q Did you know Regennia before you met Steven Sandstrom?

A Yes.

Q Now, at some point while you were in the basement with those individuals that you identified, did Steven Sandstrom come to the house?

A Yes.

Q Did he come alone or was he with someone?

A He was alone.

Q At some point in time did anyone else come to the house?

A Gary.

Q Gary Eye?

A Yes.

Q How about Regennia Rios?

A Yes.

Q Was this daytime or night time?

A It was starting to get night time.

Q And was this close in time to the date of the homicide?

A I would think so, yes.

Q And at the time that you all were in the basement, describe the basement for us a little bit. We already understand there's a bed down there, right?

A Yes.

Q Okay. Is there another bed?

A Yes.

Q Is there a T.V.?

A Yes.

Q Who all stayed down there?

A Me and my brother.

Q And your brother's name is Jonathan?

A Yes.

Q Now, at the time that these individuals all were in your basement, was anyone doing drugs?

A Yes.

Q Were you doing drugs?

A Yes.

Q What kind of drugs?

A Methamphetamine.

Q Was Christina Stanley doing drugs?

A I think so.

Q How about Regennia Rios?

A Yes.

Q How about Nessa?

A No.

Q How about Jonathan?

A No.

Q Was Gary Eye doing drugs?

A Not at the time.

Q Not at that time?

A No.

Q How about Steven Sandstrom?

A Yes.

Q What kind of drugs?

A Methamphetamine.

Q And when Steven Sandstrom came over to the house, about how long after that was it that Gary Eye and Regennia Rios came to the house?

A An hour or so later.

Q And when they came over to the house, where were you all in the basement? Can you tell us how you were situated?

A My brother was right here, my bed was right here. Me, Regennia, and Nessa, Christina Stanley were on my bed.

Q On your bed?

A And my brother and his friends were over here.

Q And where was Mr. Eye?

A Who?

Q Mr. Eye?

A He was standing in front of us.

Q Standing in front of you?

A Yes.

Q Approximately, how far away from you was he?

A About five or six feet.

Q How about Mr. Sandstrom? Where was he in relation to you?

A I think he was sitting next to me.

Q How about Ms. Rios?

A She was right here, too. She was on the bed, laying down.

Q Now, these two beds that are in the basement, is there anything that separates them?

A There was this wall-like between the beds.

Q Does the wall come all the way across the room?

A No.

Q Can you see one bed from the other bed?

A Yes.

Q Approximately how far apart are the beds?

A Less than five feet.

Q Would it be more than two feet?

A Yes.

Q Somewhere between two and five?

A Yes.

Q Now, how is it that you first learned about the homicide?

A When Gary came to the house, I guess you would say he was bragging.

Q What was his tone of voice? Was it loud or was it soft?

A I really don't remember. Just like normal.

Q Was he whispering or conversational tone?

A Conversational.

Q What was he saying?

A He was saying something about he killed some black man and he --something about my hood on my time.

Q Did he use the word black man or the words black man?

A Nigger.

Q He said nigger?

A Yes.

Q N-I-G-G-E-R?

A Yes.

Q Now, amongst your friends that were in the basement that day, have you ever heard the phrase nigga, N-I-G-G-A?

A Yes.

Q Is there a difference?

A Nigga is like a friend and nigger is just being racial.

MR. OSGOOD: Objection. May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. OSGOOD: I'm going to ask for a mistrial. It goes to the heart of the issue. We have had a motion in limine, order grants it. Told them not to use the word racist. She just gave her opinion and my client is a racist. It goes to the heart of the issue. I built my entire case around, at least, half of it showing that he isn't. And they've had this witness quite awhile and should have talked to her about it. And she just blurted out the conclusion.

MR. GIBSON: That's not what she said. She was asked to explain the difference between the two terms. She said the nigga is a familiar term, a friendly term for associates and

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nigger is a racist term. She didn't express an opinion as to anyone using that word, what their intent is by it. She was trying to describe the difference between the two terms and that's all.

MR. OSGOOD: It isn't a race term. It's used interchangeably.

MR. GIBSON: That's his argument.

MR. OSGOOD: That's a question of fact.

THE COURT: Motion for mistrial is denied. I don't think she was giving her opinion that Mr. Eye is a racist. I think she was giving her opinion that the use of that word is racist in origin. So that will go in with all the other evidence.

MR. OSGOOD: Can we clean it up maybe by making it clear that that's her opinion?

THE COURT: You can do that on cross-examination.

MR. OSGOOD: All right. Are they on notice that if she goes on and says Mr. Eye is a racist, they're in trouble.

THE COURT: I have ruled on it, that the opinion testimony about whether a person is racist or not is excluded. Now, beyond that, I'm not prepared to say what I'll do if it happens but -

MR. GROMOWSKY: Your Honor, for the record Mr. Gibson started saying, talking before we said we concurred in the recommendation for mistrial.

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THE COURT: Your motion for mistrial is likewise

denied.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. GIBSON: May I continue?

THE COURT: You may.

BY MR. GIBSON:

Q N-I-G-G-E-R, nigger, is that derogatory?

A Yes.

Q Would you use that term in reference to a friend of yours?

A No.

Q And the word that you heard Gary Eye use, was that

N-I-G-G-E-R?

A Yes.

Q Now, are you familiar with the term, smoked?

A Yes.

Q Have you heard that term used?

A Yes.

Q Did you hear it that evening?

A Yes.

Q Who said smoked?

A Gary.

Q What was the context in which he used the term, smoked?

What did he say?

A He smoked his ass.

Q And that was in reference to the African-American?

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A Yes.

Q What did he mean by hood? What did you understand that to be a reference to?

A I really don't know. I guess where he grew up at.

Q Is that in the northeast?

A Yes.

Q Is that where you grew up?

A Yes.

Q Is that how you knew Gary, from growing up in the northeast?

A Yes.

Q Now, when you hear what Gary said, what do you do, if anything?

A I was just kind of shocked.

Q And what happened next?

A After awhile he left. Stevie stayed with me. And the cops came not too long after.

Q Is that on another day or was that -A

I think that was the same day.

Q Same day?

A Yeah. That's when the cops came down there.

Q We'll get to that in a second. When Gary left or -Strike that.

Let's back up a second. When Gary Eye made that statement about the nigger in his hood, where was Steven

Sandstrom in relation to Gary at that point?

A Gary --Could you repeat the question?

Q When Gary made that statement, how far away is Stevie from Gary?

A He was sitting right here on the bed next to me.

Q Next to you? And when Stevie made that statement, I mean, excuse me, when Gary made that statement did Stevie say anything?

A No.

Q After Gary left, did you discuss the murder with Stevie?

A Yes.

Q Did you ask Stevie any questions about it?

A All he told me is that Gary shot somebody.

MR. OSGOOD: May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. OSGOOD: I thought I just heard her say, he asked her if she said Gary shot somebody, that Stevie said. That's a Bruton issue.

MR. GIBSON: Not a Bruton issue.

MR. OSGOOD: Clearly I can't cross-examine Mr. Sandstrom as saying that. It's the basis of our motion, motion for severance and things we have argued from the beginning of the trial.

THE COURT: How is it not a Bruton issue?

MR. GIBSON: It's not a Bruton issue because it's not in the testimony. It's not something under interrogation by police detectives, not something elicited by authorities in response or in preparation of an interview that was to be used later in order or prosecution or investigation. It's none of those things.

MR. OSGOOD: Hearsay also and not admission against interest. It's a statement inculcating my client. So it's not admissible as an admission against interest. It's not in furtherance of any conspiracy. May well have been made around the course of the conspiracy but did not in any way change the conspiracy. I don't know what hearsay exception it would come in under and more importantly I can't cross-examine him on it.

MR. GIBSON: In order to determine whether or not it's a statement against interest, the context in which the statements made has to be examined. Now the evidence has established that Steven Sandstrom is with him that night. And if the homicide happened while Steven Sandstrom was with him there is, indeed is culpability and therefore the statement would be against his interest.

MR. OSGOOD: It's just the opposite. It's putting it off on my client. It's the classic example of when something is not a statement against interest when you say I was driving a getaway car. I wasn't in the bank. Clearly there is going

to be argument you were in the bank. So it's not a statement against interest. It's exculpatory. No statement, in essence.

THE COURT: Well, I'm going to overrule the objection. It's not, it is not testimonial in nature. And I think, I don't think it's exculpatory. I think it's more accusatory than exculpatory but nevertheless I'm going to overrule the objection.

MR. OSGOOD: As to hearsay as well?

THE COURT: Yes. Step back.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Counsel, step back up, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: On further consideration I think it is hearsay. I'm not aware of any exception that would make it admissible. Can you think of anything?

MR. GIBSON: I think it's a statement against interest. I'm not going to argue.

THE COURT: It's not a statement against his interest. So I'm going to sustain the objection to the hearsay objection. I'll instruct the jury to disregard it.

MR. GIBSON: I also anticipate the defense is going to want to go into that on cross. So if we're striking it now.

THE COURT: If it's hearsay for the government, it's hearsay for Sandstrom, too.

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MR. GIBSON: Okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: I have sustained the objection to the last question and answer. You are instructed to disregard it.

Mr. Gibson?

MR. GIBSON: Thank you, Your Honor.

BY MR. GIBSON:

Q Now, were you present when Steven Sandstrom was taken into custody?

A Yes.

Q And did that take place on St. Patrick's Day 2005?

A Yes.

Q Where did that happen?

A In the basement.

Q In the basement of your house?

A At my house.

Q Who was present at the time in the basement of your house?

A Christina Stanley, Nessa, my brother, me and Stevie.

Q And was it daytime or night time?

A It was night time.

Q Dark outside?

A Yes.

Q And, approximately, or in relation to when the police

arrived, how long had Steven Sandstrom been at your house?

A For a couple of hours.

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Q Couple hours?

A Yeah.

Q When Steven Sandstrom had arrived at your house, was it still light out or dark out, if you recall?

A It was light out.

Q It was light out?

A Yes.

Q Now, how was it that you first noticed that the police were there?

A My sister came downstairs and told me.

Q How old was your sister at the time?

A Twelve.

Q And did she come in from an interior door, a door inside the house, or did she come in from the door to the outside from the basement?

A She came in from the upstairs.

Q From the upstairs of the --inside the house?

A Yes.

Q And did you see anything after she said that the police were there?

A They came to the backdoor and had flash lights.

Q Flash lights?

A Yes.

Q And you saw the lights?

A Yes.

Q Now, at some point did the police come into the basement?

A Yes.

Q Now, before that, before the police came into the basement, did you see Steven Sandstrom do anything?

A Yes.

Q What did he do?

A He hid the gun.

Q When he first arrived at your house, did you know he had a gun with him?

A No.

Q And when he hid the gun, did you see that?

A Yes.

Q When he went to hide the gun, did he say anything prior to hiding it?

A He just kind of panicked and said he needed to hide the gun.

Q And did you see where he got the gun from?

A Yes.

Q Where did he get it from?

A From right here.

Q Indicating in your front around the waist area?

A Yes.

Q Did he have to reach inside something?

A No.

Q And had you seen that gun before?

A Yes.

Q Where had you seen it before?

A We were in a stolen car together.

Q You were in a stolen car together? Who is we?

A Me and Stevie.

Q And do you know the difference between a revolver and an automatic?

A Yes.

Q What kind of gun was this?

A It was a revolver.

Q And when Stevie panics, what happens next? What do you see?

A He went to put the gun in the closet and I seen him reach up.

Q And where was this closet in your basement?

A It was right there by my bed.

Q Right by your bed?

A Yes.

Q Was there a door on the closet?

A No.

Q Where did you see him put it?

A I seen him put it on top.

Q On top of anything?

A I don't know if it was on top of something. I just seen him reach up.

Q Now, who was still in the basement when Stevie put the gun up?

A Me, Christina Stanley, my brother and Nessa.

Q And that's Jonathan?

A Yes.

Q Now, what happened next?

A The cops came downstairs in the basement and they took down all our names, ran our names through. And Stevie tried to give them a false name and the cop knew that it was Steven Sandstrom and they arrested him.

Q And then what happened? Did they take him out of the house?

A Yes. And they started searching for a gun.

Q Did they find anything?

A No.

Q Now, after Steven Sandstrom is taken from the house, do you stay behind in the basement?

A Yes.

Q Does Stanley stay behind?

A No, they left.

Q Stanley leaves?

A Yes.

Q How about your brother, does he stay?

A Yes.

Q How about Nessa?

A She left, too.

Q She left? Now, at some point does somebody come to your house after Stevie has been arrested?

A Yes.

Q About how long after Stevie has been arrested does somebody come to your house?

A I'd say 20, 30 minutes.

Q And who is it that came to your house after Stevie was arrested?

A Stephanie Sandstrom.

Q And did you know Stephanie Sandstrom?

A Yes.

Q How did you know Stephanie Sandstrom?

A Through her brother and I met her before through my cousin, Nessa.

Q Who did you know first Stephanie or Steven?

A Stephanie.

Q And when Stephanie came to the house, what happened?

A She came and told me that my brother left the gun and she needed to come take it and get rid of it.

Q Where were you when you had this conversation?

A Upstairs at the front door.

Q And what happened next?

A Me and Stephanie went downstairs and we were looking for the gun and we found the gun in a box in the closet.

Q Where was Jonathan?

A He followed us downstairs.

Q Was the gun where you thought it was when you started looking?

A No.

Q Was it still in the closet?

A Yes.

Q Where in the closet was it?

A It was in a box on the floor.

Q About how long did it take you to find it?

A We were sitting there about ten minutes trying to look up, reach around, couple minutes, then we found it in a box.

Q And then what happened?

A Stephanie took it.

Q And do you know what happened to it after that? Did you ever see it again?

A No.

Q Now, at some point Stevie was released, is that correct?

A Yes.

Q And is that when you started to live with him?

A Yes.

Q Did you stay in Kansas City?

A Yes.

Q The entire time?

A No.

Q Did there come a time when you left Kansas City?

A Yes.

Q Where did you go?

A Ozarks.

Q Why did you go to the Ozarks?

A To run.

Q What were you running from?

A From --him, from the murder case.

Q The murder case?

A Yes.

Q Stevie was with you?

A Yes.

Q How long did you stay in the Ozarks?

A Three weeks.

Q Then what happened?

A We came back into town.

Q And at some point Stevie was taken into custody again, is that correct?

A Yes.

Q Did you end the relationship with him when he was taken into custody the second time?

A After awhile, yeah.

Q After awhile?

A (Nods head yes.)

Q How long did you continue to see Stevie after he had been

detained the second time?

A I'd say for about a year.

Q And while you were still involved in that relationship, I believe you indicated to us already that you had talked to him on the phone and wrote letters to him during that time period?

A Yes.

Q Now, do you remember first being approached about this homicide investigation by FBI agents in April of '05?

A Yes.

Q Where did you first come into contact with the FBI agents?

A On 1106 Ewing.

Q And whose address is that?

A Stevie's parents' house.

Q Did the agents tell you why they were there?

A Yes.

Q Did they give you something?

A A subpoena.

Q Is that a grand jury subpoena?

A Yes.

Q Did you want to see the agents?

A No.

Q Did you want to talk about what had happened?

A No.

Q Did you agree to the interview by the agents on that occasion?

A Yes.

Q At that time?

A Yes, at that time.

Q Did you tell them everything you knew?

A No.

Q Were you advised that you would have to appear at a grand jury?

A Yes.

Q Did you want to appear at the grand jury?

A No.

Q Were you protecting anybody or trying to protect anybody?

A Yes.

Q Who were you trying to protect?

A Stevie.

Q Were you in love with him at the time?

A Yes.

Q Did you show up for your grand jury appearance?

A Yes.

Q Now, at the time that you appeared in front of the grand jury, were you appointed counsel?

A What does that mean?

Q Did you get a lawyer?

A Yes.

Q Is that Mr. Hall?

A Yes.

Q Now, were you interviewed in anticipation of going to the grand jury?

A Yes.

Q In other words, did they talk to you before you went to the grand jury?

A Yes.

Q And did you enjoy that experience?

A No.

Q Did you want to be interviewed?

A No.

Q Did you initially tell the investigators about that conversation in your basement?

A No.

Q Relating to Gary?

A No.

Q Did there come a time when you did talk about that conversation?

A Yeah, after awhile.

Q And then did you try to take it back?

A Yes.

Q Now, how many times were you at the grand jury, do you remember?

A I think twice.

Q And on the first occasion, was that in July of '05? Does that sound about right?

A Yes.

Q And on that first occasion after --before going into the grand jury when you tried to take back what you had said about that information about the conversation in the Chirino basement involving Gary, did you discuss with the investigators coming back a second time to appear at the grand jury?

A Yes.

Q And were you advised, were you told why that was?

A Yes.

Q Was it explained to you that no one wanted to put you in front of the grand jury if you were going to commit perjury?

A No. I think so, yes.

Q You were told nobody wanted you to lie in front of the grand jury, is that right?

A Right.

Q You and your attorney agreed to come back on another occasion to talk about the basement conversation, is that right?

A Yes.

Q Now, when you went into the grand jury on the first occasion, did you tell the grand jury about the gun?

A I don't remember if I did or didn't.

MR. GIBSON: May I approach?

THE COURT: You may.

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BY MR. GIBSON:

Q Showing you your grand jury transcript from July 19th of 2005. Have you seen that before?

A Yes.

MR. GIBSON: Mark this as Government's Exhibit 33 for identification purposes only.

BY MR. GIBSON:

Q Like to direct you to page 8 and just ask you to read that to yourself.

A Yes.

Q Does that refresh your recollection?

A Yes.

Q Did you tell the grand jury about the gun on your first

grand jury appearance?

A Yes.

Q Told them what you told us today?

A Yes.

Q Now, when you came back, would that have been September of 2005? Does that sound about right?

A Yes.

Q And when you came back, you came back again with your attorney?

A Yes.

Q And did you appear again in front of the grand jury?

A Yes.

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Q Did you tell the grand jury about the conversation in your basement involving Mr. Eye?

MR. OSGOOD: Objection. Could he ask something that's not so leading?

THE COURT: Leading objection is sustained.

BY MR. GIBSON:

Q What, if anything, did you say to the grand jury when you came back in September of '05?

A I told them about the conversation in the basement.

Q Did you tell the grand jury what you told us today?

A Yes.

Q Now, did you recently have a court case involving someone you had been seeing recently?

A Yes.

Q And did you meet with us last week in anticipation of coming to court today?

A Yes.

Q And at the time that you met with us, was that case still open?

A Yes.

Q Was there an active warrant for you on that case?

A Yes.

Q Do you have a court date on that case now?

A Yes.

Q Is that court date in June?

A Yes.

Q And was that court date set up as a result of a call by the government to have the warrant withdrawn and a new court date assigned for you?

A Yes.

Q Other than having a new court date assigned for you, did the government do anything else in reference to that case?

A No.

Q Does that have anything to do with this?

A No.

Q Is that case still open as you're sitting here?

A Yes.

Q Now, Ms. Chirino, you indicated that while you were still seeing Mr. Sandstrom and you were receiving his calls or that you had received his calls and you would talk to him from time to time, is that correct?

A Yes.

Q Okay. I'm going to ask you to listen to some conversations and I'm going to ask you to identify the voices you hear on those conversations.

A All right.

Q Okay? Going to start with 79B1. That is 79B1.

THE COURT: Just a moment. All of those CDs have not yet been offered or admitted.

MR. GIBSON: Well, they're going to be offered at

this time after she identifies the voices on the recorded conversations.

THE COURT: Step up, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: We'll stipulate to that.

THE COURT: I just wondered whether we're going to get into the substance of the CDs before they're admitted.

MR. GIBSON: Well, I don't think there's any objection about that or disagreement as to the contents, Your Honor.

THE COURT: You guys don't have any problems? Let me create one for you.

MR. OSGOOD: We may. As it's playing I may ask you to stop it on some particular objection that comes to mind but we don't have any authentication problem, no problem with the CDs matching the transcripts and usual procedures, we do. If I jump up and say, please stop it, I'd like to address something.

MR. GIBSON: If you like, we could move for admission

now.

THE COURT: If there's no objection to the authenticity of the tape, the identification of the speakers or the accuracy of the transcript, let's go ahead and admit those then we won't have to stop.

MR. GIBSON: We'll move for admission now on the

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transcripts identified by Agent Gothard during this testimony.

THE COURT: Those would be 79, 79B and B1, 80, 80a,

81.

MR. GIBSON: 81a, 81b, 83, 83d, is that right?

MR. KETCHMARK: I think also in the 90 series.

THE COURT: 93 and 93b, 94 and 94a will all be admitted without objection.

MR. OSGOOD: Now, I'm not agreeing the transcripts are admitted to be substantive evidence to go back to the jury.

THE COURT: No, they're not admitted as substantive evidence.

MR. ROGERS: Also, Your Honor, this is with the notion the excerpts are all that are going to be played even though the entire CD -

MR. GIBSON: Yes. The excerpts are specifically identified by a sub-number. In other words 79A1 will be the excerpt that will be played. 79B3 would be the excerpt that would be played. Those will be specifically identified. We have edited. We're not playing the entire -

That's what we distributed at the beginning of the voir dire process last week. Those transcripts were all identified and the portions were identified.

MR. OSGOOD: You're going to give that instruction?

THE COURT: I'm going to give the instruction on the

taperecording. Now, when you're ready to pass out the

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transcripts -

MR. GIBSON: The transcript is synced with the audio. In other words, we can display the audio now. Well, the display, the transcript along with the audio and they're synced to play at the same time.

THE COURT: I'll give both of them now.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Instruction No. 9. Ladies and gentlemen, you are about to hear taperecordings of conversations. These conversations were legally recorded and you may consider the recordings just like any other evidence.

Instruction No. 10. There will be typewritten transcripts of the taperecordings that you're about to hear. The transcripts undertake to identify the speakers engaged in the conversations. You will be permitted to have the transcript for the limited purpose of helping you follow the conversations as you listen to the taperecording and also to help keep track of the speakers. Differences in meaning between what you hear in the recording and what you read in the transcript may be caused by such things as the inflection in a speaker's voice. It is what you hear, however, not what you read that is evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide,

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based upon what you have heard here about the preparation of the transcript and upon your own examination of the transcript in relation to what you hear in the taperecording.

If you decide that the transcript is in any way incorrect or unreliable, you should disregard it to that extent.

Mr. Gibson.

BY MR. GIBSON:

Q Ms. Chirino, we're going to play for you a portion of a recorded conversation further identified as 79b1 for exhibit purposes in today's record. This is a recorded conversation from March 18th of 2005 originating at the Jackson County Detention Center.

(The tape is played.)

MR. GIBSON: Pause for a second.

BY MR. GIBSON:

Q Ms. Chirino, do you recognize the female voice on that conversation?

A Yes.

Q Whose voice is that?

A Mine.

Q Do you recognize the male voice on that conversation?

A Yes.

Q Whose male voice is that?

A Stevie Sandstrom.

MR. GIBSON: Please continue with 79b1.

(The tape is playing again.)

BY MR. GIBSON:

Q Now, Ms. Chirino, have you heard the reference "strap" before?

A Yes.

Q What does strap refer to?

A A gun.

Q I'm sorry?

A A gun.

Q A gun?

A Yes.

Q I'd like to play for you 79b2 from that same conversation on March 18th of 2005 originating at the Jackson County Detention Center.

(The tape is playing.)

BY MR. GIBSON:

Q Ms. Chirino, whose voice said, hum, for 500 I can get out and I've got a spot they won't find me at? Who said that?

A Stevie Sandstrom.

Q And the female voice that we heard in that exchange, whose voice was that?

A Mine.

Q I'd like to play for you 79b3 from that same conversation on March 18th of 2005.

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(The tape is playing.)

BY MR. GIBSON:

Q Now, Ms. Chirino, I'd like to play for you a conversation identified in Government's Exhibit list as 79c1 from CD ID4, track 4, conversation also taking place on March 18, 2005.

(The tape is playing.)

MR. GIBSON: Pause it, please.

BY MR. GIBSON:

Q Whose male voice do you hear on that?

A Stevie Sandstrom.

Q And whose female voice do you hear in that conversation?

A Mine.

MR. GIBSON: Can we start it over, please?

(The tape is playing.)

MR. GIBSON: We're still on 79b2. Or strike that.

79c1. Excuse me.

(The tape is playing.)

BY MR. GIBSON:

Q Ms. Chirino, whose voice said, it's --it's --it could be one of two things and don't say nothing on this phone because they're listening to it. Who said that?

A Steven Sandstrom.

Q And whose voice said, yeah, I know. I know. I know. I know?

A Me.

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Q Ms. Chirino, I'm going to play for you a recorded conversation from what the government has marked as 81a1 on our exhibit list, also identified as CD 1D6, track 3 recorded April 12, 2005 from the Jackson County Detention Center.

(The tape is playing.)

MR. GIBSON: Pause it, please.

BY MR. GIBSON:

Q Ms. Chirino, whose voice said, no, I think fucking they questioned Regennia and Vincent in there so I think and Christina Stanley, I think every one of them motherfuckers, the cop, the way the cops was talking to me. Who said that?

A Steven Sandstrom.

Q And whose voice said, I think all of them fucking snitches -

MR. OSGOOD: Objection, Your Honor. He's reading the transcript. He can ask if she recognizes it.

THE COURT: Just ask if she recognizes the voice.

BY MR. GIBSON:

Q Whose female voice was on that?

A Mine.

MR. GIBSON: Please continue.

(The tape is playing.)

BY MR. GIBSON:

Q Now, Ms. Chirino, I'm going to play for you a recorded conversation the government has identified on its exhibit list

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as 81a1 which is CD ID6, track 3. We just did that one.
Excuse me. 81b1 which is also CD ID6, track 4, also recorded
on April 12 of 2005.

(The tape is playing.)

MR. GIBSON: Pause it, please.

BY MR. GIBSON:

Q Whose male voice is on that recording?

A Steven Sandstrom.

Q Who is the female voice on that recording?

A Mine.

MR. GIBSON: Please continue.

(The tape is playing.)

BY MR. GIBSON:

Q Now, Ms. Chirino, I'm going to play for you a recorded
conversation identified on the Government's exhibit list as
93b1, recorded on July 26 of 2005, at the Jackson County
Detention Center. Two. Excuse me. B2.

(The tape is playing.)

MR. GIBSON: Your Honor, I need to go back for
clarification purposes. It is b1 as I originally thought.

BY MR. GIBSON:

Q Whose female voice did you hear at the end of that
recording?

A Mine.

Q And who was the male voice?

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A Steven Sandstrom.

Q Now, Ms. Chirino, I'm going to play for you a recorded conversation identified on the Government's exhibit list as 94a1, from CD ID43, track 2 recorded July 28 of 2005 in the Jackson County Detention Center.

(The tape is playing.)

MR. OSGOOD: Stop. Stop.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: More hearsay about Gary Eye.

MR. GIBSON: This is specifically not hearsay. The relationship between the parties is an integral piece of evidence to every conspiracy. The fact they're communicating, exchanging discovery while Mr. Sandstrom is incarcerated in detention, is specifically relevant to what the government is trying to prove.

MR. OSGOOD: Do you have the transcript?

THE COURT: Let me see what we're talking about.

Where does it start?

MR. GIBSON: Right at the top, Judge.

MR. OSGOOD: If he sent this statement through the mail, I'll withdrawal the objection. Obviously, she can establish that. After the tape is played if they'll make that representation.

THE COURT: Well.

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MR. OSGOOD: Get in trouble with why he did that.

THE COURT: What statement through the mail are you talking about?

MR. GIBSON: First reference is Gary sent me Regennia's, her statement. Remember when Regennia called you, bitch you out or something.

THE COURT: Okay.

MR. OSGOOD: Evidence that he sent the statement is obviously admissible in my mind. And why he sent it would be speculative. Why can't they just examine on this conversation from the tape and clean that up, Your Honor?

MR. GIBSON: There's no need to clean it up.

MR. OSGOOD: I'll withdraw the objection.

THE COURT: Proceed.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. OSGOOD: Your Honor, I withdraw the objection.

THE COURT: Mr. Gibson.

MR. GIBSON: Thank you, Your Honor.

Could we play 94a1 from the beginning, please?

(The tape is playing.)

BY MR. GIBSON:

Q Ms. Chirino, whose male voice did you hear in that conversation?

A Steven Sandstrom.

Q And whose female voice did you hear in that conversation?

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A Mine.

MR. GIBSON: Your Honor, at this time the government would move for the admission of the recordings on 79b1, 2 and 3, 79c1, 81a1, 81b1, 93b1 and 94a1, those segments.

MR. ROGERS: They've already been received, Your Honor.

MR. GIBSON: Your Honor, we had previously identified the CDs themselves and transcripts of the entire conversation through Special Agent Gothard. What we have done here is introduce the relevant portions of those and that was the reason for my proffer.

THE COURT: Those exhibits identified by Mr. Gibson will be admitted.

BY MR. GIBSON:

Q Now, Ms. Chirino, you indicated that you received letters from Mr. Sandstrom as well, is that correct?

A Yes.

MR. GIBSON: May I approach with Government's Exhibit 134?

BY MR. GIBSON:

Q Showing you what's been marked as 134. Do you recognize that?

A Yes.

Q Whose handwriting is that?

A Stevie.

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Q Is that one of the letters that you received from Steven Sandstrom?

A Yes.

Q And what is the date on that letter?

A 9-1-05.

Q And when was it sent out? Are there two dates on there?

A Yes.

Q What is the second day?

A 9-8-05.

Q And who is it addressed to?

A Me.

Q And who signed the letter, turning to the last page?

A Steven Sandstrom.

Q Is that his signature?

A Yes.

Q And how did he sign the letter?

A Stevie and Christina Sandstrom, forever. Right back, baby. I love you. Miss you with all my heart. Love, your husband, Stevie AKA Daddy.

MR. GIBSON: Now, Your Honor, she has identified 134. I'm going to ask to display a portion of that letter which the government has identified as 134A on the screen.

THE COURT: 134A will be admitted.

BY MR. GIBSON:

Q Do you see that on the screen?

A Yes.

Q Is that the same document I just showed you?

A Yes.

Q Okay. Now, you tell me if I'm reading this correctly, portion that's indicated on the screen.

Momma, is that right, Ms. Chirino?

A Yes.

Q I just got a letter from Justin. I told him what's up. He will make sure I'm okay, too. He told me whatever he has to do to get me back out, he will do. He's more like a big brother than a cousin. We're really close.

Did I read that correctly?

A Yes.

Q Is that Steven's handwriting?

A Yes.

MR. GIBSON: Your Honor, I'm going to ask to approach with Government's Exhibit 133A --or 133 in its entirety again. I'm only going to display a portion of it.

MR. OSGOOD: You mean to her?

MR. GIBSON: Yes.

BY MR. GIBSON:

Q Before we do that, there's another portion on the screen.

Do you see that?

A No.

MR. GIBSON: Can we have that back up, please?

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BY MR. GIBSON:

Q Beginning with I hate, do you see that?

A Yes.

Q Is that Stevie's handwriting?

A Yes.

Q Tell me if I'm reading this correctly. I hate Regennia to death. I hope she dies a horrible death in a house fire, beat to death, ran over. I don't care as long as she suffers.

Did I read that correctly?

A Yes.

Q Going back to 133. Do you recognize that?

A Yes.

Q Is that also in Steven's handwriting?

A Yes.

Q Is that a letter you received from Steven Sandstrom at your home?

A Yes.

Q What is the date on that letter?

A 9-10-05 to 9-13-05.

Q And who signed that letter?

A Steven.

MR. GIBSON: Your Honor, I'm going to ask to display what the government has identified as 133A, portion from that letter or portions from that letter.

THE COURT: 133A is admitted and may be published.

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BY MR. GIBSON:

Q Do you see it on the screen in front of you?

A Yes.

Q Tell me if I'm reading this correct. Yesterday was Gary's birthday. I got a letter from him and I wrote him one, too. On the envelope I put, go Gary, it's your birthday. I'm crazy, huh, mamma? Yeah, daddy is a fool. I wrote Jonnie Renee's baby daddy, and told her to tell him that her cousin is a snitch and she told the cops her house was a dope spot.

Did I read that right?

A Yes.

Q Now, do you know who Jonnie Renee is?

A Regennia Rios' cousin.

Q Then the next portion on that letter, you tell me if I'm reading this correct.

I'm not going to be gone that long, baby. I'm not going to get 15 years either so don't worry. To keep it real, me and my boy is going to escape the first chance we get. I don't know when but it's soon. Be expecting me home before long. Okay, baby? Regardless, I'll be home soon. And just remember what I told you. Tell yourself it every day. I'm not going to be gone long, baby. Okay? You already know that everybody is changing up their stories. They don't have a witness, but Regennia. She's going to be dead before too long so she's out of the picture and I doubt I'll get charged for

the pistol. I won't get much time for it any ways, if they do.

A Yes.

MR. OSGOOD: Your Honor, could we approach?

THE COURT: You may.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: Might I request an instruction that that letter is admissible only against Mr. Sandstrom at this point. I hear nothing in there of the co-conspirator nature. He's just telling her he's going to get out and that he's going to escape. And I don't believe that it's proper to admit this against Mr. Eye.

MR. GIBSON: I disagree, Your Honor. He referenced he and his boy are going to escape which could be a reference to Gary Eye. If they want to argue it's not a reference to Gary Eye, they can make that in closing. Doesn't identify him specifically by name as was their complaint in other context, however, in this particular context there is no specific reference to his name. There is a reference to escape. There is an allegation that these individuals aided and abetted each other and, obviously, the ongoing relationship between the two is important to the government's case.

THE COURT: I think the jury could conclude that he and Gary Eye are planning to escape so I'll overrule the objection.

MR. OSGOOD: I don't believe they were incarcerated

together.

THE COURT: I don't know.

MR. OSGOOD: They weren't at this point.

MR. GIBSON: It wouldn't matter, Judge, the plan

could be one when Stevie gets out to meet or it could be a reference to somebody else but that's for the jury to determine.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. GIBSON: May I have a moment, Judge?

THE COURT: Yes.

BY MR. GIBSON:

Q Ms. Chirino, I'm going to approach you with what the government has marked as 131 and ask you if you recognize that?

A Yes.

Q And is that in Stevie's handwriting?

A Yes.

Q Is that a letter that you received at your home?

A Yes.

Q Who is that addressed to?

A Me.

Q And what is the date on that letter?

A 10-1-05.

Q Who signed that letter?

A Stevie.

MR. GIBSON: Your Honor, I'm going to display 131A, the relevant portions from that letter as we did in the previous procedure.

THE COURT: 131A is admitted and may be displayed.

BY MR. GIBSON:

Q Do you see what is on your screen?

A Yes.

Q Again, Ms. Chirino, you tell me if I'm reading this correctly.

Baby, I have a question for you. If I get ten years, will you still be here for me? If I do get 10 or 15, when I come out, I'm coming for you. I would still want you to be my wife. I'm being a hundred percent honest. I'll probably get ten years. I hope not. But with the charges, ten would be a deal, for ten charges. I'll try to get less but I don't know. Hell, I don't know. They might drop everything if Regennia comes up dead. No witness. No case. Momma, pray for me.

Did I read that correctly?

A Yes.

Q Is that Stevie's handwriting?

A Yes.

Q Going to the next portion.

I hope I'm not gone long. I probably won't be. But I'll probably have to testify to get a good deal. But I'll have to fuck Gary to get out fast. I need to see what's up

first. Like I said, they might drop everything if Regennia comes up missing. If I can find out where she is then we can beat this. Well, I can. They're trying to scare me so I will tell on Gary. Like I said, baby, I'll do anything to come home.

Did I read that correctly?

A Yes.

Q Next portion. I'm going to be a hundred percent honest. If shit don't start looking good and worse comes to worse then I'm going to take ten years. I'm going to try to get less but for everything I've got on me, ten is really good. Let's just hope Regennia comes up missing.

Is that right so far?

A Yes.

Q If so, I'll only get five for the pistol. Without Regennia they really ain't got nothing so they might have to drop everything. They would still try to hit us but we'll most likely beat it.

Did I read that correctly?

A Yes.

Q Going to the last portion. Tell Vince to cover my ass.

Do you see that?

A Yes.

Q Gary is hit no matter what. Tell Vince to come to court and say Gary made me turn around and that Regennia told Gary to

kill the guy and I couldn't stop Gary. Please have Vince do it for me. Tell Vince how you feel about me and tell him to please do that for you. Baby, I need him to do that for me. It's going to be hard to get them to believe me without any help. If he says it, too, then I'll have a chance. Please get him to do it for us so we can be back together, baby.

Did I read that correctly?

A Yes.

MR. OSGOOD: Your Honor, I don't think that was

admitted into evidence. Was it? 1B, 131B?

THE COURT: I thought we were on 131A.

MR. GIBSON: My apologies, Your Honor. The second

portion was 131B. I skipped over it. But just to be specific I would go back to 131B and display just that portion.

THE COURT: 131B is admitted. And may be displayed.

BY MR. GIBSON:

Q And on 131B did he sign the letter Stevie and Christina, forever?

A Yes.

Q I love you and miss you with all my heart. Love, your husband, Stevie AKA daddy. I love you, sweetheart?

A Yes.

Q All of that is in his handwriting?

A Yes.

Q Now, Ms. Chirino, are these letters that were turned over

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by you to your attorney?

A Yes.

Q And your attorney subsequently provided them to the government?

A Yes.

MR. GIBSON: May I have a moment?

THE COURT: Yes.

MR. GIBSON: With that, Your Honor, I pass the

witness for cross.

THE COURT: Mr. Osgood, cross-examination?

MR. OSGOOD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Ms. Chirino, I represent Mr. Eye along with Mr. Sandage at the counsel table. We've never met, have we?

A No.

Q You've never met Mr. Sandstrom, have you?

A Yes.

Q Excuse me. I mean, Mr. Sandage, the lawyer?

A No.

Q Were you told that we had sent a letter through your attorney requesting to interview you?

A Yes.

Q By your attorney?

A Yes.

Q And did you decline to be interviewed by my private investigator?

A Yes.

Q Why was that?

A Because I just didn't want to do it.

Q You were interviewed a number of times by the government, weren't you?

A Yes, I know.

Q And weren't you told you could have your lawyer there when the defense talked to you? We just wanted to have some idea -A Yes.

Q --of what this was all about? Your answer is, yes, you understood that?

A Yes.

Q Was it your decision, personally, not to talk to my investigator?

A Yes, it was mine.

Q That request was made, of course, after you had written all of these letters to Mr. Sandstrom, hadn't you?

A Yes.

Q Back and forth?

A Yes.

Q Where the two of you figured out, if you could, pardon my language, ladies and gentlemen, fuck, Gary, that maybe you two lovers could be together, again, wasn't it?

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A Yes.

Q Now, when you met with the FBI the first time, you lied to them, didn't you?

A Yes, I did.

Q And that was on the 15th day of April 2005, was it not?

A Yes.

Q Where did that interview take place, ma'am?

A At 1106 Ewing.

Q Okay. Now, you're 20 today, is that right, ma'am?

A Yes.

Q And so in April of '05, you would have been how old?

A Seventeen.

Q You were a minor?

A Yes.

Q Did the government allow your attorney to go into the grand jury room with you?

A No.

Q So you were in there, your parents weren't in there, were they?

A No.

Q You didn't have a guardian in there with you, did you?

A No.

Q Now, in all fairness to the law, the law says that only one witness can be in a grand jury at a time but I just want to point out that you were in there by yourself as a minor,

weren't you?

A Yes.

Q Were you frightened?

A Yes.

Q Were you told that you could go to juvenile detention if things didn't go right and you could stay there a long time?

A I don't recall that.

Q All right. Now, what do you recall about the conversation after you were told that you were lying to the authorities the first time during the first interview?

A They said, I needed --I don't really remember.

Q Pardon?

A I don't really remember.

Q Did you ask to have a lawyer appointed for you at that time?

A Yes.

Q And that's when Mr. Hall, seated over there, became your attorney?

A Yes.

Q Now, at some point in time did you get what's called a proffer letter? Do you remember that term?

A I don't remember.

Q Okay. Well, let me kind of simplify it for you. Was there some discussion about what would or would not happen to you if you continued to lie?

A I don't remember.

Q All right. Was there any discussion about anything they would do or not do for you or to you in exchange for your testimony?

A No.

Q Nothing?

A Nothing.

Q All right. Now, where were you living on Van Brunt? At 337, is that right?

A Yes.

Q Whose house was that?

A My mother's.

Q How long had you lived there?

A Couple of years.

Q I believe you said you came back from California, is that right?

A Yes.

Q And how long had you been in California because you said you knew Mr. Eye?

A I lived there since I was little.

Q So when you said you had known Mr. Eye about seven years?

A Yes, when I moved here.

Q That's when you first met him when you moved here?

A I was about 8 or 9.

Q Now, we have talked about the northeast area. This house

on Van Brunt, I guess would be considered in the northeast, wouldn't it?

A Yes.

Q Van Brunt is what 7, 9 blocks from 9th and Spruce?

A It's a little, I think a little bit farther than that.

Q All right. But it's in that area?

A Yes.

Q Where did you go to high school at? East?

A Van Horn.

Q Van Horn. Okay. And do you know where if --did Gary go to high school for awhile there?

A I don't remember.

Q All right. How far away from where you lived did he live while you were growing up together?

A He used to live next door to my grandma.

Q Did you go over to your grandma's a lot?

A Yes.

Q And did you develop some kind of relationship with Mr. Eye at some point in time?

A No.

Q Never?

A Just friends.

Q Okay. Just friends. And did you hang around together with common friends?

A Yeah.

Q Group, kids together?

A Yes.

Q Was it a mixed neighborhood then?

A I don't remember if -Q

Well, you're Hispanic, right?

A Yes.

Q Are you Mexican or some other Latin?

A Hispanic and El Salvador.

Q El Salvador. Okay. Are there also Mexicans living in that area?

A Yes.

Q And other Hispanics from other countries in Latin America?

A Yes.

Q And are there African-Americans living in that area?

A Yes.

Q And are there black people living in that area?

Caucasians?

A Yes.

Q So it's a mixed neighborhood?

A Yes.

Q And the kids all played together and grew up together?

A Yes.

Q And didn't think much about what the color of your skin was, did they?

A No.

Q And at some point in time as you got a little older did you begin to, as a lot of young people your age, listen to rap music?

A Yes.

Q You like it?

A Yes.

Q And, for example, are you familiar with the group Trick Daddy?

A Yes.

Q That was a CD found in one of these cars. And that's a black rap group, isn't it?

A It's just one rapper.

Q One rapper. For example, in that rap music, have you heard the use of the term nigga?

A Yes.

Q Ho?

A Yes.

Q Bitch?

A Yes.

Q And fuck?

A Yes.

Q And mother fucker?

A Yes.

Q And I apologize, ladies and gentlemen, to the jury, to the rest of you but I don't know how else to say it. That's all on

that kind of music, isn't it?

A Yes.

Q Pretty gutter, foul language, that at least would be considered in some walks of society, wouldn't it?

A Yes.

Q The kids though, not just you, but it's common music played by kids your age, isn't it?

A Yes.

Q And have you, for example, gone down the street and heard it in cars with these big speakers, ka-boom, ka-boom, ka-boom?

A Yes.

Q So it's, would you agree with me, it's to some extent cultural?

A Yes.

Q If you listen to it, do you pick up that kind of language and that manner of talking among your friends?

A Yes.

Q And have you, for example, used the term bitch?

A Yes.

Q In relationship to other people?

A Yes.

Q Friends, people you're angry with, and also friends?

A Yes.

Q And have you used the word ho?

A Yes.

Q You're a bitch ass ho?

A Yes.

Q Even some times maybe kidding. Somebody says something you don't agree with, you laugh and said, you're a bitch ass ho?

A Yes.

Q And shut up, nigga?

A Yeah.

Q Where you coming from, dawg?

A Yes.

Q All of that kind of language is common among, again, not faulting you, but common among kids your age, isn't it?

A Yes, it is.

Q And the people that you ran around with back in March of '05, Gary Eye, Steven Sandstrom, you all used that language, didn't you?

A Yes.

Q And you didn't think anything about it, did you?

A No.

Q I'm not condemning you for it. I'm just saying you didn't think anything about it?

A No.

Q And did you stop and listen carefully to, well, strike that.

Have you also heard the term "nigger"? How you

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doing, nigger? What's up, nigger?

A Yes.

Q Say that to each other as friends, don't you?

A Yes.

Q Probably you've on occasion said, how you doing, nigga, to one of your friends?

A Yes.

Q And also probably said on occasions, how you doing, nigger? To one of your friends. What's up, nigger?

A Yes, I have used the term before.

Q Again, not condemning you, other kids in the neighborhood and white kids, black kids, Hispanic kids, use it all the time. Not thinking anything about it, don't they?

A Yes.

Q So can you sit there today and tell me that there was a distinction in the use of these words by Mr. Eye? He used the words the same way you do, didn't he?

A Yes.

Q In conversation?

A Yes.

Q So if he were in a car and somebody showed him a gun in a car and he said, I'll shoot a nigga quick or I'll shoot a nigger quick, that would be slang in relation to he's a tough guy, right?

A Yes.

Q That's the way you would interpret that if you heard that conversation?

A Yes.

Q Particularly if you weren't talking about current politics and race in politics or some other form of race-related conversation. Just an off-hand comment?

A Yes.

Q And you've heard him talk that way?

A Yes, before.

Q Okay. Now, let's go to the basement incident. There were two times that you guys were in the basement, is that right?

A Yes.

Q First time was when who was there?

A Me, my brother, Christina Stanley, Regennia Rios and Nessa and my brother's friend David Eagle, his sister and his girlfriend.

Q And you were all crowded in kind of down in the basement there?

A Yes.

Q You, in fact, had a CD playing at that time, didn't you?

A I don't remember if I did or not.

Q The T.V. was not on?

A I don't remember if the T.V. was on or off.

Q Okay. Let me ask you this. When you played a CD in that T.V, isn't it a fact that it threw up on the screen of the T.V.

the tracks that the CD was playing?

A The number?

Q Yes.

A Yes.

Q So you couldn't watch T.V. and listen to a CD at the same time?

A No.

Q No. You mean you agree with me, no, you couldn't?

A Yes, I agree with you.

Q But you don't recall whether or not there was a CD playing all the time that you guys were down there or not?

A No, I don't recall.

Q And you said Mr. Eye at some point came over to the house?

A Yes.

Q When was that? First time or the second time?

A I don't remember if it was the first or second time.

Q How did the conversation first come up about the 9th and Brighton?

A I don't remember. I was sitting there talking to Regennia Rios, smoking meth.

Q Were you high?

A Yes.

Q Now, I presume, by the way the government told you that when they interviewed you that you didn't have to worry anything about getting involved with meth or anything. This

was not a meth investigation?

A Yes.

Q Is that correct?

A Yes.

Q Have you ever sold it?

A No.

Q Okay. Just -A

Just did it.

Q Just did it. And where did the meth come from that evening?

A From Stevie.

Q Okay. And you guys are cutting up, having a good time?

A Yes.

Q And at some point you said Mr. Eye said something that is significant to this case?

A Yes.

Q What did he say?

A He was on my time, in my hood so I smoked his ass.

Q Say that, again, slower.

A He said, he was on my time, in my hood so I smoked his ass.

Q What prompted that comment? What are you telling us prompted that comment?

A I don't know. I wasn't listening. I was talking. Then I heard him say that.

Q How did that stick in your mind if you didn't even know what he was talking about?

A I heard something about it before but I didn't believe it but then after awhile he got caught so I knew.

Q So you're all down there having a good time, listening to the CD and this statement you say was made. And then later you recall that statement, reflecting back on what happened down there, because you hear he was charged?

A Yes.

Q Is it possible someone suggested to you that that was what was said? Some of these other people that were all giving their version of what was said when this happened? Is that where you got that?

A No.

Q You hesitated when you said, no. Is it possible, ma'am, that somebody else said that and you picked it up? In your opinion, is it possible? This man is on trial for his life.

A Yes. But -Q

Well, yes, it's possible that you heard somebody else say that and you're repeating it?

A Yes.

Q He is on trial for his life.

THE COURT: Step up.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: It's not what she said. He just mischaracterized her testimony and put it through in the form of a question.

MR. OSGOOD: It's cross-examination. I gave her the opportunity and she said it's possible. Had her repeat it in the record. Had her repeat the statement in the record so it was clear. What she said was said then she said it's possible somebody else said.

THE COURT: It's what she said. I don't know what your objection is, Eric.

MR. GIBSON: I think it's closing argument.

THE COURT: It's cross-examination of a key witness in a death penalty case. I'm going to give him some latitude and she said what she said. Now, you may be able to rehabilitate her but I'm going to let it in.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q Now, it was after that conversation in the basement then that later you continued your relationship with Mr. Sandstrom, is that right?

A Yes, I did.

Q And you were infatuated with him?

A Yes.

Q And that's when all these letters were written?

A Yes.

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Q And that's when he was suggesting that Ms. Rios disappear, I believe was the word?

A Yes.

Q And on the tape I heard you say something that seems out of character for you. You referred to Rios in response to one of his questions about, fuck that bitch, I'm going to drop her?

A Yes.

Q What did you mean when you said that?

A I was going to kick her ass.

Q Okay. Not make her disappear?

A No.

Q Okay. So would you agree with me that you say some things some times that should not be interpreted exactly as they sound?

A Yes.

Q Drop her could mean I'm going to shoot her and kill her and drop her on the ground, couldn't it?

A Yes.

Q But you didn't mean that, did you?

A No.

Q You were just a little bit angry with her and you were going to -A

Yes.

Q What were your words, what were you going to do to her?

A I was going to kick her ass.

Q Kick her ass. Okay. Now, you do want at this point though to see Stevie, if possible, beat this rap, don't you? I don't mean now, I mean back in these conversations?

A Yes.

Q You wanted to do what you could to help him?

A Yes.

Q And, of course, you're here testifying today, aren't you?

A Yes.

MR. OSGOOD: I think I'm going to sit down, Your

Honor.

THE COURT: Cross-examination?

MR. GROMOWSKY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q Ma'am, I thank you for being here today and I think I'm going to be able to keep this fairly brief because a lot of the ground I was going to cover, Mr. Osgood kind of did it for me. So while we were just talking about Regennia Rios here, you just said that when you talked about dropping her, you were talking about kicking her ass?

A Yes.

Q In fact, the same conversation the jury just heard, Mr. Sandstrom said something to the effect of somebody needs to go kick her ass and that's taken care of, is that correct?

A Yes.

Q So what we've got you talking about is you're upset with Ms. Rios because she's talking to the police, is that true?

A Yes.

Q And this is all heat of the moment stuff, these conversations that you're having on the phone, true?

A Yes.

Q And same thing in the letters you're exchanging with each other. It's all heat of the moment. You're venting with each other so it doesn't necessarily mean anything, isn't that correct?

A I guess you could say that.

Q Well, he's locked up and he's facing a murder trial that's going to send him away for at least life and maybe death. So he doesn't even have access to Ms. Rios at that point, is that correct?

A Correct.

Q So when he says he's going to kick her ass or whatever, that, physically, is impossible. He's just venting. True?

A Yes.

Q And same thing with you when you're talking about kicking her ass back to him?

A Yes.

Q In addition to Ms. Rios talking to the police and giving statements against your boyfriend or who was your boyfriend at that time, you had another run in with Ms. Rios out on the

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street, did you not?

A Yes.

Q Specifically, I think you told one of the special agents that came to investigate this case with you that she came after you out of McDonald's with Vincent Deleon and he said, "snitches get stitches". Is that true?

A Yes, he did.

Q And Ms. Rios, herself, confronted you about your so-called snitching on Gary. Is that true?

A Yes.

Q So when that type of thing happened to you and you're doing your visit with Mr. Sandstrom, either phone calls or letters, you're letting him know what is going on out there on the street. Is that true?

A Yes.

Q So when he's talking about being upset with Ms. Rios, he's talking about not only because she's talking to the police but also because she's confronting you who he loves at that time, is that correct?

A Yes.

Q And that, of course, plays into his mindset and his thinking and you know that because you were involved in these conversations with him?

A Yes.

Q Now, when special agents came and spoke to you, initially,

and served you this grand jury subpoena that we were talking about, at that time you were, in fact, a minor. You were less than 18 years old. Is that true?

A Yes.

Q And you were living over there at 1106 Ewing, is that correct?

A Yes.

Q And when they came to the house over there, there was an adult in the home. Is that true?

A There was Steven Sandstrom's mother.

Q Okay. That's Bonnie Sandstrom?

A Yes.

Q When the agent came up and talked to you, originally, he talked to you at the house. Is that true?

A Yes.

Q But then he separated you away from that adult figure and took you out to his car to interview you one on one?

A Yes.

Q You did not have access to Bonnie Sandstrom's support at that time, is that correct?

A Yes.

Q Mr. Hall, your attorney, he wasn't appointed to represent you at that time. Is that true?

A True.

Q And the conversation you had with the special agent in the

car, in those close quarters, it was very upsetting to you. Is that right?

A Yes.

Q In fact, you eventually jumped out of car and threw his subpoena back on the ground and stormed into the house?

A Yes.

Q Now, as mentioned, you had the pleasure, I guess, of going before the grand jury two times in this case?

A Yes.

Q That was July 19, 2005 then again September 27, 2005, is that right?

A Yes.

Q And the reason that they had you come back a second time was because, at least according to them, they believed that you were about to commit perjury before a grand jury, is that right?

A Yes.

Q Do you recall being told when you came back before the grand jury, that they decided to give you this courtesy of the second time because they didn't want to hook you into perjury, is that right?

A Yes.

Q The pistol that you saw the evening that we're talking about down in your basement, that pistol I think you described as silver metallic, is that correct?

A No.

Q You don't recall telling that to the agents of the FBI?

A No. I told them that it had a wooden handle on it.

Q I understand you said it had a wooden handle but you also said silver metallic with a brown handle?

A Yes.

Q The base of the gun, I guess the handle, we're talking the pistol grip itself, is the brown part?

A Yes.

Q The rest was silver?

A I didn't see it all. I --I don't remember any silver.

Q You don't recall. Show you your proffer statement that was put together. If you could just read the highlighted portion right here to yourself.

A Okay.

Q Does that refresh your recollection as to what you told the FBI and the U.S. Attorneys?

A Yes.

Q And did you, in fact, tell them that it was a silver metallic handgun?

A Yes.

Q And also that it had the brown handle?

A Yes.

Q I think you also told them during the same proffer that during this time frame when you're down in the basement with

Mr. Sandstrom, and I'm not exactly sure from the details who else may have been present at the specific time, but at least you, Stevie was acting odd and --I'm sorry. He was acting odd?

A Yes.

Q He was upset about something?

A Yes.

Q It was obvious to you that things were upsetting for him at that time?

A Yes.

Q You were trying to talk him into telling you what the matter was?

A Yes.

Q At least initially he wasn't able to tell you, is that true?

A Yes.

Q After Mr. Sandstrom was arrested, you're aware he was in the Jackson County Detention Center with Vincent Deleon?

A Yes.

Q How, again, are you familiar with Mr. Deleon?

A He's my cousin.

Q So you're family with him, is that right?

A Yes.

Q When he got out of Jackson County Jail, you guys talked about what was going on with Stevie, is that right?

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A No.

Q Beg your pardon?

A No.

Q Do you recall telling the FBI that when Mr. Sandstrom was talking about the incident in this case that he began crying?

A Yes.

Q So, again, obviously, this whole affair was upsetting to him?

A Yes.

Q To the point that it actually made him cry, is that correct?

A Yes.

Q Now, when we're talking about the letters and the telephone calls and everything else, you know the jury got to see some snippets in here but there's a lot more to them than what was shown, isn't that right?

A Yes.

Q In these letters, for example, Mr. Sandstrom was very sweet to you, wasn't he?

A Yes.

Q Talking about your future together and how much he loved you?

A Yes.

Q Wanted to have a family with you and get away from his own family because you're the only one who ever loved him?

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A Yes.

Q That's the nature of things going on?

A Yes.

Q You also talked about in the letters about one time you were talking to him on the phone and he sang a song to you. Do you remember that?

A Yes.

Q And that made him start crying again, is that true?

A Yes.

Q And he talks to you in his letters that when he lays down at night and misses you so much that he's crying?

MR. GIBSON: May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: Your Honor, I gave him some latitude because this is cross-examination, however, this is completely self serving hearsay being offered by the defendant with no hearsay exception whatsoever. The statement offered by a party opponent which would be the government offering Stevie's statement, that's a hearsay exception. But this is Stevie trying to get in his emotional state without him having to take the stand and that's not permissible. We can't cross-examine Stevie about these statements he's alleged to have made.

MR. GROMOWSKY: This is just putting letters in

context. They take four or five sentences out of a multi page letter and want that to be the entirety of it as far as this jury is concerned.

THE COURT: --the letters --want to offer all the letters?

MR. GROMOWSKY: Not at this point we can't because there's other issues.

MR. GIBSON: In context. But the rules of evidence

don't allow that for the same reason they don't allow this.

MR. GROMOWSKY: Your Honor, I can move on from here.

THE COURT: Okay. The objection is sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q Ma'am, also in these letters, in these conversations, there is no mention at all that Mr. McCay was killed because of his race, is there?

A No.

Q Before testifying before the grand jury on September 27, 2005, you spoke to Mr. Sandstrom by phone, is that correct?

A Yes, I did.

Q And that happened in the morning time before you going into the grand jury, I guess, in the afternoon or at least later in the morning. Is that true?

A Yes.

Q And at that time he, in fact, was no longer your

boyfriend. You had broken up with him, is that right?

A I think so, yes.

Q When you spoke to Mr. Sandstrom on the phone you actually told him you were going before the grand jury, is that right?

A Yes.

Q And, in fact, when a lot of these letters and cards and things you received and telephone conversations you had, he at that point, when those came in, he already knew you had been before the grand jury in July because you told him that, is that right?

A Yes.

Q And when you spoke to him on the phone the morning of the 27th of September 2005, do you recall what he told you.

A No, I don't.

MR. GIBSON: May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. GIBSON: Same objection.

MR. GROMOWSKY: This has nothing to do with him. It

has to do with, he told her to just tell the truth. Same thing

he was saying when he had her on direct exam.

THE COURT: How is that not hearsay, John?

MR. GROMOWSKY: It's not offered for the truth of the

matter asserted.

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MR. GIBSON: It's not relevant.

THE COURT: Why does it prove anything if it's not true? Why is it probative if it's not true?

MR. GROMOWSKY: Probative to the relationship, probative whether or not she told the truth to the grand jury.

THE COURT: Objection sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. GROMOWSKY: Could we come back up again?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GROMOWSKY: Your Honor, again, I'd just like to restate this is going to show what Mr. Sandstrom said. It's not offered to show for the truth of the matter asserted. It's not hearsay because it's not. It just simply doesn't meet the definition of it.

THE COURT: If it's not offered for the truth then it's not relevant. If it's offered for the truth, it's hearsay.

MR. GROMOWSKY: Your Honor, I think there's been a lot of testimony in here that has been offered not for the

truth. We've got all kinds of issues. He tried to bolster her testimony.

THE COURT: If he wants to take the witness stand and say that he told her to tell the truth, he can do that, subject to cross-examination. But in the absence of that, it's

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hearsay, John. Or it's irrelevant one or the other.

MR. ROGERS: May I be heard?

THE COURT: No. My ruling is firm. Let's move on.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q Just a little bit more, ma'am.

Mr. Deleon was here already earlier. He already told us that Stevie hung out with African-Americans when he was out on the street and you observed that as well. Is that correct?

A Yes.

Q And he was friendly with African-Americans. Is that true?

A Yes.

Q You saw that with your own eyes, is that right?

A Yes.

Q For example, you've seen him hanging out with Kenneth "Tank" Robinson and his cousin, Kevin Fisher?

A Yes.

Q They're both African-American?

A Yes.

Q In fact, at least with regard to Mr. Robinson, he actually hung out with him in your presence after the McCay homicide?

A Yes.

Q They were friendly at that point?

A Yes.

Q You have always seen him playing around with his cousin's,

Missy's kids, is that true? Missy Stall?

A Yes.

Q And these children are bi-racial, is that true?

A Yes.

Q And they're half African-American, half white. Is that right?

A Yes.

Q You never saw any problems with him dealing with them?

A No.

Q Love them just like any of his other cousins or niece that you're familiar with. Is that true?

A Yes.

Q Mr. Sandstrom, as we discussed a little bit earlier, not me but Mr. Osgood, indicated that he did listen to rap music. That was his preferred music. Is that true?

A Yes.

Q And for the most part hip hop is considered a minority music?

A Yes.

Q And what nationality are you, ma'am?

A Hispanic and El Salvador.

Q And Hispanic in this society, at this point any way, are still considered minorities as well, is that true?

A Yes.

Q And, obviously, he had no problem dating you, is that

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correct?

A Correct.

Q In fact, he fell deeply in love with you, is that correct?

A Yes.

Q Thank you, ma'am.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. GIBSON:

Q You appeared in front of the grand jury on two occasions, is that right, ma'am?

A Yes.

Q Okay. And on the first occasion I think you already explained to us that you talked about the gun, is that correct?

A Yes.

Q Just the gun?

A Yes.

Q And there was a break, is that right?

A Yes.

Q And then you came back on another occasion, is that right?

A Yes.

Q And the only reason for coming back before the grand jury, was that to talk about the conversation in your basement?

A Yes.

Q Was that to talk about what you heard Gary say?

A Yes.

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Q And what had you heard Gary say?

A He was walking in my hood on my time so I smoked him.

Q And smoked him, what was the exact phrase he used?

A Smoked his ass.

Q And how did he refer to the individual that he had smoked?

A Like it was nothing.

Q Well, what word did he use?

A Nigger.

Q N-I-G-G-E-R, is that right?

A Yes.

Q And you were under oath when you came back the second time for the grand jury, right?

A Yes.

Q And you met with your attorney, I assume, to discuss coming back for the grand jury the second time, right?

A Yes.

Q Had you ever been to a grand jury before? Other than this case, had you ever been in that circumstance?

A No.

Q And had you ever heard one of your friends indicate that they had smoked anyone in the basement of your house before?

A No.

Q This was the only time, is that right?

A Yes.

Q Stood out in your mind?

A Yes.

Q In fact, you said at the time you were a little bit shocked by that, is that right?

A Yes.

Q Thank you.

THE COURT: Recross?

RECROSS-EXAMINATION

BY MR. OSGOOD:

Q You told the grand jury you were a little bit shocked, didn't you?

A Yes.

Q Those were all people who looked like the jury here. Ordinary folks sitting in a big room. Is that right?

A Yes.

Q Twenty-six of them, I believe?

A Yes.

Q And you're the only kid in there, right?

A Yes.

Q By yourself?

A Yes.

Q Without Mr. Hall over there. He's sitting outside, isn't

he? Can't come in?

A Yes.

Q You're 17 years old or 16?

A I'm 17.

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Q Seventeen at the time. You're trying to be as polite as you can, aren't you?

A Yes.

Q And you're using the proper terms. You're not stupid by any stretch of the imagination, are you? You seem like a smart young lady.

A Yes.

Q You're talking the way you think these adult grown-up folks would expect a 17-year-old young lady to talk, weren't you?

A Yes.

Q You weren't using the street slang that you use all the time, were you?

A No.

Q Now, we've already gone over on cross the first time that in the setting that you're comfortable in, with your homies -What do I mean by homies? Tell the jury what I mean by homies?

A Friends.

Q Okay. Common term, isn't it?

A Yes.

Q You're in the hood with your homies, you talk in a more relaxed, casual, almost kind of second language among young people, isn't it?

A Yes.

Q And so he asked you if that comment stood out and shocked

you. In reality, it didn't shock you, did it? It's more talk. It's more bravado. If it was said at all, it was just more BS among friends and kids, wasn't it?

A No.

Q You're under oath?

A I didn't see it like that. I never heard somebody say that.

Q You heard somebody say that?

A I never heard somebody say that.

Q Is it possible, again, and I asked you on cross the first time, was it possible, it's been a long time ago. Was it possible that you were repeating at the grand jury what you heard, maybe, one of these other people in this case, all of -A
It could be possible.

Q That was possible?

A Yes.

Q Okay. Thank you very much, ma'am. I appreciate it.

THE COURT: Mr. Gromowsky?

MR. GROMOWSKY: No, Your Honor. Thank you.

THE COURT: Instruction No 8, again. We're about to

take our second recess overnight and I remind you of this instruction which I have given you earlier. During this recess or any other recess, you must not discuss this case with anyone including your fellow jurors, members of your family, people involved in the trial or anyone else. If anyone tries to talk

with you about the case, please report that to me immediately.

THE WITNESS: All right.

THE COURT: Do not read, watch or listen to any news reports about the trial. I'm going to repeat that. Do not read, watch or listen to any news reports about the trial. Finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

Good night. We'll see you at 8:30 in the morning.

MR. GIBSON: May Ms. Chirino be excused?

THE COURT: Yes. Unless there's some objection.

MR. OSGOOD: No.

THE COURT: She is excused.

(Witness excused.)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: I'll be here at 8 in the morning if you need me. Good night.

MR. ROGERS: Judge, could I have just a moment to clarify in my own mind because with all due respect I have-Your Honor's understanding of the hearsay rule is not the same as mine, so I want to get on the same page, if I can.

It's my understanding that the hearsay rule precludes the admission of an out-of-court statement deduced to prove the truth of the matter asserted in the statement. And statements such as, tell the truth, is not a statement which has content

which can be true or false. It is either true or false that the statement was made. But once the statement is made, it is a --it's a directive statement telling somebody to do something. So I don't think it can have a content that is true or false. And so for that reason I think the issue is, did Mr. Sandstrom tell you to tell the truth is not the subject of a hearsay objection. What am I missing?

THE COURT: Well, if it's not hearsay -

MR. ROGERS: Okay.

THE COURT: --then what does it prove? The problem is, the core of the problem is, Charlie, that you are attributing to your client a statement that the other side cannot cross-examine him on and it's a statement which is, certainly advances his interest. But it can't come in unless the other side can cross-examine him on it.

MR. ROGERS: Well, I guess that's what I'm missing because I'm not attributing, assuming the witness said, yes, that's what he said, would be attributed to him perhaps, even the recording would attribute it to him. But -

THE COURT: Does the recording attribute -

MR. GROMOWSKY: I assume it's one of the recorded calls. I don't know. In fact, it came right out of the grand jury transcript.

MR. ROGERS: And she's available for direct examination and cross-examination, if they're surprised, I

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guess. So, you know, whether or not he said it is not -

THE COURT: The problem I'm having with it, Charlie, is that it puts words in his mouth that the United States is unable to cross-examine him on. And the words are words which advance his interest. I mean, they're important words whether they were said or not, they're important words. And if the United States isn't permitted to cross-examine him about whether he said that or not, whether, what he meant by it, the circumstances under which he said it, then it's unfair to allow him to basically testify without being subject to cross-examination.

MR. ROGERS: First of all, I think it's just the exact flip side of the statements which go to show guilty knowledge as well as going to show or tending to prove up Count 9 or whatever it is in terms of disappearing Regennia, all that kind of stuff. It's the opposite of that.

And in terms of cross-examination, I still don't see that the issue is not whether the statement was made in which case she's available to be cross-examined. So if she's making it up for him for some reason, they could expose that through cross-examination.

THE COURT: I'm not sure if I can articulate for you the exact reason why I think the hearsay objection applies. It is more a matter of fairness. And for that reason I don't think he ought to be able to say things through a witness on

the stand with the government not having an opportunity to cross-examine him. Now, I'll think about it some more and if -

MR. ROGERS: You can see my puzzled look.

THE COURT: I do. I do. I'm not saying I'm right on every evidentiary ruling. I'm just giving you my best call at the moment. And I will think about it. That's the problem I see with it.

MR. ROGERS: That's why I wanted to bring it to your attention at this time so if I'm missing something, I would know it. And if not, we can figure out something different or not. Agree to disagree, whatever we're going to do.

Thank you.

(End of session)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)

)

Plaintiff,)

)

vs.) Case No. 05-00344-01/02-CR-W-ODS

)

GARY EYE and) Tuesday, April 22, 2008

STEVEN SANDSTROM,) Kansas City, Missouri

Defendants.)

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ORTRIE D. SMITH
UNITED STATES DISTRICT JUDGE

VOLUME 6 OF 17

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APRIL 30, 2008 -DAY 6

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Good morning.

I'm told that you want to talk about something.

MR. KETCHMARK: Just two things, Your Honor. I mentioned this morning --I think they both agree, their clients don't need to be here for this. One is, I didn't see it but apparently a couple of them did. Somebody who came into the courtroom at some point yesterday with a T-shirt that said, "snitch" on it.

THE COURT: I didn't see it either.

MR. KETCHMARK: I didn't see it. Had I seen it, I would have brought it to the Court's attention at the time. I don't know who the individual was. I don't know. I was under the impression when Mr. Deleon was testifying or maybe was just finished. Mr. Sandage might have seen it.

MR. SANDAGE: I saw it and at the break I told him if he was going to come back in the courtroom he needed to change shirts or turn it wrong side out. He did turn it wrong side out.

THE COURT: Okay. Lynn, you might help us watch for that. Did you hear?

Okay. Evidently, one of the spectators yesterday was wearing a T-shirt with snitch on it. Don't let anybody in here

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that has those kinds of pronouncements on their apparel.

MR. ROGERS: Your Honor, I believe he had a jacket over it. I don't know if the jacket was open after he came in. It was after Mr. Deleon testified that my attention was called to it and he had just come in. I noticed when he came in but I didn't really look. We were told that it was, in fact, a relative of Mr. Deleon who was here to give him moral support for whatever reason.

THE COURT: Strange way.

MR. ROGERS: Maybe pro snitch teacher. I don't know.

THE COURT: Okay.

MR. KETCHMARK: And another thing, Your Honor, is that one of --I gave the Court a copy of our expected batting line-up today. Listed No. 2 is Stephanie Sandstrom, who is the sister of Defendant Steven Sandstrom. There is a report from the private investigator Mr. Osgood used to interview her and there is more of this discussion of this Black Raymond individual. And it's clear from reviewing the report that Stephanie says, from what I have heard and it's kind of rumor of the hood on what went down around the shooting of Black Raymond. And I think it's clearly, obviously, inadmissible hearsay. I think that Mr. Osgood desires to, wants to keep it restricted, too, because according to rumor of the hood, it was Vincent Deleon with Gary Eye and Vincent shoots Black Raymond at Gary's prompting. That's where Stephanie theorizes the

beginning of this game, nigger, nigger, nigger.

MR. OSGOOD: 98.2 percent right.

MR. KETCHMARK: That's what the report says. And that's the problem. Obviously, she wasn't there. We don't know. I want to make a motion to basically exclude that line of questioning. I understand from Mr. Rogers, who's going to be questioning her, that he's not going to get into it because he understands that is hearsay. So I wanted to get that so we cut down on the need to keep popping up in the middle of witness's testimony.

MR. ROGERS: I do not intend to get into that with her unless it's somehow relevant to something I don't expect her to say on direct examination. If that becomes the case, then I would certainly approach.

THE COURT: That seems pretty clearly hearsay, that we can all agree is hearsay.

MR. ROGERS: I do know that.

THE COURT: While we're on that subject, I worried last night about that ruling on hearsay, Charlie, but I think I've got it figured out. What I think the issue is, is that when Mr. Sandstrom says, tell the truth, the sentiment or idea he is conveying by saying that is, I want you to tell the truth. And when you add that on to it, then it is offered for, because you want the fact finder to believe that Sandstrom

truly wanted her to tell the truth. So it's offered for the

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truth of it and it becomes hearsay. So that's, I think, the reason that it is hearsay and I just had trouble coming up with it yesterday.

MR. ROGERS: And I don't want to beat a dead horse but I respectfully disagree. It seems to me this is what back in philosophy was called, they called it a performative utterance. In other words, the speaking of the words is the performance of the act. So if the question is, did he tell you to tell the truth, her answer would be yes, I assume. And so the question is not, did he want you to tell the truth. But what did he say? And the factual, there is no factual content. Just like what we see every day here in court. Witness comes in, he swears to tell the truth under pains and penalty of perjury, right? If they say, yes, there is no truth or false content to that because the act of saying yes is the act of swearing to tell the truth. Just like when you get married. You take this person to be your lawfully wedded spouse. Yes. You can't be lying about it. Now you can be lying about the other content of the statement if you go on swearing to tell the truth, whole truth, nothing but the truth, solemnly. Solemnly would be a factual finding because you might be doing it frivolously. If you are being sworn in as a citizen, then there is a factual allegation of without secret reservation or whatever it is. But in terms of just the act of swearing, you cannot say that you're swearing without doing it.

MR. OSGOOD: I don't want to educate my colleague because I didn't want it in. But there's an, as an old prosecutor, what you should have said, Mr. Rogers, was, did you have a conversation with Mr. Sandstrom? I don't want to know what it is. Yes, I did. As a result of that conversation what are you doing here today? I'm telling the truth. That's how you get it in.

THE COURT: If there is no other inference that can be drawn by that statement, tell the truth than saying I want you to tell the truth, then I think that is where the problem is because the government is unable to cross-examine Mr. Sandstrom on that inference. You know, well -

MR. ROGERS: Let me go one step further because I disagree with that because I think there is, for example, the government can cross-examine Ms. Chirino, who is the person making the factual allegation he said that.

THE COURT: That's not the problem.

MR. ROGERS: They can say, what do you take that to mean? Well, we agreed on a story which was the truth even though it was a lie. He wanted me to go ahead and repeat that story or whatever it was. Or he did it in a joking manner. Just like they talk about the plea agreement and their plea agreement is in return for truthful testimony but we don't get to cross-examine Mr. Ketchmark about what he told Mr. DeLeon the truth was or what they agreed it was. But we can

cross-examine DeLeon about that and Mr. Gromowsky did.

THE COURT: We may just have to agree to disagree.

MR. ROGERS: All right.

THE COURT: Anything else we need to talk about?

If not, we'll take a brief recess. When all the jury

is here, we'll begin.

(Recess)

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Good morning. Welcome back.

Mr. Ketchmark? Mr. Gibson?

MR. GIBSON: Government calls Jonathan Chirino.

JONATHAN CHIRINO, GOVERNMENT'S WITNESS, SWORN

MR. GIBSON: May I proceed?

THE COURT: Yes, you may.

MR. GIBSON: Thank you.

DIRECT EXAMINATION

BY MR. GIBSON:

Q Good morning, Mr. Chirino.

A Good morning.

Q Sir, you're going to need to keep your voice up. There's a microphone in front of you. It's stationary. Need to speak into the mike so everybody can hear you.

A Yes.

Q The young lady in front of you is taking down everything you say. You have to speak orally. You can't nod your head or shake your head. She has to hear what you're saying to the questions.

A Yes.

Q Do you understand everything I said so far?

A Yes.

Q If I ask you anything that you don't understand, just tell me to repeat the question or rephrase the question and we'll go from there. All right?

A Yes.

Q Now, how old are you today, Mr. Chirino?

A 18.

Q And do you have any brothers or sisters?

A Yes.

Q How many?

A Two sisters.

Q And what are your sisters' names?

A Kristina and Veronica.

Q Kristina and Veronica?

A Yes.

Q And is Kristina older or younger than you?

A Older.

Q Where did you grow up, sir?

A Kansas City.

Q In what part of Kansas City?

MR. OSGOOD: I can't hear.

THE COURT: Mr. Chirino, you're going to have to speak up, please.

THE WITNESS: Is this working?

THE COURT: No. It's not on.

Tap your microphone. That should help. Thank you.
BY MR. GIBSON:

Q What part of Kansas City, sir?

A Northeast.

Q The northeast? And how long did you live in the northeast?

A Since I was 3.

Q Are you living in the northeast now?

A Yes.

Q Now, in March of 2005, where were you living?

A Northeast.

Q Specifically, what street?

A Van Brunt.

Q What was the house number?

A 337.

MR. GIBSON: Like to show the witness what was

previously moved and entered as Government's Exhibit 9A.

BY MR. GIBSON:

Q Would you take a look at the screen, sir?

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A Yes.

Q Do you recognize that location?

A Yes.

Q What is in that photograph?

A My house.

Q Your house, where you were living in March of '05?

A Yes.

Q Sir, I'd like you to take a look at what was previously marked, moved and entered as Government's Exhibit 9B. Do you recognize that, sir?

A Yes.

Q What is that?

A My basement.

Q That's the entrance to your basement from the outside?

A Yeah.

Q Okay. Now, do you know Gary Eye?

A Yeah.

Q How long have you known Gary Eye?

A All my life.

Q All your life? He grew up with you in the northeast?

A Yes.

Q Sir, you're going to need to lean into the microphone, please.

A Yes.

Q Do you know Steven Sandstrom?

A Yes.

Q How long have you known Steven Sandstrom?

A Not that long. Probably two, couple weeks.

Q Did he have a relationship with your sister?

A Yes.

Q What was that relationship?

A I don't know. I guess they had a relationship.

Q Were they dating?

A I guess, yes. Yes.

Q Now, do you see Gary Eye in the courtroom?

A Yes.

Q Could you indicate where he is, please?

A Right there.

MR. GIBSON: Indicating by pointing the finger to the

Defendant Gary Eye.

BY MR. GIBSON:

Q Do you see Steven Sandstrom in the courtroom?

A Yes.

Q Where is Steven Sandstrom?

A Right there.

MR. GIBSON: Indicating by pointing the finger at
Defendant Steven Sandstrom.

BY MR. GIBSON:

Q Now, sir, in March of 2005 did you become aware of a

homicide involving a victim by the name of William McCay?

A Yes.

Q And where were you when you became aware of that?

A On the school bus.

Q On the school bus? Now, at some point in March of '05, couple of days after the killing, were you present for a discussion regarding the McCay homicide in your house on Van Brunt Street?

A Yes.

Q And who was present for that conversation?

A Me, myself, my sister Kristina, Regennia, David Eagle, Jessica Eagle, David's girlfriend, also Gary and Steven.

Q Now, you mentioned Regennia. Is that Regennia Rios?

A Yes.

Q Did you know Regennia Rios prior to this conversation you were about to discuss?

A Yes.

Q How long had you known Regennia Rios.

A Couple of years.

Q Couple of years. Now, you also mentioned Kristina, in addition to your sister, is that correct?

A Yes, it is my sister.

Q Was there another Kristina present?

A I don't think so. No.

Q Now, how is it that the subject of the McCay homicide came up?

A They were talking about it.

Q Who was talking about it?

A Gary and Steven.

Q And where was this conversation taking place?

A In the basement.

Q And where were you in the basement during this conversation? Where were you situated?

A Situated on the bed. There were two beds.

Q There's two beds?

A Yes.

Q And which bed were you on?

Does that belong to you or your sister? Who sleeps on that bed?

A I do.

Q Was anybody on your bed with you?

A Yes.

Q Who was on your bed with you?

A Me, David, Jessica, and his girlfriend.

Q Was there anybody on the other bed?

A Yes.

Q Who was on the other bed?

A Stevie, Regennia, Kristina and Gary.

Q Now, you said Gary was talking about the homicide. What, if anything, did you hear Gary say?

A I didn't hear a lot. They were whispering.

Q They were whispering?

A Didn't hear a lot. I was on the other bed.

Q What, if anything, did you hear him say?

A What did I hear him say?

Q Yeah.

A That he had killed somebody.

Q What was the words he used?

A That he killed, I don't know specifically but that he killed somebody, what it was called, have said nigga or nigger but I don't specifically know. I'm not sure.

Q Now, you're not sure. Did you appear before a grand jury?

A Yes.

Q And when you appeared before the grand jury, that would have been on September 28th of 2005, is that right?

A Yes.

Q And at the time that you appeared before the grand jury, you had a lawyer present, right? Not inside the room with you but you had a lawyer at the time, right?

A Yes.

Q And would that refresh your recollection as to what you said or what you heard?

A Yes.

MR. GIBSON: Your Honor, I would approach with

Government's Exhibit, marked for identification purposes only, as 32.

Want you to take a look at page 13 of Government's Exhibit 32, at line 17. Read that to yourself, please, over to the next page, to line 9.

All right. Does that refresh your recollection, sir?

A Yes.

Q What, specifically, did Gary say?

A He killed that nigger.

Q I'm sorry?

A He killed that nigger.

Q Say again.

A He killed that nigger.

Q Nigger?

A Yes. But I'm not for sure if he said that. It could be a possibility he didn't say that.

Q Well, you didn't say that at the grand jury on September 28th of 2005, did you, sir?

A No.

Q In fact, you were sure at the time you appeared in front of the grand jury on September 28th of 2005, isn't that correct?

A Could have been, yes.

Q And you were under oath then at the time, isn't that right?

A Yes.

Q Do you want to be here today, sir?

A No.

Q Are you still friends with Gary Eye?

A Don't know.

Q Are you still friends with Steven Sandstrom?

A Don't know.

Q I'm sorry?

A Don't know.

Q Don't know. Now, after Gary said that, what, if anything, did he do next?

A They left.

Q Did he do anything before he left the house?

A No.

Q Do you remember talking about this in the grand jury?

A Yes.

Q Does that refresh your recollection, sir? Direct you to page 14, line 4. Would you take a look at that for me, please, sir?

A Where?

Q Line 5. Does that refresh your recollection?

A Yes.

Q What did he do after he said, I killed that nigger?

MR. OSGOOD: Mr. Sandage's witness.

MR. SANDAGE: No objection.

THE COURT: Proceed.

BY MR. GIBSON:

Q What did he do after he said, I killed that nigger?

A Got up and left. Started -Q

Started what?

A Left.

Q Where was Stevie when he said that?

A On the bed.

Q On the bed with Gary?

A With my sister.

Q With your sister? And these beds are about two feet apart, is that correct?

A Probably more.

Q Now, were you at your house when Steven Sandstrom was taken into custody a couple of weeks later?

A Yes.

Q At the time that you were at your house, when he was taken into custody, where were you? Physically, where in the house?

A The basement.

Q The basement. Who else was in the basement?

A Me, Nessa my cousin, Kristina my sister.

Q And Kristina is that your sister or are you referring to Christina Stanley?

A My sister.

Q Was Christina Stanley there?

A Yes.

Q When you said Nessa who is Nessa?

A My cousin.

Q Is that Vincent's sister?

A Yes.

Q Did you know Vincent as well?

A Yes.

Q How well did you know Vincent?

A He's my cousin.

Q Now, what happened that day?

A What do you mean?

Q Well, when did you first notice the police were there?

A When they came to knock on the door upstairs.

Q And after they knocked on the door, what happened next?

A Went upstairs to see what happened. My mom had answered the door, went downstairs and the cops were coming through the backdoor.

Q Where was Stevie?

A On the bed.

Q And what, if anything, did Stevie do when the cops got there?

A Just threw the gun he had into the closet.

Q And did you see that?

A Yes.

Q And did he say anything when he threw the gun in the closet?

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A

No. I don't remember. I don't really remember.

Q

Was there anybody else in the basement at the time besides you and Mr. Sandstrom when he threw the gun in the closet?

A

Yeah.

Q

Who else was in the basement?

A

My sister, Nessa, Christina.

Q

Christina Stanley?

A

(Nod head yes.) Yes.

Q

Now, at some point was Stevie taken into custody?

A

Yes.

Q

Were you in the basement when that happened?

A

Yes.

Q

When Stevie was taken out of the house, did you remain in the basement?

A

Yes.

Q

Now, approximately a half hour after that, did somebody

come to the house?

A

Yes.

Q

Who was that?

A

Stephanie.

Q

What is Stephanie's last name?

A

Sandstrom.

Q

How do you know Stephanie Sandstrom?
Stephanie Sandstrom?

A

She's the sister of Stevie.

Or do you know

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Q What happened when Stevie's sister came to the house?

A She picked the gun up and left.

Q Well, where were you at the time?

A In the basement.

Q And how did Stephanie get into the house, if you know?

A The front door.

Q And who else was in the basement when Stephanie got the gun?

A I believe it was me, Nessa and Christina, I believe was there. Could have been just me.

Q What about your sister?

A My sister, too.

Q You and your sister and Stephanie?

A Yes.

Q Had you seen that gun before?

A Yes.

Q Where had you seen it before?

A On Stevie.

Q On Stevie?

A (Nod head yes.)

Q Where did Stevie keep that gun when he had it?

A In his stomach in a brace.

Q In the waist area?

A Yes.

Q In some kind of brace?

A Yes.

Q Now, when Stephanie left, did you ever see the gun again?

A No.

Q Did you stay in the house when Stephanie left or did you go with her?

A Stayed in the house.

Q Now, do you remember being given a grand jury subpoena for that September court appearance?

A Yes.

Q Did you want to attend the grand jury?

A What?

Q Did you want to attend the grand jury?

A No.

Q Did you come to the U.S. Attorney's Office in anticipation or before your grand jury appearance?

A Did I what?

Q Did you come to the U.S. Attorney's Office here in this building before you actually went in front of the grand jury?

A Yes.

Q And did you ask for a lawyer at that time?

A Yes.

Q Were you given a lawyer?

A Yes.

Q Did you come back the next day to appear in front of the

grand jury?

A Yes.

Q Now, when you initially spoke with the investigators, did you want to talk to the investigators?

A No.

Q Stevie was still dating your sister at the time, is that correct?

A I believe so, yes.

Q And you were still friends with Gary at the time, is that correct?

A I believe so.

Q Now, after Stevie was taken into custody, did you continue to talk with him?

A Yes. Well, briefly.

Q Would he call the house?

A For a brief time then I would talk to him.

Q And when he called the house, would he talk to your sister?

A Yes.

Q Would he occasionally talk with you?

A Yes.

MR. GIBSON: Your Honor, at this time the government

is going to play excerpt 93B2, recorded conversation from July 26 of 2005 originating at the Jackson County Detention Center in Kansas City, Missouri.

(The tape is being played.)

MR. GIBSON: I'm sorry.

THE COURT: Stop just a moment. I don't show that as

being admitted. It is? Okay. Proceed.

MR. OSGOOD: He needs to offer it.

THE COURT: It has been offered and admitted, I

believe.

MR. ROGERS: I may be wrong.

THE COURT: All right. Any objection to 93B2?

Without objection, 93B2 is admitted and may be

played.

MR. GIBSON: May we proceed?

THE COURT: Yes.

MR. GIBSON: Thank you.

(The tape is being played.)

MR. GIBSON: Pause it, please.

BY MR. GIBSON:

Q Whose voices did you hear on that recording, sir?

A Mine and Stevie.

Q Is this a conversation between you and Steven Sandstrom?

A Yes.

MR. GIBSON: Please continue.

(The tape is being played.)

BY MR. GIBSON:

Q That was a conversation between you and Steven Sandstrom?

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A Yes.

Q Did you ever communicate to Regennia Rios the message that Mr. Sandstrom asked you to communicate?

A No.

Q Now, sir, I'd like to play for you an excerpt from 94A2.

(Phone ringing.)

MR. GIBSON: Pause one second.

THE COURT: Yeah, we don't have that one.

Any objection to 94A2?

94A2 is admitted.

MR. GIBSON: ID43 is the CD, track 2. Recorded

conversation from July 28 of 2005 originating at the Jackson

County Detention Center in Kansas City, Missouri.

Please proceed.

(The tape is being played.)

MR. GIBSON: Pause it, please.

BY MR. GIBSON:

Q Mr. Chirino, who is this conversation between?

A Myself and Stevie.

Q Yourself and Steven Sandstrom?

A Yes.

Q Recognize the voices?

A Yes.

MR. GIBSON: Please continue.

(The tape is being played.)

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BY MR. GIBSON:

Q

Who was that a conversation between, sir? You and Mr. Sandstrom?

A Yes.

MR. GIBSON: May I have one moment?

That's all, Your Honor.

THE COURT: Cross-examination, Mr. Sandage?

MR. SANDAGE: Your Honor, we don't have any

questions.

THE COURT: Mr. Rogers? Mr. Gromowsky?

MR. GROMOWSKY: One moment, please, Your Honor.

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q

Good morning, sir.

A

Morning.

Q

Sir, when you met with the United States Attorneys and some agents from the FBI prior to your grand jury testimony, you said earlier you recalled that meeting, is

that correct?

A

Excuse me?

Q

When you met with the U.S. Attorneys and the special agents from the FBI prior to your grand jury testimony, do you remember that meeting?

A

Yes.

Q

Who all was present for that meeting?

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A I don't know their names.

Q Any of them in the courtroom here today?

A Yes.

Q Can you point them out for us, please? Tell me what they're wearing?

A He was here. The one in a suit right there.

Q Can you give me, like a tie? They're all in suits right here. The one who raised his hand?

A Yes.

Q Special Agent Janke and Special Agent Gothard. Who else?

A I don't know nobody else.

Q Okay. It's my understanding there was an Assistant U.S. Attorney, Paige Fitzgerald there, as well. Do you remember her?

A No.

Q When you had this meeting with them, they accused you of lying, is that correct?

A Yes.

Q And did you start feeling like they were putting pressure on you to tell the story that they wanted to hear?

A Yes.

Q And, specifically, did anybody start cussing at you?

A Yeah.

Q And just so we --back up a little bit. How old were you when you had that meeting with them?

A 15.

Q 15 years old. And when they started cussing at you, what did they tell you?

A Give us the fucking truth.

Q Anything else?

A You're fucking lying.

Q Anything else?

A No. That's it.

Q Do you recall them saying anything about they told you to cut the shit?

A Yes.

Q Okay. Who was it that told you that?

A Him.

Q Which one?

A To the left.

Q Agent Gothard?

A Yes.

Q The second one in? Right here?

A Yeah.

Q Okay. So Special Agent Gothard told you that?

A Yes.

Q It was at that point you started telling them a different version of the events. Is that true?

A Yes.

Q When you got to the grand jury, I noticed here today you

had to be reminded to lean into the microphone. I saw in the grand jury transcript as well that you had to be reminded to talk up because you mumble a little bit. Right?

A
Yeah. Yes.

Q
And so when you testified and they just came up there and showed you your grand jury transcript again and it says, nigger as opposed to nigga, you're just looking at what someone else transcribed and wrote down, is that correct?

A Yes.

Q You don't recall specifically what you told them, whether

it was nigger or nigga. That's just what somebody wrote down?

A Yeah.

Q Okay. Thank you, sir.

THE COURT: Redirect examination?

REDIRECT EXAMINATION.

BY MR. GIBSON:

Q
Sir, when you met with Ms. Fitzgerald and the agents from the FBI, your lawyer was present, was he not?

A
Yes.

Q

That's Mr. Chris Harlan?

A

Yes.

Q

And he's present with you today, is that correct?

A

Yes.

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Q And the agents told you to tell the truth. Is that not what you just said?

A Yes.

Q And when you started the interview were you telling the

agents the truth?

A No.

Q And when you finished the interview had you told the

agents the truth at the end of the interview?

A Yeah.

Q Is what you testified to today the truth?

A Yes.

THE COURT: Recross?

MR. SANDAGE: Nothing, Your Honor.

MR. GROMOWSKY: No, Your Honor. Thank you.

THE COURT: You may step down, Mr. Chirino.

MR. GIBSON: May Mr. Chirino be excused?

THE COURT: Without objection, the witness is

excused.

(Witness excused.)

MR. KETCHMARK: Government calls Stephanie Sandstrom to the stand, Your Honor.

STEPHANIE SANDSTROM, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Ma'am, could you, please, introduce yourself to the ladies

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and gentlemen of the jury?

A Stephanie Sandstrom.

Q Can you lean forward, ma'am, and speak up a little?

You're kind of hard to hear.

A Stephanie Sandstrom.

Q Ms. Sandstrom, how old are you?

A 21.

Q Do you have any brothers?

A I have two brothers.

Q What are their names?

A Steven Sandstrom and John Sandstrom.

Q Do you see one of your brothers in court today?

A Yes.

Q Can you, please, point him out and identify an article of clothing he's wearing?

A (Witness pointed.)

MR. KETCHMARK: Your Honor, I ask the record reflect

she identified Steven Sandstrom.

THE COURT: The record will so reflect.

BY MR. KETCHMARK:

Q Ms. Sandstrom, where did you grow up?

A Northeast.

Q Northeast side of Kansas City?

A Yes.

Q Do you know a gentleman by the name of Gary Eye?

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A Yes.

Q Do you see Mr. Eye in the courtroom?

A Yes.

Q Could you, please, point him out for the record as well?

A (Witness pointing.)

Q Is he the gentleman standing?

A Yes.

MR. KETCHMARK: Ask the record reflect she has

identified Defendant Gary Eye.

THE COURT: Record will so reflect.

BY MR. KETCHMARK:

Q Ms. Sandstrom, is your brother, Steven Sandstrom, a friend

with Gary Eye?

A Yes.

Q Have they known each other for awhile?

A Yes.

Q And at some point in time, ma'am, did you have more than a

friendship with Mr. Eye?

A Yes.

Q Was it a romantic relationship?

A No.

Q Did you have sex?

A Yes.

Q Would that have been approximately when?

A March or April of 2005.

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Q And, again, have you lean -A
March or April 2005.

Q But you wouldn't characterize yourself as dating him?

A No.

Q Ms. Sandstrom, do you also know a female by the name of
Regennia Rios?

A Yes.

Q How do you know Ms. Rios?

A We grew up together.

Q In the northeast?

A Yes.

Q Was she also a friend of your brother and Mr. Eye?

A Yes.

Q If I could, ma'am, I'd like to draw your attention back to
March of 2005. Is that all right?

A Yes.

Q And in March of 2005 how old would you have been?

A 18.

Q 18?

A Yes.

Q When's your birthday? What day?

A March 9th.

Q March 9th. So on March 8th of 2005, if my math is right,
that would have been one day before your birthday. So you
would have been 17?

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A Yes.

Q Let's focus on March 8th, if we could. The day before your birthday where were you living at that time?

A 1106 Ewing.

Q 1106 Ewing? Is that also in the northeast?

A Yes.

MR. KETCHMARK: If I could Ms. Marko, could we pull

up Government's Exhibit 6A?

BY MR. KETCHMARK:

Q What you see on the screen in front of you, what has been

pulled up as Government's Exhibit 6A?

MR. ROGERS: It's being displayed.

THE COURT: Any objection to Government's Exhibit 6A?

MR. ROGERS: No objection but it's been displayed to

the jury before so I thought I better bring that to somebody's attention.

THE COURT: Thank you. I was trying to get there. 6A is admitted.

MR. KETCHMARK: I apologize. Your Honor, I'm also going to move admission of 6B and 6C at this time.

THE COURT: Without objection, 6B and 6C are admitted. All may be displayed.

MR. ROGERS: No objection.

BY MR. KETCHMARK:

Q Again, ma'am, directing your attention now to 6B is in

front of you. Do you see that picture?

A Yes.

Q What is in the picture?

A My mother's house.

Q I'm sorry?

A My mother's house.

Q Is that the home there at 1106 Ewing?

A Yes.

Q Is that the home you would have been living at in March of 2005?

A Yes.

Q And we see a couple of windows. One has a bicycle in front of it. Do you see that?

A Yes.

Q What was behind that window with the bicycle?

A That was Steven's bedroom.

Q Your brother Steven's bedroom?

A Yes.

Q And is 6C also a photograph from the street?

A Yes.

Q Now, back in March of 2005 on March 8th who was living at that 1106 Ewing address with you?

A My parents, my two brothers and my daughter and me.

Q Your daughter Hailey?

A Yes.

Q How old was Hailey at the time?

A She was 2-1/2.

Q On that day, ma'am, were you home, March 8th?

A Yes.

Q And at any point in time during that day do you have contact with your brother Steven at the house?

A Yes.

Q And is he there by himself or does he have anybody with him?

A Everybody is with him.

Q By everybody, who are you referring to?

A Steven, Regennia and Gary.

Q Can you maybe tilt that microphone up a tad? That might help you a little bit. So he was with Gary and Regennia?

A Yes.

Q And do you remember, when do they come to the house or are they there? What do you remember about that?

A I remember them coming to the house.

Q When they come to the house, what happens?

A They came in and they went in my brother's room and started getting high.

Q Did you go in the room with them?

A Yes.

Q And when you say getting high, what are you referring to?

A Smoking methamphetamine.

Q And did you smoke meth with them before?

A Yes.

Q Had you used meth before?

A Yes.

Q At some point in time, Ms. Sandstrom, do the three individuals, your brother, Mr. Eye and Ms. Rios, leave the house?

A Yes.

Q And do you stay at the home there on Ewing the remainder of the night?

A Yes.

Q Do you remember about what time you would have gone to bed that night?

A About 10:30 or 11.

Q And did you sleep through the night?

A Yes.

Q Let's forward then to the next morning when you wake up. This is March 9th. And, again, what is the significance of that date?

A It's my birthday.

Q Were there plans that you had on March 9th for your birthday?

A Yes.

Q What were they?

A To go eat.

Q To go eat?

A Yes.

Q And was this something your family, typically, did on your birthday?

A Yes.

Q Who, typically, went out to dinner?

A It's my mom and dad and me and my brothers.

Q Did you, in fact, go have your birthday dinner on March 9th?

A No.

Q Why?

A My brother never showed up.

Q By your brother, you're referring to Steven?

A Yes.

Q Did you try to get in touch with him?

A Yes.

Q How?

A Calling his and Gary's and Regennia's cell phone.

Q Did they answer?

A No.

Q At some point, Ms. Sandstrom, do you see something on the news that concerns you?

A A car being burnt.

Q And why does that concern you?

A It was the same car that they was in.

Q And by the same car that they were in, what are you referring to?

A The Intrepid.

Q When did you see them in the Intrepid?

A Day before my birthday.

Q On March 8th when they arrived, they arrived in a burgundy Intrepid?

A Yes.

Q And the story on the news, in addition to the news talking about a burning Intrepid, was there other information that the news was talking about?

A A man being killed on 9th Street.

Q And were these two stories being reported together as possibly being linked?

A Yes.

Q As a result of seeing that news report, Ms. Sandstrom, did you try to get in touch with your brother again?

A Yes.

Q Did you have any luck?

A No.

Q Did you talk to or see your brother at all on your birthday?

A No.

Q Let's focus now, if we could, ma'am, on the day after your birthday, March 10 of 2005. Are you still at the 1106

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Ewing address, your parents' house?

A
Yes.

Q
At some point while you're there do you have contact with your brother?

A
Yes.

Q
Does he come to the house?

A
Yes.

Q
Is he by himself?

A
No.

Q
Who is with him?

A

Gary and Regennia.

Q

Same people that you had seen him with the day before your

birthday on March 8th?

A

Yes.

Q

What happens when they show up?

A

Into the room. Steven's.

Q

I'm sorry. Where?

A

Back in Steven's room.

Q

In his bedroom?

A

Yes.

Q

Do you follow them in there?

A
Yes.

Where do they go?

Q
And do you ask your brother why did you stand me up on my birthday?

A
Yes.

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Q Were you upset with him?

A Yes.

Q Do you remember, if any of them, being your brother, Mr. Eye or Ms. Rios, made any statements at that point?

Well, let me ask it to you this way. When you're asking them, what are you asking your brother?

A Just why he didn't show up.

Q And what, if anything, was the response you got?

A I don't think Stevie said anything.

Q What about Mr. Eye? Did Mr. Eye make any statements at that point?

A Yes.

Q What did Mr. Eye say?

A That he shot a nigger on 9th Street.

Q And are those the words he used?

A Yes.

Q Nigger. N-I-G-G-E-R?

A Yes.

Q Any doubt in your mind, Ms. Sandstrom, that that's what he said?

A No.

Q Is it possible you misheard him?

A No.

Q Is it possible he said something else?

A No.

Q This statement that Mr. Eye makes, in your presence in the room, your brother is there?

A Yes.

Q And Ms. Rios is there?

A Yes.

Q Does that prompt your brother to make any statement?

A Not that I recall.

Q Did he at any point acknowledge he was in the car and driving when this happened?

A Yes.

Q And was that a statement he made in the bedroom there?

A I believe so.

Q Do you remember if Mr. Eye made any other statements about shooting the nigger at 9th Street?

A I believe he said he was walking on his block on his time.

Q That he was walking on his block on his time?

A Yes.

Q And did he say that's why he shot him?

A Yes.

Q What was Gary or Mr. Eye's reaction? Describe how he's acting as he's telling you this in your brother's bedroom?

A He just acted like it was a game.

Q Was he talking seriously like you and I are talking? Was he laughing or was he joking?

A He was just laughing.

Q Does Ms. Rios make any statements?

A I believe she said that she told him to turn the car back around and finish him off since he already shot him.

Q And Ms. Sandstrom, is there anything else about this conversation in your brother's bedroom that you remember?

A No.

Q At some point do your brother, Mr. Eye and Ms. Rios leave the house?

A Yes.

Q And do you stay there?

A Yes.

Q Over the next couple of days, did you become aware that the police were looking for your brother?

A Yes.

Q Did that concern you?

A Yes.

Q Do you know an individual by the name of Christina Stanley?

A Yes.

Q How do you know Ms. Stanley?

A From Vincent Deleon.

Q From Vincent Deleon?

A Yes.

Q That's another person whose name we have met. But who is Mr. Deleon?

A A friend of Stevie and Gary's.

Q Grew up in the northeast?

A Yes.

Q And Ms. Stanley was a friend of Mr. Deleon's?

A Yes.

Q Do you know where back in March of 2005 the Stanley's would have been living?

A 16th Terrace.

Q 16th Terrace?

A Yes.

Q Is that also on the northeast side?

A Yes.

Q With the police --knowing the police are looking for your brother, do you yourself take steps to try to find him?

A Yes.

Q And on one particular occasion, ma'am, did you think that your brother might be over at the Stanley house?

A Yes.

Q Where were you at or where were you at when you decided or thought possibly he was at the Stanley house or you wanted to check to see if he was there?

A 1106 Ewing.

Q Your parents' house?

A Yes.

Q The house displayed in the photograph. And so what did

you do? Did you call over to the Stanley house?

A I walked.

Q And when you walk over to the Stanley house, you're walking up, what do you do?

A I approach a car that was setting in front of the house.

Q There is a car in front of the house?

A Yes.

Q Why do you approach this vehicle?

A Because my brother and Gary and I believe Regennia and Vincent was all in the car.

Q They were in the car?

A Yes.

Q And it might seem obvious, but are you saying you saw them in the car so you don't go to the house?

A Yes.

Q When you walk up to the car, what's going on inside the car?

A There was a couple conversations going on and-Q
Can you lean in, again, ma'am. When you walk up to the car, what is going on in the car?

A They was just talking in the car like two conversations going on.

Q And what did you say? What else were they doing in the car?

A And was getting high.

Q And, again, was that methamphetamine?

A Yes.

Q Now, at this point when you're walking to the Stanley house, are you, yourself, under the influence of any type of drug?

A No.

Q Were you drunk?

A No.

Q You were walking over there because you were concerned and trying to find your brother?

A Yes.

Q And when you get there and see your brother in the car with these people, who is your focus on?

A My brother.

Q And what are you doing, Stephanie? Tell the ladies and gentlemen of the grand jury or the jury what you're doing as you approach the car and you see your brother?

A Just talking to him.

Q And is he talking back to you?

A He was just talking to me, telling me to leave and to get away.

Q Was it getting you mad? Were you getting annoyed how he was treating you?

A Yes.

Q At any point, ma'am, are you hearing other people in the

car? Can you hear bits and pieces of what they're saying?

A Yes.

Q Do you hear any statements as you're talking to your brother that were coming from Gary?

A Yes.

Q Tell the ladies and gentlemen of the jury what you heard, the bits and pieces of what Mr. Eye said in the vehicle?

A I just remember him saying something about he -THE

COURT: Ms. Sandstrom, back up and speak loudly,

please, so everybody can hear you.

THE WITNESS: I just remember him stating he got his points.

BY MR. KETCHMARK:

Q Did he make any reference, again, or use the word nigger?

A Yes.

Q What do you remember about that?

A I remember him saying nigger twice.

Q And I understand, Ms. Sandstrom, it's been a long time.

Did you appear, well --well, back when this happened back in March of 2005, were you interviewed by the Kansas City, Missouri Police Department?

A Yes.

Q And would it be accurate to say that a lot of what we talked about, you didn't tell the police?

A Yes.

Q You did tell them some things but you didn't tell them everything, right?

A Right.

Q For instance, you didn't tell them that you had had contact with your brother on your birthday, correct?

A Right.

Q And it might seem obvious but why did you lie about that?

A Trying to protect my brother.

Q In addition to talking to the police, you became aware, did you not, ma'am, that there was a federal investigation into the homicide?

A Yes.

Q And you also became aware at some point that we were wanting you to appear as a witness in that investigation?

A Yes.

Q In fact, we had a subpoena that we were trying to get to you and you knew that?

A Uh-huh.

Q Is that a yes?

A Yes.

Q And you were, in effect, avoiding us getting that subpoena to you, weren't you?

A Yes.

Q And you finally got that subpoena but you didn't appear when you were suppose to, is that correct?

A Right.

Q And, again, it might be obvious but is that because you didn't want to have to come in and talk about what we're talking about?

A Yes.

Q And as a result of that, Ms. Sandstrom, were you arrested by the marshals because the court issued a material witness warrant for you?

A Yes.

Q And following that arrest, you were interviewed by a couple of agents of the FBI?

A Yes.

Q Is it the two gentlemen sitting here, Special Agent Gothard and Special Agent Janke?

A Yes.

Q And they tried to talk to you about what you and I are talking about?

A Yes.

Q And on that date when you were initially arrested you didn't provide them with most of the details we're talking about, right?

A No.

Q And, ma'am, we're also going to talk about a gun that you retrieved from your brother's girlfriend's house, did you not?

A Yes.

Q What did you do with it?

A Threw it in the Little Blue River.

Q And when the agents are talking to you on that morning after you had been arrested and they're asking you about whether you disposed of the gun, what did you tell them? Did you tell them right away that you did that or did you lie?

A I lied.

Q You lied?

A Yes.

Q Were you adamant that you had no part in the disposal of that gun?

A Yes.

Q Now, at some point after they talked to you, initially, do we, we, being the United States Attorney's Office, get you an attorney?

A Yes.

Q And it was us that got you an attorney appointed, right?

A Yes.

Q And do you see the attorney here? Is it Ms. Nouri, who is sitting here?

A Yes.

Q And from that time on, have you always had the opportunity to have her present with you when ever you and I are

talking with the exception of when you were in grand jury?

A Yes.

Q And when you're in the grand jury, was she outside the room?

A I believe so.

Q And I told you that, didn't I?

A Yes.

Q And we would let you go out and talk with her when you were in grand jury, right?

A Yes.

Q Now, at some point, and I have already alluded to it, you testified in front of that grand jury, didn't you?

A Yes.

Q And before you got into the grand jury room to testify, you met with these agents, again, and with your attorney being present and were asked questions, again, about whether you had contact with your brother and whether you were involved in the disposing of the gun, weren't you?

A Yes.

Q And at that point did you tell these agents and myself, when I was present, essentially, the same information you're telling this jury here today?

A Yes.

Q Is it the truth?

A Yes.

Q Now, when we got off on this point, Stephanie, I was asking you about walking up and talking to your brother in the car in front of the Stanley house. Do you remember that's where we had stopped in kind of the events of what was going on?

A Yes.

Q And when we talked in grand jury and in the days leading up to grand jury, did we talk to you about that specific event, about going up to the car?

A Yes.

Q And that would have been back in the summer of 2005?

A Yes.

Q And is it fair to say that in that time frame it was only a few months removed from the events versus now we're sitting here a few years removed?

A Yes.

Q And if I allowed you an opportunity to look at that portion of your testimony in grand jury, would it help refresh your memory about what particular parts or aspects of Gary's statements you heard in the car?

A Yes.

MR. ROGERS: I'm going to object. I don't think

there's been any showing of lack of memory. I don't think there's any need to refresh anything.

THE COURT: Sustained.

BY MR. KETCHMARK:

Q Ma'am, other than a statement about getting his points and something about on his block on his time, are there other aspects that you told us before that you can't remember as you sit here today?

A Not that I remember.

Q Do you remember if he made any statements about that he could kill every nigger that walks down 9th Street, on his block on his time?

A Yes.

Q Did he make that statement?

A Yes.

Q And you told that to the grand jury?

A Yes.

Q Now, I've kind of mentioned it briefly but at some point in time after this conversation that you, well, after the conversation that you overhear in front of the Stanley house, are you getting angry with your brother because he's not talking to you and he's telling you to leave?

A Yes.

Q And do you do just that? Do you walk down the street and leave?

A Yes.

Q Now, at some later point, Ms. Sandstrom, do you learn that your brother's been arrested?

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A Yes.

Q At the time that this is going on, was your brother dating

someone?

A Yes.

Q Who?

A Kristina Chirino.

Q And did you know that?

A Yes.

Q Did you have a cell phone at this time?

A Yes.

Q And at some point in time, ma'am, do you get a message on

your cell phone from your brother?

A Yes.

Q And is it directing or asking you to do something?

A Yes.

MR. KETCHMARK: Your Honor, at this time I would ask to and I believe it's already been offered and admitted as a transcript, 80A, yesterday. I don't believe there's any excerpts. It's a very short transcript. I believe we offered and admitted that.

THE COURT: I show 80A as identified. 80A is a

transcript?

MR. KETCHMARK: That's correct.

THE COURT: It has not been admitted.

MR. KETCHMARK: I would offer to admit that at this

time.

MR. ROGERS: No objection.

THE COURT: Any objection to 80A, the transcript?

MR. OSGOOD: No objection.

THE COURT: 80A is admitted.

BY MR. KETCHMARK:

Q And before we play this message, Stephanie, you didn't get

this call, initially. It's actually a message, correct?

A Yes.

Q And the part that the jurors are going to hear, initially,

is that the equivalent of what you would have on your phone for normal messages on a cell phone, could say, hi. I'm not here. Leave a message. They're going to hear music, right?

A Yes.

MR. KETCHMARK: At this time, Ms. Marko, please play.
(The tape is being played.)

MR. KETCHMARK: Stop a second.

BY MR. KETCHMARK:

Q Again, it might be obvious but do you hear the male

speaker on that?

A Yes.

Q Who is that?

A My brother.

Q Steven Sandstrom?

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A Yes.

Q Okay. Continue.

(The tape is being played.)

BY MR. KETCHMARK:

Q At some point, Ms. Sandstrom, after your brother has been arrested, do you listen to that message?

A Yes.

Q And what did you understand your brother to be asking you to do in that message?

A To go to Kristina's and get the gun.

Q Did you do that?

A Yes.

Q Can you lean in, again, ma'am? I apologize.

A Yes.

Q Where was Kristina living at the time, do you remember?

A On Van Brunt.

Q And when you get there, is it night? Is it day?

A It's night time.

Q And when you arrive, is there anything going on outside of the Chirino house?

A There was about twelve cops there and they was together -the truck.

Q Did you go into the home?

A Yes.

Q When you go in, where do you go?

A To the front door, down to the basement.

Q Did you have contact with anybody there at the Chirino house?

A Jonathan and Kristina.

Q Tell the ladies and gentlemen of the jury about your conversation or contact with Jonathan and Kristina?

A Just remember asking for the gun and they was playing me like they didn't know where it was.

Q Did you accept that as the final answer so to speak?

A No.

Q What did you say?

A Told them they was lying and they knew where it was.

Q Their response?

A That he hid it somewhere in the closet in a box.

Q Hid it somewhere in the closet in a box?

A Yes.

Q And what did that prompt you guys to do?

A I looked for it and I found it.

Q Where was it?

A In a box.

Q In the closet?

A Yes.

Q What did you do with it?

A I put it in the front of my pants and left the house.

Q Now, Ms. Sandstrom, had you ever seen your brother with

that gun before?

A
Yes.

Q
On how many occasions?

A
Six to 8.

Q
Six to 8?

A
Uh-huh.

Q
Was there a particular way that he would carry that gun?

A
In the back support.

Q
Bandage --back support bandage?

A
Yes.

Q
Had you ever seen Mr. Eye with that gun before?

A
Yes.

Q

On how many occasions?

A Six or more.

MR. ROGERS: I'm sorry. I didn't hear.

THE WITNESS: Six or more.

BY MR. KETCHMARK:

Q

So back in the Chirino basement, you find the gun in the closet. You said you stuffed it in your pants?

A

Yes.

Q

What did you do next?

A

I drove to my mother's house and wrapped it in diapers.

Q

Is that the 1106 Ewing address?

A

Yes.

Q

Was anybody home when you did that?

A My parents.

Q Did you tell them what you were doing?

A Yes.

Q And you said you wrapped it in what?

A In two of my daughter's diapers.

Q Did you stay at the house?

A No.

Q What was your plan at that point?

A To go dispose of the gun.

Q Did you tell your parents that?

A Yes.

Q What did you do?

A I drove to 17th and Manchester and threw it in the river.

Q 17th and Manchester?

A Yes.

Q How did you get there?

A I drove in my car.

Q And tell the ladies and gentlemen, describe to them as you're driving your car, how do you go about getting rid of that gun?

A Just driving over the bridge and throwing it as I driving over.

Q Didn't stop?

A No.

Q And, again, you didn't tell the police this, initially?

A No.

Q And you didn't tell these agents that, initially?

A No.

Q But at some point after you get Ms. Nouri and you talk to these agents, again, before you go to grand jury, do you tell them this information?

A Yes.

Q Do they make a request of you in terms of saying, can you show us where you did it? Where you threw the gun?

A Yes.

Q And did you agree to do that?

A Yes.

Q And did you take them with Ms. Nouri and get in the car in the courthouse here and drive them down and start at 1106 Ewing and drive them the route that you would have taken?

A Yes.

Q And when you got to the bridge at 17th and Manchester, did you show them approximately where you would have been on the bridge when you chucked it or how did you do it?

Did you throw it like this or throw it like this?

A I had it, driving, and the passenger window, I had it down. I just threw it as I was driving.

Q You're driving and doing this?

A Yes.

Q Did you show these agents approximately where you were at

on the bridge in your best memory when you threw the gun?

A Yes.

Q Now, I understand, ma'am, and I think it's clear that you didn't want to have to be in the position that you are in in terms of talking to the FBI about all of this information?

A Yes.

Q And you still would prefer that you not be here, correct?

A Yes.

Q And when we talked, did we tell you that we weren't looking at charging you for getting rid of that murder weapon?

A Yes.

Q Did we tell you that what we were more interested in was that you be truthful about what you knew?

A Yes.

Q And we assured you that if you were truthful that we weren't going to charge you for disposing of that gun, didn't we?

A Right.

Q And we also talked, ma'am, about the fact that there was drug use that you had talked about because it was around conversations, right?

A Yes.

Q And we told you we weren't going to charge you for your

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use of drugs?

A Right.

Q And as this is going on and this process of the interview

and the grand jury is developing, are these agents

threatening you?

A No.

Q Are they scaring you or forcing you to tell them things?

A No.

Q Are they telling you that this is what we want you to say?

A No.

Q They're telling you that they want you to tell the truth,

right?

A Yes.

Q And is what you're saying, difficult as it might be, is it

the truth?

A Yes.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Ms. Sandstrom -

THE COURT: Just a moment.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
PROCEEDINGS WERE HAD:)

MR. ROGERS: I'm sorry, Judge. I realize it's early

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but I need a break.

THE COURT: Really?

MR. ROGERS: Really. Too much coffee. Same as I do

every morning. I don't know what the difference is today.

THE COURT: Okay. All right. We'll take -MR.

OSGOOD: Can he run around corner? I'll wait and

fumble with my papers.

THE COURT: All right. Fumble.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q Ms. Sandstrom, my name is John Osgood. I represent Mr. Eye along with Mr. Sandage. I'm going to ask you some questions but I want to wait a second. Mr. Rogers had to step out for a second. He'll be right back. He's counsel for Mr. Sandstrom, your brother. We're about to start here in a second so bear with me for a minute.

Ms. Eye, Ms. Sandstrom, I'm sorry, the last question that Mr. Ketchmark asked you was, did anybody threaten you, tell you you could be in trouble or anything for any reason. You said no?

A

No.

Q

And you'll need to speak up, ma'am.

A
No.

Q
Do you remember talking to a gentleman by the name of Mark
Reeder?

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A Yes.

Q Who is a private investigator?

A Yes.

Q You need to speak up again.

A Yes.

Q Did you tell Mr. Reeder that you were told that if you did not reveal facts that they contended you knew, that you could be prosecuted as an accessory after the fact for the murder and obstruction of justice?

A No.

Q You didn't tell Mr. Reeder that?

A No.

Q Okay. Now, you're aware your brother and Mr. Eye are both charged with capital murder, aren't you?

A Yes.

Q Do you know what that means?

A No.

Q Pardon?

A No.

Q You need to speak up now.

A No.

Q If you need to lean forward --it might be helpful if you lean closer to the microphone. Because everybody in the jury box is very interested in what you have to say as well as the spectators, as well as the people over here.

And the defendants have a right to hear what you say. So I don't mean to harp on it but you need to lean forward and speak up. Can you do that for us, please?

A Yes.

Q You're still not doing it.

A Yes.

Q And now the other thing is I don't want to put words in your mouth and I'm going to ask you questions and if I ask you a question you don't understand, I'm asking that you stop me at that point and say, Mr. Osgood, I don't understand the question. Please state it another way. Will you do that for me?

A Yes.

Q Okay. You understand the ground rules here?

A Yes.

Q Okay. You don't remember telling Mr. Reeder that?

A No.

Q You did talk to him for about an hour, didn't you?

A Yes.

Q And that was on the 31st day of October of 2005, wasn't it? Do you remember the date?

A No.

Q Where did that happen at?

A I believe at my mother's.

Q Your mother's house?

A Yes.

Q Okay. We'll come back to that.

By the way you talked to the prosecutors before you came in here today, didn't you? These gentlemen sitting over here? In preparation for your testimony?

A Yes.

Q How long did you spend with them?

A Maybe like five minutes.

Q When is the last time you talked to them, sat down with them and the agents to go over your testimony?

A Saturday.

Q This past Saturday?

A Yes.

Q How long did you spend with them then?

A About an hour.

Q About an hour?

A Yes.

Q Did you go over your statements and your grand jury testimony?

A Yes.

Q You read it and reviewed it?

A We just went over the facts of it.

Q Told you what they were going to ask you?

A Yes.

Q Talked about your answers?

A
Yes.

Q
Okay. Now, let's --kind of jumping around here. Let's go back to April 13 of 2005, which would be --your birthday was on March 9th, is that right?

A
Yes.

Q So 9 from 13 is 4 days, that would be?

MR. KETCHMARK: April or March?

MR. OSGOOD: April. I'm sorry. 34 days. I'm not a math major.

BY MR. OSGOOD:

Q From March 9th to April 13th is about 34 days. Would you agree with me? 33, 34 days?

A Yes.

Q That's the first time you sat down and talked to the

police, isn't it?

A Yes.

Q And that was a Detective Robert Blehm. Do you remember

him?

A Kind of.

Q What did he look like?

A I don't remember.

Q Where did that interview take place?

A I believe it was 12th and Locust.

Q Did they bring you down to the police station?

A Yes.

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Q Did they tell you that they were investigating a homicide?

A Yes.

Q And that it was a serious matter?

A Yes.

Q And did they tell you that your brother was a suspect?

A Yes.

Q And how long did that interview take place?

A I don't remember.

Q Did they have you fill out one of these forms that was an advice of rights form?

A I can't remember.

Q Now, you have said, I don't remember. We've been doing this about five minutes, you said I don't remember about 8 or 10 times, haven't you?

A No.

Q Well, 5 or 6, whatever the record will show. You've said it a number of times, haven't you?

A Yes.

Q And you understand that this is an important matter?

A Yes.

Q Is it fair to say that there's a lot of things you don't remember about this?

A No.

Q Okay. Now, at this police department interview, did you have anybody with you?

A No.

Q Did you have a lawyer?

A No.

Q All right. Now, you, on direct examination, told us that Mr. Eye came over to the house two days after your birthday, is that right? Gary?

A Yes.

Q That's when he made this statement that, something to the effect of he shot the nigger on 9th Street?

A Yes.

Q Is that still your testimony?

A Yes.

Q Ma'am, do you recall telling the detectives that on that day, we're not talking about the incident with the car now but on that day, did you tell the detectives that Gary and Stevie were over at the house, they stayed about 45 minutes and left?

A I don't remember.

Q Would it help you if you saw your statement?

A Yes.

Q Did you read that highlighted there? Does that help refresh your memory?

A Yes.

Q Yes?

A Yes.

Q Okay. Did you, in fact, tell the police at that time in that interview in the homicide investigation that they came over to the house and stayed 45 minutes and left?

A Yes. And I lied.

Q Pardon?

A I lied to them.

Q Well, let's just go on now. Did you also say that Gary made no statements at that time?

A Yes.

Q About the murder?

A Yes.

Q And did you also say that Stevie made no statements at that time about the murder?

A Yes.

Q You knew it was a homicide investigation, is that right?

A Yes.

Q You weren't taking sides at that point between Gary or Stevie, were you?

A No.

Q You told the police that they made no statements though?

A Right.

Q Now, they went on to question you a little bit, is that right?

A Yes.

Q And they asked you about, you said that was a lie by the

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way?

A Yes.

Q Could it have been a mistake on your testimony because

later in the report it talks about this statement that you said was made at the house was, in fact, you said was made in the car?

A Could you rephrase that?

Q All right. Was it a lie at that point or a lie later

because you told the detective -MR.

KETCHMARK: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: Object to the form of the question. I think she indicated it was clear it was a lie. And I think the question as formed is incorrect and going to confuse her. She clearly indicated -

MR. OSGOOD: I'll withdraw it. I'll withdraw it.

MR. KETCHMARK: But it's going to be. Okay. We'll be --I'm going to continue to object if it's confusing. I think she's clear.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q You then went on and told the detectives about a

conversation that occurred at the car, didn't you?

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A Yes.

Q What did you tell them the conversation was at the car?

A I don't remember.

Q You don't remember? Excuse me, ma'am, but I think you

just told us what the conversation was at the car on
direct examination not less than 10 minutes ago.

THE COURT: I think you asked her what she told the
detectives about the conversation at the car. She doesn't
recall. Show her the statement.

BY MR. OSGOOD:

Q So is that --I didn't mean to confuse you.

A Yeah, you confused me. I remember what happened in front

of the Stanley house. I thought you meant a different
occasion.

Q

Okay. Now, we're getting somewhere. You don't remember
exactly what you told the police but you do remember today
what happened at the car?

A Yes.

Q All right. Would it help you if you saw your statement
again?

A Yes.

Q Okay.

Did that help you?

A Yes.

Q Well, where I'm going with this is on direct examination

you said these statements were made by Mr. Eye at your house two days afterward. In the police report it indicates, doesn't it, you told them that these, they said nothing at the house. Then a week later it was said at the car?

MR. KETCHMARK: Your Honor, if I might for clarification, I think she testified there were statements at the house and then there were subsequent statements at the car. She's not saying it happened at one place and not the other. Object to the question as mischaracterizing what her testimony is.

THE COURT: I'm going to allow the question and let's limit the speaking objections, Mr. Ketchmark.

MR. KETCHMARK: All right.
BY MR. OSGOOD:

Q Did you understand the question?

A Would you repeat it?

Would you read it back, please, ma'am?

(The last question was read back as follows:

Q (By Mr. Osgood) Well, where I'm going with this is

on direct examination you said these statements were made by Mr. Eye at your house two days afterward. In the police report it indicates, doesn't it, you told them that these, they said nothing at the house. Then a week later it was said at the car?")

BY MR. OSGOOD:

Q Do you understand that?

A Yes. Everything, almost everything that I told the police or the homicide detectives, I lied. I was scared.

Q So everything in this report was a lie?

A Not everything, no.

Q Most of it?

A Yes.

Q Why would you lie to them?

A I was scared.

Q You were scared?

A Yes.

Q Okay. Now, by May of '05, you had an attorney, didn't you, Ms. Nouri?

A Yes.

Q Is she in the courtroom?

A Yes.

Q And you had discussions with her. And I don't want to get into your attorney-client discussions but you talked to her about your situation and all of the options you had and the options the government had and everything and you decided to talk to the government. Is that a fair statement?

A Yes.

Q The next thing that happened was on the 23rd day of May

you met with some FBI agents, didn't you?

A Yes.

Q Do you remember who that was?

A Yes.

Q Who was it?

A Arch and Heath.

Q Who?

A Arch and Heath.

Q Who is Arch?

A Arch Gothard.

Q Is he a special agent with the FBI?

A Yes.

Q You're on first name terms with him. You call him Arch.
He calls you Stephanie?

A Yes.

Q Heath, are you on first name terms with him, too? You
call him Heath, he calls you Stephanie?

A Yes.

Q How many times have you talked to Heath and Arch?

A Couple.

Q That's these two special agents from the FBI, sitting here
at the table, aren't they?

A Yes.

Q Now, how long did that interview with Arch and Heath take?

A I think a couple of hours.

Q Well, on the 23rd of May, I'm talking about, because you had another one later, didn't you?

A Yes.

Q Now, on the 23rd of May you weren't calling them Arch and Heath, were you?

A No.

Q They were calling you Ms. Eye and you were calling them, I don't know what you were calling them but it wasn't a very pleasant interview, the first time, was it?

A No.

Q What happened?

A I just remember lying to them and telling them that I didn't know anything.

Q Now, you, obviously, even though you're in here testifying against him and knowing he's facing a murder charge, you love your brother, I'm sure, very much, don't you?

A Yes.

Q And, in fact, it was a little bit upsetting and maybe, I don't know the words, upsetting, you were disappointed when he didn't show up for your birthday?

A Yes.

Q Birthday is an important part of a young girl's life, isn't it?

A Yes.

Q You get dressed up and you go out to dinner and get the

family together. And it's one of the times you all sit down together?

A Yes.

Q It's hard for a family in modern American to spend some time together, isn't it?

A Yes.

Q So you were looking forward to that?

A Yes.

Q And Stevie wasn't there?

A No.

Q And you were disappointed?

A Yes.

Q Now, even today you want to help him if you can. You want to help him get out of the murder case, don't you?

A If I could but I can't.

Q I see. Well, you can by shifting most of the blame to Mr. Eye, can't you?

A No.

Q That would help him, wouldn't it?

A No.

Q That wouldn't help him?

A It's not my decision.

Q I see. So on the 23rd of May you have this conversation with the FBI and you told them what about a gun? They asked you about that gun at that time on that first

interview? Do you remember?

A A little bit, not that much.

Q Did the term western style cowboy gun come up?

A Yes.

Q What was said?

A I just remember stating that it looked like a western gun.

Q Did you tell them that, first of all, you said you saw Stevie with it seven or eight times?

A 6 to -Q

Did you tell them at that time that it was an old western-style gun but admitted she was on drugs and did not have a good recollection of the gun or when you had seen it.

A Not that I remember.

Q Pardon?

A Not that I remember.

Q Would it help if you saw your statement?

A Yes.

Q Refresh your memory?

A Yes.

Q So the question I just asked you is, is that reasonably accurate?

A Yes.

Q So I guess you would characterize that as a misstatement or a lie also?

A Yes.

Q Pardon?

A Yes.

Q So you have already lied to the homicide detectives?

A Yes.

Q You said almost everything in there was a lie?

A Yes.

Q And so now you're lying to the FBI on May 23rd?

A Yes.

Q You said you hadn't seen that gun?

A Yes.

Q Or maybe you were on meth and you didn't remember?

A Yes.

Q Now, by the time you talk to the FBI in that first interview, you were putting it on Mr. Eye, weren't you?

A Putting everything, yes.

Q Pardon?

A Yes.

Q You were putting it all on him, weren't you?

A Yes.

Q And you were, to the extent you can, also saying things about Ms. Rios?

A Yes.

Q But, again, they told you that they weren't happy with your interview, didn't they?

A Right.

Q They thought you were lying about things?

A Yes.

Q Did they swear at you at any point?

A No.

Q Use swear words?

A Yes.

Q Which one? They were then Agent Gothard?

A No. I remember cussing. I don't remember them.

Q Pardon?

A I remember cussing. I don't remember them.

Q Okay. They didn't cuss you back?

A No.

Q What did you say to them?

A I don't remember.

Q Okay. You don't use swear words at all so you don't remember?

A No. It's been three years.

Q Okay. I assume you're not --you don't talk harsh like that then?

A No.

Q No?

A No.

Q Now, on May, over the 25th and the 26th, I guess couple of days, you went back and talked to them again, is that

right?

A Not for sure.

Q Had they shown you a report of that interview, the FBI report in your preparation to testify on Saturday?

A I don't believe so.

Q Okay. I'm going to show you this report and ask if you have ever seen it.

It would have been these dates. Does that refresh your memory?

A Yes.

Q So it's about a month later, right? It's in May?

A Yes.

Q About three months after your birthday?

A Yes.

Q And you meet with them down in the FBI here or at the U.S. Attorney's Office?

A I believe it was the U.S. Attorney's Office.

Q Fifth floor in this building?

A Yes.

Q And it was, was Lisa Nouri with you, your attorney?

A Yes.

Q And how long did that session take?

A I believe a couple hours.

Q Pardon?

A A couple hours.

Q

A couple hours. Was it in a little interview room back, just when you walk into the main lobby? You go around to the side then go to an interview room?

A

Not for sure.

Q

Back down the hall?

A

Yes.

Q

Small room with a phone and table in it?

A No.

Q Wasn't a table?

A It was a big table.

Q That's what I mean.

this size here?

A Yes.

Q Who all was there?

Wasn't a little one.

A long one, conference table, maybe

A

The agents, the U.S. Attorney and my lawyer and me.

Q

Okay. And you had this two-hour discussion about your conversation?

A

Yes.

Q

And did you tell them at that time that you had been untruthful to the agents during your interview on May 23rd?

A

Yes.

Q

So three days later, you're back again?

A

Yes.

Q

When do you come to the point of where you're on a first

name basis with the agents, ma'am?

A About, some time. I don't know. It's been awhile.

Q Pardon?

A I don't remember exactly. It's been awhile.

Q After all these interviews and the grand jury or during that time frame?

A Yes.

Q So you became friendly with them?

A Yes.

Q And now you apparently told the detectives that you had not seen Stevie for a couple days prior to March 9th and you told them in this interview that was a lie, didn't you?

A Yes.

Q That you had seen him?

A Yes.

Q When did you see him?

A March 8th.

Q Okay. And why did you lie about that?

A Just trying to cover up.

Q Trying to what?

A Trying to cover up.

Q Cover up for Stevie?

A Yes.

Q Did they tell you that was a potential criminal offense,

making you an accessory after the fact?

A No.

Q So you just decided to change that testimony? Why?

A To tell the truth.

Q I see. So you had some epiphany that caused you at that point to want to tell the truth?

A Yes.

Q Now, did you tell them in that interview that you were smoking meth in the bedroom with Stevie, Mr. Eye and Mr. Deleon and yourself?

A Yes.

Q Now, what is your relationship with Mr. Deleon?

A He was just a friend.

Q Pardon?

A He was just a friend.

Q Did you have a sexual relationship with him?

A No.

Q Okay. I didn't bring it out but the prosecutor asked you if you had sex with Mr. Eye. You did, didn't you?

A Yes.

Q Were you pregnant at that time or had a baby at that time?

A No.

Q When was your child born?

A Which one?

Q I believe you were involved in a pregnancy in some point

in June of '05, weren't you?

A Yes.

Q And who was that child by?

A Anthony Aguirre.

Q Aguirre?

A Yes.

Q Spell his last name, please.

A A-G-U-I-R-R-E.

Q Okay. How long had you been, I guess, you were actually dating him?

A Yes.

Q How long had you dated him?

A About seven months.

Q Okay. And you have a child by him?

A Yes.

Q So you discussed this smoking meth in this meeting back in the bedroom?

A Yes.

Q You said, I believe, at that time you went to bed with your daughter?

A Yes.

Q Hailey?

A Yes.

Q Now, is that Mr. Aguirre's child also?

A No.

Q Who is the father of that child?

A Nick Paris.

Q Nick Paris?

A Yes.

Q Now, at that point did you tell them you had no independent recollection of them coming back to the house March 9th, early in the morning?

A Yes.

Q Was that true?

A No.

Q Pardon?

A No.

Q So even on March 25th and the 26th, you were still lying to them?

A No.

Q Well, clarify that for me, please.

A Could you rephrase that question? I'm sorry.

Q Yes, ma'am. That's what I want you to do. If I ask you a question you don't understand, correct me, please, because I'm not in charge here. I'm just the facilitator to ask you the questions. The testimony has to come from you. I'm not trying to testify.

You said in that interview that you had gone to bed and you couldn't remember whether or not they had come back to 1106 Ewing in the early morning hours of

March 9th?

A They didn't.

Q They didn't?

A No.

Q Okay. So that was accurate?

A Yes.

Q You got up about 8:00?

A Yes.

Q I believe in that interview you told them on March 10th which would have been two days later?

A Yes.

Q Or two days after your birthday?

A One day.

Q One day after your birthday?

A Yes.

Q That they did come home?

A Yes.

Q Who was it?

A Steven, Regennia and Gary.

Q Did you tell the FBI in that interview that you weren't sure Rios was present?

A Not that I remember.

Q Let me show you the interview. See if that helps you.

Does that help you?

A Yes.

Q So what is your recollection, having looked at this, about what you said about whether or not Rios was there?

A I'm pretty sure she was there.

Q Okay. They were in this green Intrepid I believe you said?

A Yes.

Q And you say that's when you asked what was going on and Mr. Eye said, I shot the nigger?

A Yes.

Q You say Stevie agreed that Eye had jumped out and shot and Steven was driving?

A Yes.

Q You also made statements to the effect that Mr. Eye supposedly said he would kill every nigger that walks down 9th Street, didn't you?

A Yes.

Q And that's when you said that Mr. Eye said, nigger, nigger, nigger?

A Yes.

Q And so at this point you're loading it up pretty good on Mr. Eye, aren't you, with these two FBI agents?

A Yes.

Q Arch and Heath?

A Yes.

Q It's all shifting to him, isn't it?

A It was the truth.

Q And then you talk a little more about the gun.

You also at some point even suggest that Mr. Eye has a swastika on his arm. He doesn't have a swastika on his arm, does he?

A

I don't remember. I remember two people stating he had

it. I don't know.

Q Somebody else told you that?

A Yes.

Q You never saw a swastika on his arm?

A Not that I remember.

Q But you told them he had one on his arm?

A I told them that I heard.

Q Would it help you to see your statement?

A Yes.

MR. KETCHMARK: Counsel, what page?

MR. OSGOOD: Last page. No. 4.

See it?

THE WITNESS: May have seen.

BY MR. OSGOOD:

Q

You said, you may have seen one on his arm. Now you're saying somebody else may have said that. So you were,

basically, telling the FBI everything you could to dovetail into their investigation, weren't you?

A
Yes.

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Q Pardon?

A Yes.

Q Your answer is yes that you were trying to dovetail into their investigation?

A Yes.

Q All right. Now, let's talk a little bit --going to kind of shift gears. You grew up in the northeast, is that right?

A Yes.

Q And how long have you known Mr. Eye?

A About ten years.

Q And so you're 21 now?

A Yes.

Q So you were kids together?

A Yes.

Q And that's a mixed neighborhood, isn't it?

A Yes.

Q And there's Hispanics living in that neighborhood?

A Yes.

Q And there's African-Americans living in that neighborhood?

A Yes.

Q And there are Caucasians?

A Yes.

Q Even I believe now some orientals, aren't there?

A Yes.

Q Quite a few of them?

A Yes.

Q So it's a multi-cultural diverse neighborhood, isn't it?

A Yes.

Q And, basically, everybody gets along there, don't they?

A Yes.

Q Pretty much. I don't recall, do you recall if any riots or any disturbances or any racial confrontations in those neighborhoods that made the news or that you're aware of?

A No.

Q Everybody shops in the same shops, don't they?

A Yes.

Q And there is a little business area there at 9th and Spruce, isn't there?

A Yes.

Q They call that the Island, I believe?

A Yes.

Q Because of the way the buildings --there is a building that kind of runs at an angle?

A I believe. Talking about the liquor store?

Q Yes, ma'am. You need to speak up again. But there's a little shopping area there?

A Yes.

Q Then not too far from that is the Inner City Oil, I think, and some other areas?

A Yes.

Q So it's both kind of a mixed commercial and residential neighborhood?

A Yes.

Q People are out walking around on the street and everything?

A Uh-huh.

Q You grew up in that neighborhood?

A Yes.

Q Where did you go to grade school at?

A I went to different schools. I went to George Washington Carver.

Q Okay. Were you bussed?

A Yes.

Q Okay. And I guess intermingled with black children and yourself?

A Yes.

Q Been around them a lot?

A Yes.

Q Incidentally, there's talk about the use of the word nigger and nigga. Do you use the word nigger?

A Me?

Q Yeah.

A No.

Q Never?

A I have but I don't now.

Q Okay. Well, when is the last time you did? Was it after all this came to a head that you're more conscience now of the use of the term?

A Yes.

Q And certainly it's given you some time to reflect on it as it has us all, right?

A Yes.

Q It's not a very pretty term, is it?

A No.

Q But you were using it growing up, weren't you? During those time frames?

A Yes.

Q And you didn't draw a distinction between it and nigga, did you?

A No.

Q How you doing, nigga? What's up, nigga? Conversation like that?

A Yes.

Q Right off of the preamble to the tape?

Can we play the preamble to the tape again, please?

(The tape is being played.)

MR. OSGOOD: Thank you.

BY MR. OSGOOD:

Q That's something you put on the front of your phone, isn't it?

A Yes.

Q And who was that group?

A I don't remember.

Q Would you agree with me that that is characteristic and typical rap music?

A Yes.

Q And that's the kind of music that you listen to?

A Yes.

Q And your friends listen to?

A Yes.

Q Much like when I was your age we listened to rock and roll, you guys listen to rap, don't you?

A Yes.

Q And pretty much an accepted form of music across the cultural lines, isn't it?

A Yes.

Q In fact, there is even, help me. There's a white rapper that was one of the top rappers in the country at one point in time. I don't know if he's still around or not.

What was his name?

A Eminem.

Q Eminem. Exactly. That Mr. --I don't know what his real name is -

MR. ROGERS: Could we turn off the exhibit if he's done talking about it?

THE COURT: Yes.

BY MR. OSGOOD:

Q Eminem made millions emulating black culture, didn't he?

A Yes.

Q Ever own any Eminem CDs?

A Yes.

Q Okay. Pretty popular guy, wasn't he?

A Yes.

Q He used the word nigger, nigga?

A Yes.

Q Ho?

A Yes.

Q Bitch?

A Yes.

Q Shoot. Kill. That's in these CDs. The conversation in them is replete with those kinds of terms, isn't it?

A Yes.

Q Some of them even urge you to go out and shoot the cops, don't they?

A No.

Q None of them you had?

A No.

Q Lot of controversy about it, isn't there?

A
Yeah.

Q
So, kids you run around with listen to that stuff, all of you?

A
Yes.

Q
Stevie listened to it?

A
Yes.

Q
I'm calling him Stevie. By the way, I normally refer to witnesses by their last name. Since you're both Sandstroms, if no one objects, I'm going to refer to him as Stevie while we're in here. That's what you call him, right?

A
Yes.

Q
Okay. Mr. Eye listened to that kind of music, too?

A
Yes.

Q

Ms. Rios?

A

Yes.

Q

And all the people you ran with?

A Yes.

MR. KETCHMARK: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: Understand it's a capital murder case. I understand I'm giving him latitude. I would --just one of the Court's normal rules is cross can't exceed direct.

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I believe Mr. Osgood is over. The only thing is I think he has made this point repeatedly, then goes back, tries to make his point again. I think this would be an appropriate time to at least suggest to him that he wrap himself up.

MR. OSGOOD: The old objection. Prejudicial. Yeah, it's prejudicial because it's hurting.

MR. KETCHMARK: It's not, Your Honor.

MR. OSGOOD: I've got lots more time.

THE COURT: You know, if somebody can tell me how I can limit cross-examination in a death penalty case consistent with due process, I'm happy to hear it. I do think that we can go a little faster. And it is taking time. And, normally, I do try to limit cross-examination. But I'm not sure that it passes constitutional muster in this case.

MR. KETCHMARK: I'm not suggesting that we do that. That's why I kind of came up here, started my remarks half jokingly. But I think also as he's making his points he can move on. We don't need to be belaboring. I don't think I should have to object as asked and answered.

THE COURT: I'm going to give him a reasonable period of time to conduct this cross-examination and I don't think we're there yet.

MR. KETCHMARK: Okay.

THE COURT: So let's continue. And if it becomes too repetitive or cumulative, I'll stop it. All right.

MR. KETCHMARK: Thank you.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q Now, have you seen your brother, Stevie, around other black Americans?

A Yes.

Q And they get along?

A Yes.

Q Have you seen Mr. Eye around them also?

A Never have.

Q Never seen Mr. Eye associate with any black Americans?

A No.

Q Do you know his mother?

A Yes.

Q Ever met her?

A Yes.

Q She's dark-complected, a very dark-complected lady?

A Yes.

Q Darker than or about the skin color of Mr. Jonathan Chirino, the previous witness?

A Yes.

Q Are you aware that she's half Native American?

A Yes.

Q Are you aware that part of her family married into African-Americans?

A No.

Q You didn't know that?

A No.

Q Okay. Mr. Eye ever mention that to you?

A No.

Q Okay. Now, after your interview on March 25th and 26th of '05, you go to the grand jury, don't you?

A Yes.

Q And you give testimony to the grand jury?

A Yes.

Q That testimony is significantly different than the testimony you gave to detectives during the first interview, isn't it?

A Yes.

Q And, again, we're talking about supposed direct admissions by Mr. Sandstrom, I mean, Mr. Eye and a lesser role for your brother?

A Yes.

Q By then you're calling these agents by their first name?

A No.

Q So it's after the grand jury testimony you start calling them by their first name?

A I think so.

Q Who suggested that?

A I have always called them by their first name.

Q I see. Have you ever, yourself, ever threatened to kill

anybody?

A No.

Q Do you remember on June 6 of 2005 you wrote a letter to

Anthony Aguirre while he was in the Jackson County Jail?

A Yes.

Q Did you tell him that you're at a whole different level

and you're ready to, quote, kill you and that bitch?

MR. KETCHMARK: I would object. Can we approach?

THE COURT: Your objection is what?

MR. KETCHMARK: My objection is he's reading a letter

that she hasn't had an opportunity for her to see if she even

wrote.

THE COURT: Sustained.

MR. OSGOOD: Mark as 55 for identification, Your

Honor.

BY MR. OSGOOD:

Q Would you look at this and tell me if that's a letter you

wrote?

A Yes.

Q You did write this letter?

A Yes.

Q As a matter of fact, that's your handwriting on the

attachment to the typed version?

A Yes.

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Q

I'm going to ask you some questions about the typed version which was typed by a secretary and if we have a question we can go to the actual part of the letter itself?

A Okay.

Q So if you dispute anything, I'm going to ask you to tell me and we'll check the letter. Okay?

A Yes.

MR. KETCHMARK: Counsel, are you going to offer that?

I have no objection if you would like to.

MR. OSGOOD: I'll offer it in evidence, Your Honor.

MR. ROGERS: Your Honor, I would object with regard

to the document as a whole on the grounds of evidence with regard to the parties asking, I think the foundation has been laid. The entire document, I don't think, has come in.

THE COURT: I don't know the relevance but it

would -Step

up, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

THE COURT: What's the letter about?

MR. ROGERS: Maybe what I'm suggesting, Your Honor,

is that the document be admitted with the agreement that it will not be shown to the jury except for the part that's developed in testimony. I mean, I think it needs to be

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admitted as foundation for the cross.

MR. KETCHMARK: My concern is, obviously, is a situation where you're going to ask her questions.

THE COURT: I will conditionally admit it but it will

not go to the jury until all the parties have approved it.

MR. ROGERS: That's fine.

MR. KETCHMARK: That's fine.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Defendant's Eye Exhibit 55 is conditionally admitted.

BY MR. OSGOOD:

Q You were having a little love spat with Mr. Aguirre at the

time, weren't you?

A Yes.

Q Pardon?

A Yes.

Q Need to speak up again.

A Yes.

Q Did you tell him my cousin's bros are going to be on your

ass like flies on shit?

A Yes.

Q I'll bounce with the quickness. What did you mean by that?

A Talking about I would leave.

Q Then did you call some other woman a ho?

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A Yes.

Q Did you tell Mr. Aguirre that when he gets out, I guess he was in jail or something at that point?

A He was in prison.

Q In prison. Did you tell him when he got out he better get ready to be pistol whipped for running his mouth and having you sitting there pregnant?

A Yes.

Q Did you tell him, I'm at a whole different level. I'm ready to kill you and that bitch?

A Yes.

Q So try me, baby. It's not going to be pretty?

A Yes.

Q You were threatening his life, weren't you?

A Yes.

Q Did you really mean that?

A No.

Q Would you agree with me people say silly, crazy things when they're on drugs and tripping and doing other things?

A Yes.

Q And that's common in your culture and in the hood, isn't it?

A Yes.

Q So everything here is not always the truth, is it?

A No.

Q I'm certainly, having seen you, when I read this letter I'll tell you --Well, strike that. I don't want to testify. But you're not the same young lady sitting in the stand there that this letter would give the impression of. Are you?

A No.

Q This is not really you, is it?

A No.

Q You're a young lady with two children?

A I have three children.

Q And you're trying to get along like everybody else in America, aren't you.

A Yes.

Q You're in here in an unpleasant situation where you have to choose between Mr. Eye and your brother, don't you?

A Yes.

Q You have to make a real difficult choice, don't you?

A Yes.

Q And you've got your family at home who are concerned too?

A Yes.

Q Your mother and father?

A Yes.

Q How many times a week are they breaking down in tears over this?

A Every day.

Q Every day. And you probably are, too, aren't you?

A Yes.

Q And then you tell him, I don't have nothing else to say but fuck you and have a nice life with your herpes and nigger loving loose puss.

I don't mean to embarrass you, ma'am, but it's important that we put in context the use of that kind of language. Do you understand that?

A Yes.

Q I'm not trying to embarrass you. I apologize. I know it's difficult. You used the term nigger in this letter, didn't you?

A Yes.

Q And you certainly didn't mean to imply that you were involved in any kind of scheme to get black people out of your neighborhood, did you?

A No.

Q And you weren't talking in terms of there are too many or that there are problems between blacks and whites and that for some reason you're expressing your dismay with blacks here, are you?

A No. It was a situation between me and her. We both have children with him.

Q You both have children with this man?

A Yes.

Q There aren't any niggers involved, are there?

A No.

Q And yet you're using that term because you hear it on the rap music, don't you?

A That's not why I'm using it. She was caught several time with a black man.

Q Okay. And you referred to him as a nigger?

A Yes.

Q Did you mean to imply that --Well, strike that.

Do you get along with black people?

A Yes.

Q Like them?

A Yes.

Q Have friends?

A Yes.

Q Associate with them?

A Yes.

Q Listen to music with them?

A Yes.

Q Go to social events with them?

A Yes.

Q Games, football games, baseball games. I don't know if you're into that but dances?

A Yes.

Q Do you dance with black people?

A No.

Q If they would ask you, would you?

A Yes.

Q All right. So when you called your boyfriend a nigger loving loose puss, it didn't have anything to do with a race, did it?

A His girlfriend.

Q I mean, his girlfriend. It didn't have anything to do with race, did it?

A No.

Q Okay. That's the way some people in your culture exposed to this culture, just kind of lapse into that conversation, don't you?

A Yes.

Q And certainly that's among friends, isn't it?

A Yes.

Q In this case it was a lovers spat?

A Yes.

Q You wouldn't talk that way in front of your mom and dad, would you?

A Yes.

Q You do?

A Yes.

Q Well, you wouldn't talk that way probably in a more public setting, would you?

A No.

Q And certainly it's uncomfortable, I assume, talking that

way here, isn't it?

A Yes.

Q And talking about this?

A Yes.

MR. OSGOOD: May I have just a minute, Your Honor?

THE COURT: Yes.

MR. OSGOOD: My colleague tells me I'm done. Thank you.

THE COURT: Let's take our mid-morning break before moving on.

Please remember not to discuss the case. Keep an open mind. We'll see you back here in about 15 minutes. We're in recess.

(Witness temporarily excused.)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: See you at 10:40.

(Recess)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

MR. KETCHMARK: I had informed both defense counsel what I was intending to do and --I said I had informed defense counsel what I was wanting to bring up but in Mr. Osgood's line

of the cross of Ms. Sandstrom he is making repeated references about the neighborhood, the racial composition of the neighborhood, the fact that they all get along, shop at the same stores. There's no racial tensions. There's no race riots and all of that, implying this is a happy-go-lucky part of the city in the northeast. Mr. Gromowsky also inquired of Mr. Deleon on similar lines. But Mr. Osgood had not done it, or Mr. Sandage for that matter, to the extent that it was done in her cross-examination.

I have, in getting ready for trial, the agents had gone down there, Your Honor, and I will tender to the Court as an offer of proof what we have marked as Government's Exhibit 260, 261, 262, 275, and 277 which are photos that were disclosed in discovery that all sets of defense counsel were made aware of. And I, specifically, in the disclosure told them that I was not going to try to get into them in my case in chief. These are taken -

Special Agent Gothard, approximately?

AGENT GOTHARD: March 13th and 18th.

MR. KETCHMARK: Of this year, correct?

AGENT GOTHARD: Yes, sir.

MR. KETCHMARK: What I said is I don't intend to get them in. We have them in discovery. But if the door is opened, at any point, I will make an appropriate approach to

the Court. They were very much on notice of that. And they

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both chose to their peril, to go down this line of questioning. I think it is now open and the agents should be allowed to bring that in. They can be questioned about the timing of the photographs and things of that nature but it is abundantly clear, it doesn't take a gang expert to recognize what White Power and what White Pride as reflected in those photos is representative of.

MR. OSGOOD: There's no demographic proof as to whether or not that's an isolated incident or a pattern of behavior. It's three years after the fact. And I have no idea who put it on there or when. And it certainly would not pass muster based on the limited cross-examination under 403 test.

Highly prejudicial.

THE COURT: You think your cross-examination was limited?

MR. OSGOOD: Wasn't nearly as long as it could have been, Your Honor. I yielded to the Court.

THE COURT: It was about as long as it could have been.

MR. OSGOOD: Okay.

THE COURT: Mr. Rogers?

MR. ROGERS: Your Honor, it's clearly not relevant. There's no showing whatsoever that this graffiti was present

during the time that is at issue here. In other words, it's first found over three years after the incidents here. So

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maybe, and I don't believe it's true, maybe the character of the neighbor has changed.

Secondly, that's not the neighborhood that Mr. Osgood was inquiring about in terms of her growing up and attending George Washington Carver School. That was as, I haven't looked at the photographs, I'm thinking roughly in the vicinity of 9th and Spruce.

MR. KETCHMARK: Your Honor, if I might respond to that. The questions weren't tailored to where she grew up and went to school. It was tailored to the composition of the neighborhood. It's important to note, I mean, they can bring out, that's why I didn't try to get into these and argue we could get into them. But they're trying to paint the picture that the northeast is this happy-go-lucky melting pot, and that there's no racial tensions in the neighborhood. And it quite frankly is not correct, at least depicted by the pictures, to suggest we need a racial demographic to put these up. They put the issue of the northeast directly into issue on this case.

Now, we do not have to establish that these gentlemen are racist. We have to establish that one of their motivating factors in the crimes that they committed, as it relates to Count 1 and Count 3, is that they selected him because of his race. If they want to expand this, which they have chosen to do into the northeast and whether or not this is a happy-go-lucky community, they were aware that this was out

there. They have done it at their peril and they didn't tailor their questions to exclude it. And I think it's clearly now been opened and we have a right to refute. They can cross about the time that Gary and Stevie would have been locked up and these pictures weren't there in 2005, and they are there now. That's fine. We're not suggesting that they put the pictures or that they put the graffiti there. They can tailor and do all their cross-examination of the agents about when the pictures were taken. That he looked at that area and if he had seen that in 2005 he would have taken the photos then. Clearly, it wasn't there. But they interjected this as an issue of the case. I think we have a right to let the jury see the complete picture.

MR. OSGOOD: The other issue is -

THE COURT: Just a moment, Mr. Osgood.

At this time I'm going to exclude the photographs. However, however, if this line of questioning continues then I will reconsider whether those photographs are probative of an issue in the case. Right now, it seems to me that they are remote in time. I don't know, frankly, where these pictures are in relation to where these folks lived. I don't know when the graffiti was put on the building. I don't know whether it was there in 2005. If it was, I don't know whether these defendants saw it or these defendants did it. I think it's all too remote at this point in time. However, if we continue to

hear more about this idyllic northeast community, I'll reconsider.

MR. KETCHMARK: And I think, just so I'm clear, Your Honor, does that also include in closing argument when we're going to be past the point of being able to offer additional evidence in our case. I think to drop the line of questioning with other witnesses then suddenly to step back and say in closing argument, well, you heard from Ms. Sandstrom, they went to dances together, shopped at the same stores. They already painted a picture that is not, in fact, accurate.

THE COURT: I don't know whether it is or not. I don't know what these pictures prove, Mr. Ketchmark. I mean, there may be one, there may be one person who is a member of a gang who doesn't even live in the northeast, who travels from Raytown or Independence or Grandview or some other location, putting this graffiti on buildings. I don't know what it means. I don't think it's probative. At this point, at least, it's too remote in my mind to admit it.

MR. KETCHMARK: And I guess what I'm trying to do to get clarification that we can address before closing argument, that point, Your Honor.

THE COURT: Let's see what the rest of the evidence is.

MR. KETCHMARK: Thank you.

THE COURT: All right. Let's bring the jury in.

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(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Rogers, you may inquire.

MR. ROGERS: Thank you, Your Honor.

STEPHANIE SANDSTROM, RESUMED

CROSS-EXAMINATION

BY MR. ROGERS:

Q Good morning.

A Morning.

Q We have never spoken face-to-face before, have we?

A No.

Q But you have talked to me on the telephone a couple of times?

A Yes.

Q And you have called my office?

A Yes.

Q And let me first of all talk about the gun you described during your direct examination. Okay?

A Yes.

Q And you talked about seeing Mr. Sandstrom with a gun, right?

A Yes.

Q And you talked about seeing Mr. Eye with a gun, right?

A Yes.

Q And you talked about going to Kristina Chirino's house and with the help of Kristina and Jonathan Chirino, finding a gun?

A Yes.

Q And you talked about taking that gun to your parents' house?

A Yes.

Q And telling your parents what you were doing as you wrapped it in a couple of diapers?

A Yes.

Q And then taking the gun wrapped in the diapers to 17th and Manchester and throwing it out the window, off the bridge into the Little Blue River, is that correct?

A Yes.

Q Now, is it all the same gun?

A Yes.

Q There's only one gun that you told us about so far, right?

A Yes.

Q That's the gun I'm going to be asking you about. Okay?

A Yes.

Q First of all, what color was the gun?

A It was chrome.

Q Chrome?

A Yes.

Q Shiny?

A Yes.

Q Silver-colored?

A Yes.

Q Did you see anything about the handle, the grips of the gun?

A I remember it was white or ivory.

Q White or ivory-colored grips?

A Yes.

Q And you have told that description of that gun several times, haven't you?

A Yes.

Q And you have told that description back when you first talked to the Kansas City, Missouri Police Department on April 1, 2005, correct?

A Yes.

Q And by the way, Mr. Osgood asked you about a statement. He said April 13th but actually the report was typed up April 13th, but the statement you made was April first, correct?

A Yes.

MR. KETCHMARK: Mr. Rogers, could you have her lean in?

MR. ROGERS: I'm sorry.

BY MR. ROGERS:

Q Lean in. I'm having to lean forward and listen so I'm -

Yes? It was April first, is that right?

A Yes.

Q And you described the gun on that occasion as a chrome plated revolver with a white handle, correct?

A Yes.

Q Consistent with what you said today?

A Yes.

Q And then when you talked to Arch and Heath on May 23, 2005, you, again, described the gun to them, didn't you?

A Yes.

Q And you described it as chrome with a white handle, correct?

A Yes.

Q Same thing you told the police?

A Yes.

Q And even though you say now that you were lying to the police and you were lying to Arch and Heath on those occasions, that part is still true, right?

A Yes.

Q And then you talked, again, to Arch and Heath and others on May 25th and 26th of 2005, you were, again, describing the gun as chrome with a white handle, is that correct?

A Yes.

Q Now, when you met with the prosecution team last Saturday, did you talk about the gun?

A Yes.

Q And did they tell you that a gun had supposedly been recovered from the Little Blue River?

A Yes.

Q In the area where you showed them you threw the gun?

A Yes.

Q Did they show you the gun?

A No.

Q Did they show you a picture of the gun?

A No.

Q Did you ask them to see the gun or the picture?

A Yes.

Q What did they tell you?

A I don't remember.

Q Whatever they did, they did not show you what you wanted to see?

A Right.

Q So you were not asked to confirm whether or not that was the same gun you would have been talking about?

A Right.

Q Now, I want to call your attention to the conversation that you overheard of four people in the car outside Christina Stanley's house. Okay?

A Okay.

Q And the four people in the car outside Christina Stanley's

house, I believe you said, were your brother Steve Sandstrom, my client?

A Yes.

Q Gary Eye?

A Yes.

Q Regennia Rios?

A Yes.

Q And Vincent Deleon?

A Yes.

Q And at that time you knew that Vincent Deleon was romantically involved with Christina Stanley?

A Yes.

Q And you knew that Gary Eye and Regennia Rios were in some sort of romantic relationship as well?

A Yes.

Q And you heard Regennia Rios say something about the killing of Mr. McCay, didn't you?

A Yes.

Q And what did she say?

A Just stating that they shot him. That they needed to turn the car back around and finish him off.

Q That she told Steve, who was driving, to turn the car back around and finish him off?

A Yeah.

Q That she, Regennia Rios, said that?

A Yes.

Q How did she say she reacted to the killing of Mr. McCay?

A I don't think she did.

Q Do you recall her telling you or saying at that time that it turned her on?

A Sounds right.

Q Okay. And, in fact, back on the 25th and 26th of May, 2005, after you had decided to start telling the truth, according to your earlier testimony, you told Arch and Heath and the other people there that she said that, is that correct?

A Yes.

Q Rios also made a comment about the shooting turning her on?

A Yes.

Q And do you now remember that's exactly what she said?

A Yes.

Q All right. Now, let's talk a little bit about your life growing up with Steve Sandstrom. Okay?

A Okay.

Q It wasn't "Leave It To Beaver", was it?

A No.

Q Your parents are both drug addicts?

A Yes.

Q And they have been drug addicts your entire life?

MR. KETCHMARK: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: I'm going to object on relevance grounds. This is trying to get the mitigation information in. I have no idea why how they grew up and the drug use at the house in the childhood has any bearing on the guilt.

MR. ROGERS: Your Honor, she has testified about activities that took place in the parental home including smoking meth and talking to them about disposing of the gun. I think it has a lot to do with it.

THE COURT: No. I think it's relevant in the mitigation stage, if we get there but I don't think it's relevant here, Charlie. Sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. ROGERS:

Q Let me ask it this way. You indicated that you would have

no problem using the kind of language that you used in

your angry letter to Mr. Aguirre in front of your parents?

A Right.

Q Why is that?

A We never had no structure or boundaries.

Q You never had any structures or boundaries?

A No.

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Q You talk like that in front of your parents all the time?

A Yes.

Q Now, is it true that whatever you were able to do, so you as a nuclear family, your mother, your father, you and your two brothers lived together?

A Yes.

Q Some times you were not able to do that?

A Right.

Q And where would you live then?

A With different family members.

Q Like your grandmother or somebody like that?

A Yes.

Q And when you lived together, did you also have friends over?

A Yes.

Q Did Steve have friends over?

A Yes.

Q Did Steve have friends even live there for extended periods of time.

A Yes.

Q And was one of those friends a guy named Tank?

A Yes.

Q Do you know his real name to be Kenneth Robinson?

A Yes.

Q How long did Tank live with you?

A Off and on for about two years.

Q And what is Tank's race?

A He's a black man.

Q And how did he come to live there?

A I don't remember.

Q Okay. During the first part of March of 2005 your brother, Steve, was dating Kristina Chirino, is that correct?

A Yes.

Q And is she Hispanic?

A Yes.

Q Did he date other Hispanic girls?

A Yes.

Q Did he date black women?

A Yes.

Q Has he been in intimate relationships with people of other than the Caucasian race, I guess?

A Yes.

Q And how often?

A A lot.

Q All right. Have you ever known him to be intimately involved with a white girl?

A No.

Q So his preferences seem to be minorities?

A Yes.

Q Now, your daughter Hailey was how old back in March of 2005?

A 2-1/2.

Q Was she close with her Uncle Steve?

A Yes.

Q When is the last time she and Steve met face-MR.

KETCHMARK: Your Honor, I'm going to object.

THE COURT: Objection is what?

MR. KETCHMARK: I don't see the relevance of this.

THE COURT: I'll allow some limited inquiry but not

too much.

BY MR. ROGERS:

Q When is the last time she and Steve met face-to-face?

A I believe on, Kristina took her to the county jail.

Q That would have been back in 2005?

A Yes.

Q Before Steve and Kristina broke up?

A Yes.

Q Now, is it fair to say that 11th and Ewing, where the

Sandstrom family lived at the time of these events, is a

ways away from 9th and Brighton?

A No.

Q How far?

A Maybe 16 or 20 block.

Q 16 or 20 blocks?

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A Yes.

Q So a mile and a half? Is that a fair statement?

A Yes.

Q And that is in what is called the Sheffield area of the

northeast?

A Yes.

Q And 9th and Brighton is not in the Sheffield area, is it?

A Not for sure.

Q Okay.

May I have a moment, Your Honor?

THE COURT: Yes.

BY MR. ROGERS:

Q In fact, the home on Ewing is right next to what is called

Sheffield Park, correct?

A Yes.

Q And the area of 9th and Brighton is near what is called

Lykins Square or Lykins Square Park?

A Yes.

Q So kind of a different neighborhood?

A Yes.

Q Okay.

Those are all the questions I have, Your Honor.

THE COURT: Redirect examination?

MR. KETCHMARK: Briefly.

REDIRECT EXAMINATION

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BY MR. KETCHMARK:

Q Ms. Nouri was appointed to represent you between the two times you talked with the agents, correct?

A Yes.

Q And Ms. Nouri is still here in court with you today?

A Yes.

Q She's been your attorney that entire time, has she not?

A Yes.

Q Now, Mr. Osgood talks to you about a private investigator coming to meet with you in October of 2005 on the 31st, I think he said. And you remember that meeting?

A Yes.

Q And did you tell his private investigator that you were represented by an attorney?

A Yes.

Q Did you tell him who the attorney was?

A Yes.

Q And did you tell him you were represented at that time still?

A Yes.

Q And did you tell him that you wanted your attorney there when you talked with him?

A No.

Q Did he quit talking with you?

A No.

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MR. KETCHMARK: That's all I have, Judge.

THE COURT: Mr. Osgood?

MR. OSGOOD: Nothing, Your Honor.

THE COURT: Mr. Rogers?

MR. ROGERS: No further questions, Your Honor.

THE COURT: Thank you. You may step down.

MR. KETCHMARK: May she be allowed to be excused?

THE COURT: Without objection.

MR. ROGERS: Subject to recall, if necessary.

May we approach?

THE COURT: Well, let me just say this. She is excused this morning. She is still subject to the subpoena and may be recalled at some future point during the trial. Now you may step down.

(Witness excused.)

MR. GREEN: United States called Keith Bradford.

MR. OSGOOD: While he's coming, could we come up a second, Judge?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: At the time Mr. Reeder interviewed her we did not have the remaining discovery. We had no knowledge that she was represented by an attorney and she didn't say so according to Mr. Reeder. And, furthermore, we sent letters

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when we did get the discovery to each of the attorneys, which has come out in court, requesting permission to interview their clients. So to the extent he has implied in front of this jury I did something unethical, I take offense.

MR. KETCHMARK: I'm not suggesting Mr. Osgood had anything to do with it. I saw in the report that's referenced her recollection, she told him she was represented and still represented. It's more with Mr. Reeder, if he takes her report, says she told me that she didn't, it was only in grand jury. So it's not trying to imply -

THE COURT: Significance of it, I'm sure, is lost on the jury anyway and I certainly don't challenge your -

MR. OSGOOD: It's come out several times, Your Honor, that I requested through their attorneys to interview her so that was the pattern. I instructed my investigator and he's aware of that and is very cautious about that. So that's my record.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

KEITH BRADFORD, GOVERNMENT'S WITNESS, SWORN
DIRECT EXAMINATION

BY MR. GREEN:

Q Would you, please, tell us your name and spell your last name?

A My name is Keith Bradford, B-R-A-D-F-O-R-D.

Q How are you employed?

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A I'm employed by Honeywell Federal Manufacturing and Technology in south Kansas City.

Q What do you do for them?

A I'm an information systems engineer.

Q How long have you done that?

A I've done that for about twelve years and I've been with the company for 25.

Q Now, directing your attention back to 1977 did you start enjoying a certain hobby?

A Yeah. In 1977 I took on scuba diving. I've always been interested in water and water sports.

Q And through your, so you've been scuba diving since 1977?

A Yes.

Q Through this hobby have you had occasion to become involved in a particular group?

A Yes.

Q What group is that?

A Currently a volunteer with the Lee's Summit Underwater Rescue and Recovery.

Q How long have you been involved with the Lee's Summit Underwater Rescue and Recovery Team?

A Started in 2001.

Q Tell the jury what that is. What that is, that group?

A It was an all volunteer agency formed in 1966 to help agencies recover weapons, personal property and also teach

the public water safety so we'll go out and teach at schools and give water safety presentations.

Q So you did, you have occasion to assist law enforcement agencies?

A Yes, we do.

Q How is it, again, you assist law enforcement agencies?

A We're called out often to recover potentially weapons, property, such as stolen cars, other forms of evidence.

Q And so you have had some training and gained experience in how to recover items of evidence under water?

A We train at least once a month in about any kind of condition that we might find ourself here in the Midwest.

Q Now, I want to direct your attention to May 28th of 2005.

Did you participate in a Lee's Summit Underwater Rescue and Recovery Unit operation on that day?

A Yes, we did.

Q And where was that operation at?

A That was about 17th and Manchester over the Little Blue River.

Q Do you recall what law enforcement agency you were assisting?

A At that time the FBI was on scene and the Kansas City Police Department.

Q Before you actually began your operation, did you have a briefing?

A Yes, we did.

Q And where did that briefing occur?

A Where?

Q Yes.

A Okay. We were on the west side of the bridge in a parking lot when we were briefed about what the officers knew about the --what we needed to know about the scene.

Q And do you recall that, if not the name of the person, do you recall the agency that -A

FBI did the briefing.

Q And did they tell you what you were looking for?

A They said it was a small caliber handgun.

Q And did they focus you in on what area they wanted you to look for?

A They did. They took us to the bridge and showed us where the gun may have been thrown off the bridge.

Q And the idea being, obviously, you were to search the Little Blue River, correct?

A Yes, thrown into the river.

MR. GREEN: And could I display just for

Mr. Bradford, Plaintiff's Exhibit 27DD?

BY MR. GREEN:

Q Do you see that on your monitor, Mr. Bradford?

A Yes.

Q What is 27DD a photograph of?

A

That is the bridge where we --under which we conducted the search. Looks like we're on the west side looking east.

Q And that was --picture was taken on the day of the search, correct?

A Yes.

MR. GREEN: Your Honor -BY

MR. GREEN:

Q Is that a fair and accurate depiction of the Little Blue

River and the bridge and also your team members there?

A Yes.

MR. GREEN: Your Honor, United States offers 27DD into evidence.

THE COURT: Without objection 27DD is admitted and may be displayed.

BY MR. GREEN:

Q And, obviously, and you can see it on your monitor, too,

Mr. Bradford, there is a bridge there. Do you see that?

A Yes.

Q And is that the 17th and Manchester bridge?

A That's the bridge.

Q And then there is a waterway there, is that correct?

A That's the Little Blue.

Q And at some point, at what point did you start searching

the Little Blue River?

A It was about 9:00 in the morning, 9:08 in the morning when we started conducting our search, entered the water.

Q Now, was a report generated by your group after the search

and recovery operation was over?

A Yes. We have a person assigned to creating the report.

Q And as part of that report was there a diagram of the

search that put in the search and the search times and

things of that nature generated?

A Yes, it was.

Q Have you reviewed that diagram before today?

A Yes.

MR. GREEN: Could you display just for Mr. Bradford the diagram?

BY MR. GREEN:

Q Do you see that on your screen there?

A Yes.

Q And what do, this was within the Plaintiff's Exhibit 66

which is the report from your organization. What do you recognize this page to be?

A I'm sorry. What was the question?

Q What do you recognize this to be?

A I recognize this as being the search patterns that we used

on the Little Blue River on the date of the search.

Q And it has some notations of time, is that correct?

A That's right.

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Q And also some notations of where things were found?

A Yes.

Q From your knowledge being on the scene that day, May 28,

2005, is this diagram a fair and accurate depiction of those times and locations?

A Yes.

MR. GREEN: Your Honor, the United States offers the diagram within Plaintiff's Exhibit 66.

THE COURT: The diagram is admitted and may be displayed.

MR. GREEN: And if you could, Ms. Marko, sort of blow that portion up.

BY MR. GREEN:

Q From looking at this diagram, Mr. Bradford, can you tell

when this search would have started?

A Yes. We entered the water, looks like about 8:32.

Q And there are little hash marks that go across that are

representative of the Little Blue River. Do you see those?

A Yes.

Q What do those represent?

A The pattern we were using. We stretched the line across the river, starting there at 8:32, the 90-foot mark measured from the bridge. And we did a search 2-1/2 foot width apart. And a diver would follow that line with a

metal detector and another diver behind him with his hands doing a rigorous search of that area. Then we would move. Have about 10 on each side that would move the line and do the search back across and we zig-zagged down the river that way.

Q Now, and the rope is used for what?

A Make sure we maintain a straight line and can overlap the areas where we searched before, just a little bit, so we don't miss any area.

Q Now, you're making reference to divers, you ended up being in the Little Blue River, yourself, correct?

A Yes.

Q How deep was it on May 28 of 2005?

A The deepest I witnessed was I could reach my hand to the bottom and my head would be above water. We didn't have to actually dive here.

MR. GREEN: Just for the witness, could you display 27E?

Actually, try 27T just for the witness. T.

THE COURT: T as in Tom?

MR. GREEN: Yes, T as in Tom.

BY MR. GREEN:

Q Do you see that, Mr. Bradford?

A Yes.

Q What is that a photograph of?

A Looks like a photograph taken from the bridge, looking down on the scene where we found the weapon, actually.

Q And did it also depict one of the ropes you were talking about?

A Yes.

MR. GREEN: Your Honor, the United States offers Plaintiff's Exhibit 27T as in Tom.

THE COURT: 27T is admitted and may be displayed.

BY MR. GREEN:

Q And, actually, maybe a little bit faint so I'm going to

try to use this. I just made a circle there. Do you see

that?

A Yes.

Q And what is within that circle?

A At the very top of the circle we crossed a little stick in

the water. It's just above the rope. And that's the location where we found the weapon.

Q And then sort of cutting through the circle is the rope, is that correct?

A That's right.

MR. GREEN: Now, would you display Plaintiff's Exhibit 66? And blow it up, the center portion.

BY MR. GREEN:

Q Do you start the search at 8:32 a.m., is that correct?

A That's correct.

Q Then proceed towards the 17th Street Bridge, is that correct?

A Correct.

Q And can you tell just from looking at this diagram of Plaintiff's Exhibit 66 how long it was that you had progressed there?

A Well, we progressed, we took three sweeps of that area until 9:08 and then we moved our search a little bit closer to the bridge. We had about eight personnel on the scene at the time. And while the divers were searching this area with ropes and metal detectors, we had enough personnel then to do another search closer to the bridge, hand over hand. So we started doing that about the same time.

Q And at some point did you, yourself, Mr. Bradford, go up on that bridge?

A Yes, I did.

Q And what was your purpose in going up on the bridge?

A To talk to the officers about the last seen point, a very important part of our search is the last seen point. Then they had information given to them by a witness where something was tossed off the bridge and the manner in which it was tossed off the bridge.

Q So with that information, what did you do, Mr. Bradford?

A We picked up a couple of flat rocks that would be the

approximate size and weight of a small caliber weapon and walked up to the point on the bridge that we were directed to by the officers. And then as it was described, a person sitting in a driver's side of the car, side arm toss out the passenger window over the side of the bridge. We tried to reenact that.

Q

Did you, yourself, reenact that?

A

Yes, I did. I stood close to the center line, got down just a little bit and understood that there was a lady who may have made the toss so I took the rock and tried to toss it out the side window like the witness would have.

Q

Did you, basically, I think did, as you described it when we met earlier, throw like a girl?

A Try to throw it out the side window, try to throw like a girl. Yeah.

MR. GREEN: I want to display just for the witness

27X.

BY MR. GREEN:

Q

Do you see that, Mr. Bradford?

A
Yes.

Q
And, specifically, do you see marks that appear on the bridge in 27X?

A
I see two marks on the bridge.

Q
Did you use those marks in doing your demonstration that you just described?

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A Right. The officers directed us toward those marks. I couldn't tell you which one I was closest to but it was between those two marks.

MR. GREEN: Your Honor, the United States offers 27X

into evidence.

THE COURT: Without objection, 27X is admitted and

may be published.

BY MR. GREEN:

Q

And I'll circle --what did I just circle there?

A

That's one of the red marks on the bridge to the right. Another on the left.

Q

So is it correct to say you were close to one of those red marks when you performed your demonstration?

A

Between those red marks.

Q

After you did that, what did you do?

A

We watched --there were people that watched where the rocks fell and it was indicated on the drawing the approximate location where those rocks fell. So, again, while the search was being conducted with a metal detector, the diver and the rope, we decided with the manpower we had we would go ahead and conduct a little less formal nevertheless rigorous search of hand over hand pattern, starting at the bridge and working our way to the other divers.

Q

Did you do that?

A Yes.

Q And at some point, first of all, what kind of items are you running across?

A As we're under the bridge there were things like bowling balls, batteries, U.S.A. Today Newspaper stands that had been thrown in there, a couple of those, all kinds of metal, lots of sticks, things like that.

Q At some point did your hand come to rest on something that caught your attention?

A Oh, yes.

Q What was that?

A It was the shape of a handgun.

Q And when your hand came to rest on that, could you describe how it felt? Was it under silt? What did you feel with your hand?

A It wasn't under a great deal of silt at all. It was near the surface. I didn't have to dig down into the dirt or anything. It was right there. Very apparent. Doing hand over hand search, trying not to miss any area. When it came across any lump, rock, stick, anything, we feel it, make sure we knew what the shape was. When I came across this, it was a definite shape of the handle of a gun. I could feel the cylinders and the barrel. I knew I had a handgun.

Q What did you do at that point?

A

I notified the team members on the shore and they called the incident commander.

MR. GREEN: I want to redisplay for you the diagram in Plaintiff's Exhibit 66 and have it blown up.

BY MR. GREEN:

Q This indicates there is a red mark. Do you see that?

A Yes.

Q There is a red mark there, right?

A Yes.

Q What does that indicate?

A

That indicates the location on the map on this drawing where the gun was found.

Q

And approximately what time was the gun found? Can you tell from that?

A

I can't tell from this exactly what time the gun was found but it's marked on the report what time the gun was found.

Q

If you review your report, would that refresh your recollection?

A Yes, it would.

MR. GREEN: May the witness refer to his report?

THE COURT: Yes.

THE WITNESS: We found the gun at 10:17.

BY MR. GREEN:

Q

So upon finding this gun and letting your team members know, did you just take it out of the water? What did you

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do with it?

A No. We have training and procedures when we find anything in the water. And that is to keep it under the water to limit any kind of deterioration of the weapon, keep it in the environment from which it came until a crime scene investigator can come to the scene.

Q So how did you get that gun from in the river from where you found it in the Little Blue River to the shore?

A Kept it under the water. Visibility was very low. It was near the surface so I could at least see it was a handgun as well as feel it. One of the tenders brought out a cooler, little, like Igloo cooler type thing. We filled that with the water from where the weapon came. We usually try to get a little bit of the soil from the bottom as well in with it. And then placed the gun in the cooler while it was still under water and bring it out and brought it to shore.

MR. GREEN: Just for the witness, could you show just

for Mr. Bradford, 27MM?

BY MR. GREEN:

Q Do you recognize that, Mr. Bradford?

A Looks like the cooler I used, yes.

MR. GREEN: Your Honor, the United States offers Plaintiff's Exhibit 27MM into evidence.

THE COURT: 27MM is admitted and may be published.

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BY MR. GREEN:

Q

And, again, what is the jury seeing there, Mr. Bradford?

A

That's the cooler that was brought out and placed the handgun in that cooler before bringing it out of the water.

Q

So actually you had occasion to see the object that you had found in the Little Blue River?

A Yes.

MR. GREEN: Just for the witness, please, display

27NN.

BY MR. GREEN:

Q

Do you see that?

A

Yes, I do.

Q

What is that?

A

That's the handgun that I found.

Q

And is that a fair and accurate picture of that handgun as

it looked as you took it out of the Little Blue River and put it into the cooler?

A That's exactly what it looked like.

MR. GREEN: Your Honor, United States offers 27NN into evidence.

THE COURT: 27NN is admitted and may be published.

BY MR. GREEN:

Q

And what is that, Mr. Bradford?

A

That's the handgun that I found in the Little Blue. What

you see there is those gloved hands must have been the crime scene investigator taking this picture at that point.

Q And to your knowledge was a crime scene technician from the Kansas City, Missouri Police Department called out to the scene?

A They were called out to the scene.

Q And, in fact, who did you give, before the crime scene technician took possession, who did you give, who took physical possession of the cooler with the handgun inside of it?

A I took the cooler and passed it off to our incident commander, Mr. Jeff Koehly.

Q After you found this handgun, did you continue your search?

A Yes, we did. And you can see it also on the map.

Q If you go back then to 66.

A Again, since going back to my statement that was a little less formal search, nevertheless, rigorous with hand over hand line that I was maintaining. We brought the divers with the ropes and the metal detectors over top of the same area to make sure we cleared the area and applied that rigorous search pattern all the way up to the bridge.

Q Can you tell from either the diagram or your report about how much longer you searched?

A We searched until 12:17.

Q So approximately, well, about another two hours?

A Yes.

Q Did you find any other firearms?

A We found no other firearms.

Q I want to then jump back, lastly, Mr. Bradford, you said you found the firearm. Before you removed it from the river, did you do anything to it to memorialize it?

A Yes. There were plenty of things to mark the spot, sticks and things there in the water. So I found a tall enough stick while I was there with the handgun. I made sure there was a marker in the water so we could reference that during the rest of our search, take pictures and such.

Q You placed a stick into the part of the point that you found the firearm?

A Right.

MR. GREEN: And just for the witness, if you could

display Plaintiff's Exhibit 27PP.

BY MR. GREEN:

Q

And do you see that, Mr. Bradford?

A

Yes, I do.

Q

What is that a photograph of?

A

You can see the stick to the left of a tire and that's the stick where we found the weapon.

Q

And it shows then in relation to the bridge?

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A Yes.

MR. GREEN: Your Honor, United States offers Plaintiff's Exhibit 27PP into evidence.

THE COURT: That exhibit is admitted and may be published.

MR. GREEN: And in a minute I'm going to have Ms. Marko blow this up and I'm going to -BY

MR. GREEN:

Q What did I just circle, Mr. Bradford?

A Circled the stick in the location where we found the gun.

MR. GREEN: And then show back to the wide angle.

BY MR. GREEN:

Q I guess my last question, Mr. Bradford, you established

that the river, itself, was only a few feet deep, is that correct?

A That's right.

Q Did it have a current?

A It was a very light current. Not much to speak of at all.

But as I did my investigation, I would layout with my feet down stream and work my way up so that I didn't have to fight the current and then I would cross the river left to right and right to left.

MR. GREEN: Those are all the questions I have, Your Honor.

THE COURT: Cross-examination?

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CROSS-EXAMINATION

BY MR. SANDAGE:

Q Good afternoon, sir. My name --I'm sorry. Good morning. My name is Lance Sandage. I represent the Defendant Gary Eye.

I'm a little bit confused. You testified that you recovered the weapon at 10:17, is that correct?

A That's correct.

Q On this diagram the red dot indicates where the gun was found, right?

A That's right.

Q And then I assume the time lines on the side of the diagram are the times that you searched that two foot quadrant?

A Those time lines indicate the divers with the ropes and the metal detectors.

Q Okay.

A So they went back over that same area that I did my search. Remember, my search was less formal. I did that hand over hand, using markers on the side.

Q So your search wouldn't have ended up on the time line on the side of the diagram?

A Correct.

Q Okay. That's what--okay. And you testified that after the gun was recovered, you went back in the water to

continue the search?

A That's correct.

Q And you did that for how long?

A The entire team continued to search until 10:17 or 12:17.

I'm sorry.

Q Do you remember why you went back in?

A We wanted to make sure the area was cleared of any other weapons. There may have been multiple, any other possibility of evidence. We wanted to make sure also that the rigorous process that we have with the lines and the divers and the metal detectors was followed all the way through that pattern that I did on a less formal basis.

Q Do you remember if anybody from the Federal Bureau of Investigation asked you to go back in and continue your search?

A I know that through our incident command we were, we don't leave until we've been excused and it would have come down through the incident command.

Q Who would be in charge of the incident command?

A Mr. Jeff Koehly.

Q Okay. Thank you.

THE COURT: Mr. Rogers?

MR. ROGERS: Yes, Your Honor.

CROSS-EXAMINATION

MR. ROGERS: Could you put the exhibit up, please?

BY MR. ROGERS:

Q Sir, calling your attention to Exhibit 66 in the upper right-hand corner which --I was bragging yesterday about how good I was with this thing, I mess up first time. There is an arrow there, is that correct?

A Yes.

Q That is designed as part of your form to indicate the north direction?

A That's designed to be the northerly direction, yes.

Q And as a matter of fact it is parallel to Manchester Street which is a north-south street?

A According to that diagram, yes, it is.

Q And at right angles to 17th Street which is an east-west street?

A That's correct.

Q Okay. Now, is the north direction also the down stream direction of the flow of the Little Blue River there?

A The Little Blue River there does flow north.

Q So Little Blue River goes from the right to the left of the diagram, Exhibit 66?

A Yes.

Q Okay. And you conducted this, you and your colleagues conducted this search on May 27 of 2005, is that correct?

A I believe that's correct.

Q And -

A May 28th, excuse me, according to the report.

Q Oh, I'm sorry. You're right. May 28th. So that would be some 70, 80, 71 or 2 days after March 18, 2005?

A I'll take your word for it.

Q Okay. Don't. Not by a long shot.

And at the time that you and your colleagues conducted the search, the river was quite shallow?

A I don't know what it runs normally.

Q Okay.

A But it was shallow enough we could reach the bottom without putting our faces under the water.

Q So shorter than your arm?

A Yes.

Q Shallower than your arm is long. Is that a better way to put it?

A Uh-huh.

Q You have to do yes or no. Uh-huh or huh-uh looks the same on her coded paper there. Okay?

A Yes.

Q Yet you don't know what the weather conditions had been during the intervening over two months?

A I don't recall what the weather conditions were in that time.

Q Would it be fair to say that if there were a large rain on the water shed of the Little Blue River, that would

increase the depth and increase the speed of the current?

A If there was more water running through there, most definitely.

Q Well, what you were told when you were trying to find this gun was where the witness said the gun had been thrown from, right?

A Yes.

Q And the direction in which the witness said the gun had been thrown, you were told the witness said it had been thrown, right?

A And the manner in which.

Q And in the manner. That's how you used your test with the rocks, correct?

A Yes.

Q And whatever the current or water volume had been in the intervening time, the gun could not have gone upstream as a result of that current, could it?

A No.

Q Current always goes down stream?

A Yes.

Q Seems obvious. So when you continued the search for two hours after the gun that you found was found, the search that was continued never went under the bridge, did it?

A It went right up to the bridge.

Q Right up to it. If you drew a plumb bob over the edge of

the bridge, it would hit where the search ended?

A That's right.

Q Okay. Now, when you found, when you found the revolver

depicted in Exhibit 27NN, was it wrapped up in any manner

or was it just by itself?

A It was not wrapped up in any manner. Just by itself.

Q In looking at it, it does not appear to be a chrome

revolver, does it?

A No, it's not a chrome revolver.

Q And are the handles made of wood or plastic?

A They appear to be plastic.

Q Okay. And what color do they appear to be?

A They appear to be black.

Q Thank you. That's all.

THE COURT: Redirect?

MR. GREEN: No, Your Honor. And may this witness be excused?

THE COURT: Without objection, Mr. Bradford, you're excused.

MR. GREEN: Your Honor, the United States calls Jeff Koehly.

(Witness excused.)

JEFF KOEHLI, GOVERNMENT'S WITNESS, SWORN
DIRECT EXAMINATION
BY MR. GREEN:

Q Would you, please, tell us your name and spell your last name?

A Jeff Koehly, K-O-E-H-L-Y.

Q How are you employed, Mr. Koeley?

A I'm an information security analyst for the Federal Reserve Bank.

Q Do you also have a hobby, a certain hobby?

A I am a diver. Have been since 1982.

Q And through your being a diver, the hobby of being a diver, have you become involved with a certain group known as the Lee's Summit Underwater Rescue and Recovery Unit?

A I have since 2001.

Q And we've already heard a little bit about this group but it's basically a group that assists law enforcement agencies in recovering items?

A That's correct.

Q And you and your other members are volunteers, is that correct?

A Yes, sir.

Q Now, I want to direct your attention back to May 28th of 2005. Did you have occasion to take part in an operation on that day?

A I did.

Q And what was the location of that operation?

A I believe it was --incorrect. Excuse me. I do not

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recall the exact location, sir.

Q Do you have your report with you?

A I do.

Q If you refer to that, would that refresh your recollection?

A It would.

Q Do you remember where it was?

A It was 17th Street and Manchester Bridge.

MR. GREEN: I'm going to show for the witness what is

already in evidence as 27DD.

BY MR. GREEN:

Q

Do you recognize that photograph?

A

Yes, sir.

Q

And what is that?

A

That's the bridge, sir.

Q

And was --that was the location of the operation, correct?

A

Yes, sir.

Q

And what law enforcement agency were you assisting?

A

The FBI, sir.

Q

And what was your role on this day?

A

I was the incident commander, sir.

Q

As incident commander, what are your duties and responsibilities?

A

I was the director of the operation, sir.

Q And would it also have been your responsibility to take charge of any items that might have been found?

A Yes, sir.

Q Now, did you at some point --you were overseeing the search of the Little Blue River, correct?

A Yes.

Q Did it come to your attention that one of your volunteers had found something?

A Yes.

Q Who was that?

A Keith Bradford.

Q And he let you know he thought he found what type of item?

A A weapon, sir.

Q And what steps were then taken to remove the weapon from the river?

A I procured our cooler and brought it down to the side of the river for him to place the weapon in.

Q I'm going to show you what is in evidence as 27MM. And what is that, Mr. Koehly?

A That's our cooler, sir.

Q And what happened to it? What happened with it?

A I placed it into the water for him to place the weapon into, sir.

Q Did you see Mr. Bradford place something in there?

A I did, sir.

Q What was that?

A The weapon.

Q I'm going to show you 27NN. What is in evidence as 27NN and what do you recognize that to be?

A That is the weapon, sir.

Q That was placed in the cooler?

A Yes.

Q Now, who then came to take ultimate custody of that weapon?

A The Kansas City Crime Scene Technician, Melissa Thompson.

Q And was she on scene during this search?

A She was called.

Q And when she got to the scene --and she got to the scene after the firearm had been found?

A Yes, sir.

Q Was she lacking a certain item that she needed?

A She was lacking a container to place the item in.

Q So what did she do?

A She went to go get one.

Q Did she return?

A Yes.

Q And what did she have?

A She had a styrofoam cooler.

Q And what then happened with the styrofoam cooler?

A The weapon was transferred from our cooler into hers.

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Q

I'm just going to display for you what is marked as Plaintiff's Exhibit 47A. And just, can you say whether, how does this compare to the cooler as you remember it?

A

That would be the correct one, sir.

Q

Okay. Then, lastly, Mr. Koehly, as part of the report that was generated about this incident, would you have noted the type and serial number of the firearm?

A

Yes, sir.

Q

And would that appear on page 3 of your report?

A

I would have to check to verify that.

Q

If you would to refresh your recollection?

A

(Witness complies.) It is so noted, sir.

Q

And can you tell us what type of firearm it was?

A

According to our report, the description has it as a .22 caliber revolver with long barrel and black handle, serial number 956815.

MR. GREEN: That's all the questions I have, Your Honor.

THE COURT: Mr. Sandage.

CROSS-EXAMINATION

BY MR. SANDAGE:

Q

Hi. My name is Lance Sandage. I represent Mr. Eye, one of the defendants in this case. When you got the gun from one of your divers, is that correct, Mr. Bradford?

A

Yes, sir.

Q You took possession of it in the cooler?

A Yes, sir.

Q And at some point you identified the make and model of it, is that correct?

A Yes, sir.

Q And the serial number that you just talked about with Mr. Green, is that right?

A Yes, sir.

Q Did you have to clean the weapon at all to ascertain whether or not there were numbers on the weapon?

A No, sir.

Q And then after you take possession of the weapon do you show it --let me strike that. Were there law enforcement agents there observing the search?

A Yes, sir.

Q And what agencies were present that day?

A Kansas City police and the FBI.

Q Did you show the weapon to those law enforcement agents?

A Yes, sir.

Q And then you passed the weapon off to Crime Scene Specialist Thompson, is that right?

A Correct.

Q Is the search concluded after you pass that weapon off to Ms. Thompson?

A We continued to search at the request of the FBI to the

base of the bridge.

Q And do you know what the basis of that request was?

A To make sure there were no other weapons present.

Q All right. Thank you.

THE COURT: Mr. Rogers?

CROSS-EXAMINATION

BY MR. ROGERS:

Q Let me follow-up on that a little bit. When you say at

the request of the FBI agent, you mean Mr. Gothard here,

is that correct? Special Agent Arch Gothard?

A Uh-huh.

Q And what he told you was we're looking for a chrome

revolver with a white handle, right?

A That was the original description.

Q And so that's, obviously, not that?

A That's correct.

Q And so you continued searching for another two hours and
didn't find any more?

A Correct.

Q Thank you.

THE COURT: Redirect examination?

MR. GREEN: No, Your Honor. May this witness be
excused?

THE COURT: Without objection, the witness is
excused.

(Witness excused.)

MR. GREEN: The United States calls Melanie Bartch.
I'm sorry, Your Honor. I made a mistake. Melissa

Thompson. That will be Mr. Ketchmark's witness.

MELISSA THOMPSON, GOVERNMENT'S WITNESS, SWORN
DIRECT EXAMINATION
BY MR. KETCHMARK:

Q Ma'am, would you, please, introduce yourself to the ladies and gentlemen of the jury?

A My name is Melissa Thompson.

Q How are you employed?

A I work for the Kansas City, Missouri Police Department with the Crime Scene Unit.

Q How long have you been assigned to that particular unit?

A For eleven years.

Q And do you have any training that qualifies you to function in that capacity?

A Yes, I do.

Q Tell the ladies and gentlemen of the jury generally about that.

A We are sent to a 2-1/2 week class at the beginning of our being hired. And after we complete that there is periodic training you're sent through for the rest of the time that you're on. Then after a period of time on you also take a test that certifies us so I have taken and completed that

test.

Q I think the ladies and gentlemen of the jury have heard from others of your colleagues so I won't go into what you do. But would it be accurate to state that there are times when you're dispatched to crime scenes at the request of law enforcement?

A Yes.

Q And if I could direct your attention back, ma'am, to May of 2005 and in particular on May 28 of 2005. Do you recall if you were working that day?

A I was.

Q And do you remember being dispatched or asked to respond to a location at 17th Street and Manchester?

A Yes, I was.

Q What were --why were you asked to go to that location? What do you remember?

A I was told by detectives that there was the Lee's Summit Underwater Recovery Team had been assembled there to search for a gun that had been thrown or possibly thrown into the river. And I responded to collect a weapon that had been located.

Q And when you responded to this particular location, ma'am, had you ever in your experience in working at the Crime Scene Unit had occasion to recover a gun that was --had previously been submerged in a body of water?

A No, I had not had that experience up to that point.

Q Did you take steps then to make certain that you knew what you were doing was the proper procedure?

A Yes. While in route we contacted firearms examiners to make sure that --to find out the best way to package it to bring it back to the unit to make sure that it stays in the condition that it was and that we did not hurt any evidence.

MR. KETCHMARK: Ms. Marko, if we could, please, pull up what has been marked and admitted as 27DD.

BY MR. KETCHMARK:

Q
Do you see that photograph in front of you?

A
Yes, I do.

Q
And is that a photograph that would have been taken, well, let me ask you this. Were you the only Crime Scene Tech that responded?

A
No. Myself and Lori Keller.

Q

In addition to going to recover the firearm, did you also
take photographs?

A
Yes.

Q
Does --is 27DD one of the pictures you and Ms. Keller
would have taken?

A
Yes, it is.

Q
In the picture, obviously, we're seeing the 17th and
Manchester Bridge?

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A Yes, it is.

Q It appears there's individuals standing on the shore line?

A That's correct.

MR. KETCHMARK: Ms. Marko, if we could also show 27MM

which was offered and admitted already.

BY MR. KETCHMARK:

Q

Do you recognize this as one of the photographs that you and Ms. Keller would have taken?

A

Yes, it is.

Q

What is the significance of this picture, ma'am?

A

This is a photograph of a cooler and it contains some of

the river water and a gun is also submerged in the water.

It's murky so you can't see the gun.

Q

There's some writing on the top of the Igloo and it looks

like L-S-U-R. Do you see that?

A
Yes.

Q
Do you know what the significance of those four letters

is?

A
I would believe that it would be the Lee's Summit
Underwater Recovery Team's cooler.

Q
While you're driving to the location and you talk to
somebody in the firearms department, how did they tell you
was the best way to package the firearm to bring back to
the lab?

A
They stated that I needed to leave the firearm in water,

in the water that it had been submerged in until they could look at it because immediately taking it out of water, it will begin to rust. And so I wanted to keep it in as good a condition as possible.

MR. KETCHMARK: And 27NN, Ms. Marko, was offered and admitted.

BY MR. KETCHMARK:

Q
Now, here, ma'am, we see the gun out of the water and we see some hands. Do you see that in the photograph?

A
Yes.

Q
Whose hands would that be?

A
Lori.

Q
Is that Ms. Keller?

A
Yes.

Q

And, again, was this done briefly to photograph the gun?

A

Yes. It was just taken out briefly, just to get a photograph of it.

Q

Would it also, would you have noted a serial number on this particular weapon at this time or would it have been done later?

A

Later we noted the serial number on it.

Q

The gun, then, would have been what, placed back in the cooler with the water?

A

Yes.

Q

Did you take that Igloo cooler with you from the scene?

A No. We responded. We purchased a cooler of our own and we brought it back to the scene so we could transfer it into our own cooler.

Q And what type of cooler did you go out and purchase?

A Just one of these disposal coolers that you find, made out of styrofoam.

Q Ma'am, I'm going to show you what has been marked as Government's Exhibit 47A and ask if you would take a look at this item.

What is contained in Government's Exhibit 47A?

A This is the cooler that we purchased that day that we placed the gun in.

Q And what would you have done after placing the gun in the cooler there on May 28th of 2005?

A The orange tape, we would have sealed it and we used this orange tape to do that. And we placed our markings across the tape to show we secured it in there with our initials, date and case number.

Q And then would you have taken the cooler with you?

A Yes. We took it to the crime lab to be secured in our vault.

Q Is it your understanding that in addition to crime scene technicians at the lab, are there a number of other people who serve different functions in terms of performing different types of tests?

A Correct.

Q Would some of those individuals be ballistics and firearms experts?

A Yes.

Q At some point in time, ma'am, would you have noted the serial number on the gun that was recovered that day out at the body of water, that Little Blue River?

A Yes, I did.

Q Would you have noted that --when would you have noted the serial number? Would that be back at the lab or when would you have done that?

A I believe it was once we were back at the lab and firearms examiners would have been there at some point and we would have looked at it together.

Q Would that have --is it your standard procedure to generate a report?

A Yes.

Q And would you have generated a report in connection with responding to this location?

A Yes, I did.

Q And recovering this particular item?

A That's correct.

Q And would you also in the report note the serial number?

A Yes.

Q And do you recall the serial number as you sit here today,

ma'am?

A I would need to look at my report.

Q Would that help refresh your recollection?

A Yes.

Q Ma'am, I'm going to show you what has been marked as Government's Exhibit 26, and appears to be a three-page document. I ask you to take a look at that.

Do you recognize what Government's Exhibit 26 is?

A Yes. It's a photocopy of the report that I generated.

Q And in reviewing Government's Exhibit 26 would that help refresh your recollection as to the serial number of the gun that was recovered out of the river that day?

A Yes.

Q Would you, please, do that?

A Would you like me to read it off?

Q Yes.

A You want me to read it off -Q

Yes, ma'am.

A --for the jury. It is 956815.

Q Now, ma'am, I would ask if you would --if you need gloves we have some. But I want you to open Government's Exhibit 47A.

A Do you have a pair of gloves?

Q We do have a pair of gloves.

MR. OSGOOD: Mr. Sandage's witness, is it permissible

for me to look at the gun also?

THE COURT: Sure.

MR. ROGERS: Me, too.

BY MR. KETCHMARK:

Q Before we go on, are there other items in the bag or what's inside of 47A?

A Another bag as well as an absorbent pad.

Q And do you see a weapon inside the cooler?

A Yes, I do.

Q Would you take a look at that weapon and see if the serial number reflected on it?

A Yes.

Q Is the serial number the same serial number that you had read off as being the gun recovered out of the river?

A Yes, it is.

MR. KETCHMARK: Your Honor, at this time I move the

admission of I believe it's marked as 47B as in boy.

THE COURT: Without objection, 47B is admitted.

BY MR. KETCHMARK:

Q Well, actually, would you hold it up one more time? There

is a device that is on the trigger and it's a trigger

lock, is that correct?

A I believe so. I don't know much about this.

Q Let me ask you. That looks different than 27NN? Do you

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agree with me?

A Yes.

Q When you recovered it, it --was it in the form it was in

27NN? This device on the trigger was not on there?

A That's correct.

Q Thank you, ma'am.

MR. ROGERS: What's the exhibit number on the weapon?

MR. KETCHMARK: 47B as in boy.

BY MR. KETCHMARK:

Q And you also pulled out a bag. And this is a lawn and leave bag, is that correct?

A Yes, it is.

Q Are you familiar with these types of bags?

A

I am.

Q

What are these types of bags used for?

A

We use them to package property quite often.

Q

And, again, the tag that is reflected on there, does it also reference what was in that? Is it dealing, in fact,

with the gun?

A

This tag?

Q

There is a tag, then, also pulled it up that reflects the

gun. Then there is also reference to a bag but the bag

wasn't, obviously, with the gun?

A

No, it was not.

Q

But this gun would have been looked at by firearms. They

probably did tests with the gun?

A That's correct.

Q Okay. Thank you.

One moment, Your Honor.

That's all I have, Judge.

THE COURT: Cross-examination? Mr. Sandage?

CROSS-EXAMINATION

BY MR. SANDAGE:

Q Good morning. My name is Lance Sandage. I represent the

defendant, Gary Eye, in this matter.

Before you transported the cooler and the weapon back to the crime lab, did you check to see if the weapon was loaded?

A No. It was rusted shut.

Q Did you try to open it?

A I don't recall trying too hard to open it. It was rusted

and I didn't want to leave it out of the water too long.

Q

So you were --when you transported it from the scene to the crime lab, you had no idea if there were live rounds in it or not?

A That's correct. I did not know.

Q Thank you.

Nothing further.

THE COURT: Mr. Rogers?

MR. ROGERS: Very brief, Your Honor.

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CROSS-EXAMINATION

BY MR. ROGERS:

Q Would it be correct to say that Exhibit 46B, is that the number? 47B, the gun is not a chrome revolver, is it?

A I don't know what kind of revolver exactly it is.

Q It's not shiny and silver-colored, is it?

A It's dull from being in the water so, previously, I don't know.

Q Now, that it's been cleaned up, it's still not shiny and silver-color, is it?

A It doesn't look that shiny, no.

Q The handles, the grips are black plastic, correct?

A Yes.

Q And they're certainly not ivory-colored and they're certainly not wood?

A No.

Q That's all.

Thank you.

THE COURT: Redirect examination?

MR. KETCHMARK: No, Your Honor.

I ask she be allowed to be excused.

THE COURT: Without objection, this witness is

excused.

Thank you, ma'am.

(Witness excused.)

MR. GREEN: United States calls Melanie Bartch.

MELANIE BARTCH, GOVERNMENT'S WITNESS, SWORN
DIRECT EXAMINATION
BY MR. GREEN:

Q Would you, please, state your name and spell your first and last names?

A Melanie Bartch. M-E-L-A-N-I-E, B-A-R-T-C-H.

Q And how are you employed, Ms. Bartch?

A I work in the Crime Scene Unit of the Kansas City, Missouri Police Department.

Q And what is your position?

A I'm a Crime Scene Technician.

Q How long have you been a Crime Scene Technician?

A Twelve years.

Q And what are your duties and responsibilities as a Crime Scene Technician?

A As a Crime Scene Technician I respond to crime scenes. I take photographs and collect items of evidence in regard to the crime that has been committed.

Q And have you received training in being a Crime Scene Technician?

A Yes.

Q Would you call it extensive training?

A Yes.

Q Are you certified in any particular organization?

A Yes, I am.

Q What is that?

A With the International Association of Identification in the State of Missouri. I'm certified as a Crime Scene Tech.

Q Now, I want to direct your attention to March 9th of 2005. Did you have occasion to be dispatched to a particular crime scene on that day?

A Yes, I did.

Q Do you recall the address of the crime scene?

A Yes, I do.

Q What was that?

A Can I also refer to my report.

Q Would that refresh your recollection?

A Yes. 9th and Brighton.

Q And who was assisting you on that day?

A CST Lori Keller.

Q And was one of you designated the primary?

A Yes.

Q Who was that?

A That was her.

Q And you were the secondary?

A Yes.

Q But is it also correct that you, basically, would work hand in hand with Ms. Keller in processing the crime

scene, is that right?

A That is correct.

Q Now, you, in fact, took several photographs of the 9th and Brighton area, is that right?

A CST Keller did.

Q You were there while she did that?

A Yes.

Q At some point on March 9th did yourself and Ms. Keller go to the Jackson County Medical Examiner's Office?

A Yes, we did.

Q What was your purpose in going there?

A To perform an external body examination on the victim.

Q And had you learned or did you learn the victim's name that you were doing this examination on?

A Yes.

Q And what was the name?

A William McCay.

Q And we have heard a little bit about this but, again, explain to the jury what an external examination of a body is. What does that involve?

A We are, basically, notating any wounds. We're trying to locate any trace evidence. We're photographing the victim.

Q Do you also conduct what are called nail scrapings or did you conduct in this case a nail scraping?

A Yes.

Q And explain to the jury what a nail scraping is?

A We are trying to find any trace evidence which is underneath the fingernails of the victim.

Q And so what do you do?

A We use what is called a cuticle stick and for each hand, one for the right-hand, one for the left-hand. We scrape the nails. Then the scrapings are put on to a piece of glassine paper. Then it's put into a yellow envelope.

Q Then what happens?

A It is sealed with the case report number, our name, our initials, the date. We assign them item numbers. Then it's placed into the crime scene property room. And then it's later taken to the lab by an evidence custodian.

Q I'm going to approach you, Ms. Bartch, and show you first what is marked as Plaintiff's Exhibit 53B. Do you see that?

A Yes, I do.

Q And this, actually, you saw this bag before today, correct?

A I saw it today, yes.

Q And was it in a sealed condition?

A Yes, it was.

Q And it was, in fact, unsealed in front of you by a special agent with the FBI?

A Yes.

Q After you examined what was in there, was there a staple affixed to it?

A Yes.

Q And at this point I'm going to open the staple.

Ms. Bartch, I'm first going to show you what is marked for identification as Plaintiff's Exhibit 249. Can you identify what 249 is?

A This is what I refer to as Item No. 31 in my report. It's fingernail scrapings from the left hand.

Q Does your handwriting appear anywhere on Exhibit 249?

A Yes, it does.

Q And can you just show us just where?

A Where it says left-hand fingernails scrapings, that is my handwriting. The item number is my handwriting, along with the initials and date.

Q And your initials and date of March 9, '05 appear on top of this orange tape, is that correct?

A That is correct.

Q And when you placed it to be sent off to the crime laboratory, was it in a sealed condition?

A Yes, it was.

Q Does 249 look to be substantially in the same condition it was when you sealed it to be sent off for testing?

A Yes, it does, with the exception of where it's been opened

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by the lab for their analysis.

Q

And then Plaintiff's Exhibit 250, can you identify what that is?

A

This is an envelope which contains the right-hand fingernail scrapings.

Q

And that's your Item 30, is that correct?

A

That is correct.

Q

And your writing appears on there, correct?

A

Yes, it does.

Q

As well as your initials and the date March 9th of '05 on the orange tape at the top?

A

That's correct.

Q

What condition was the package marked 250 in when you sent

it off to the crime laboratory?

A It was in a sealed condition then they opened it and placed their tape on it.

Q Other than that, it's in substantially the same condition, Plaintiff's Exhibit 250?

A That is correct.

MR. GREEN: Your Honor, the United States would offer

Exhibits 249 and 250 in evidence.

MR. OSGOOD: No objection.

THE COURT: Without objection, 249 and 250 are

admitted.

BY MR. GREEN:

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Q Now, Ms. Bartch, did you have an opportunity to return to the Jackson County Medical Examiner's Office two days later?

A Yes, I did.

Q What was your purpose in returning to the Jackson County Medical Examiner's Office?

A It was to collect a bullet which had been recovered from the body by the medical examiner along with a vial of blood.

Q And was this a common thing for you to return to the Medical Examiner's Office a day or so later to collect items of evidence?

A That is correct. We don't stay throughout the complete autopsy.

Q And are you familiar, when you pick up items such as this, do they come to you in a particular form, the items from the Medical Examiner's Office, to be transported?

A Yes. They are given to us by an investigator at the office and they are in a sealed condition.

Q And they bear the initials of who, generally?

A Of the doctor that performed the autopsy.

Q I'll approach you, Ms. Bartch, with what is marked as Plaintiff's Exhibit 247 and a small white box, correct?

A Correct.

Q And you saw that before testifying here today, correct?

A I saw it today, yes.

Q And it was in, the outer box is marked 247. Was it in a sealed condition when you saw it before your testimony today?

A Yes.

Q And was it opened by an agent with --a special agent with the FBI in your presence?

A Yes.

Q So I'm now going to open the box. And, inside, can you identify what is inside Plaintiff's Exhibit 247?

A It is a white box which has a label with the victim's name on the box and it has a No. 2 on the box.

Q And who put the No. 2 there?

A I put the No. 2 there. That is what I numbered it in my report.

Q I'm going to take the smaller box out and there's some orange tape around the side, is that correct?

A Yes.

Q Along and on the side of the tape there appears to be initials and a date, correct?

A Yes.

Q Is this box I'm holding that you marked as Item 2, is this how this appeared when you picked it up on March 11th of 2005?

A That's correct.

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Q And did you open what you had marked as Item 2? Did you actually open this box?

A No, sir.

Q What did you do?

A

I placed it in a yellow envelope, put my item number, placed it in a yellow envelope which I sealed with my initials and date, report number. Then it was placed into the property room.

Q

And is that the last you saw of the box that you marked

Item 2 that was within 247?

A

That is correct.

Q

Until, obviously, right here today, correct?

A Correct.

MR. GREEN: Your Honor, at this time the United

States would offer Plaintiff's Exhibit 247 into evidence.

THE COURT: Without objection, 247 is admitted.

BY MR. GREEN:

Q

Now, I want to stay on March 11 of 2005, Ms. Bartch. Did

you have an occasion to go some other place besides the

Jackson County Medical Examiner's Office?

A

Yes.

Q

And where did you go?

A

I responded to the police service station which is at 5215
East 27th Street.

Q

What was your purpose in going there?

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A To process a vehicle.

Q And when you say process a vehicle, explain just a little bit what you mean?

A Well, processing a vehicle will depend on what crime had occurred in the vehicle. But, generally, it's photographing the vehicle, identifying any items of evidence and anything else that needs to be done to the vehicle.

Q Do you recall the type of vehicle you processed on May 11, 2005?

A Yes.

Q And what type of vehicle was it?

A It was a stolen auto.

Q And what was the color and make and that type of thing?

A It was a blue Jeep.

Q Well, let me show you what is already in evidence as 73B. Can you identify that?

A That is the Jeep.

Q And, in fact, who took these photographs?

A I took these photographs.

MR. GREEN: And if I could, just for the witness, I

don't believe this is in evidence yet, 73D.

BY MR. GREEN:

Q Do you recognize that?

A Yes, I do.

MR. GREEN: Your Honor, United States offers

Plaintiff's Exhibit 73D into evidence.

THE COURT: 73D?

MR. GREEN: As in dog.

THE COURT: Is admitted.

BY MR. GREEN:

Q And, again, is that just another view, Ms. Bartch?

A Yes.

Q And I'm going to note that there doesn't appear to be any

tag there, is that correct?

A That is correct.

Q And this is the vehicle as you first saw it and started

taking photographs, is that right?

A Correct.

MR. GREEN: I want to show just for Ms. Bartch

Plaintiff's Exhibit 73K.

THE COURT: 73K is admitted.

MR. GREEN: I'm sorry. It's already in evidence so
73K.

BY MR. GREEN:

Q What is that a photograph of?

A This is the rear of the vehicle.

Q And what does it show?

A It shows the rear window is broken.

MR. GREEN: And just for Ms. Bartch because this is

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not in evidence, 73L.

BY MR. GREEN:

Q And what is that, Ms. Bartch?

A This is a closer photograph of the broken window.

MR. GREEN: United States offers Plaintiff's Exhibit

73L into evidence.

THE COURT: 73L is admitted and may be displayed.

BY MR. GREEN:

Q Again, you just said but it's a close up of the knocked

out rear window, correct?

A Correct.

Q Now, you also took photographs of other areas of the car,

correct?

A Correct.

MR. GREEN: Just for Ms. Bartch, Plaintiff's Exhibit

73M?

BY MR. GREEN:

Q And do you see? What is that a photograph of, Ms. Bartch?

A This is the right side of the vehicle showing damage to

the side.

MR. GREEN: Your Honor, United States offers

Plaintiff's Exhibit 73M as in Mike into evidence.

THE COURT: 73M is admitted.

BY MR. GREEN:

Q And this area that you're referring to as apparel damage

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would be right there?

A Correct.

Q You had earlier described this vehicle as being a blue Jeep. Seeing these photographs, would that refresh your recollection that it actually appears to be purple?

A Bluish purple.

MR. GREEN: I want to, just for Ms. Bartch, show 73N

as in Ned.

BY MR. GREEN:

Q Do you see that, Ms. Bartch?

A Yes, I do.

Q What is that a photograph of?

A This is the driver's door showing the broken lock.

Q And did you think that had possible significance?

A Yes, sir.

Q And what would that significance be?

A It would be how they entered into the stolen vehicle.

MR. GREEN: Your Honor, United States offers

Plaintiff's Exhibit 73N into evidence.

THE COURT: 73N is admitted and may be published.

BY MR. GREEN:

Q And it maybe obvious but let me go ahead and circle. What did I just circle?

A The broken lock.

Q Now, you had occasion to take pictures of items that you

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had found, that you found inside the vehicle, is that correct?

A Yes.

Q As part of your processing of the vehicle did you reach under seats and things of that nature?

A Yes.

Q And did you have occasion to find some type of item underneath a seat as you were searching that you then pulled out and photographed?

A Yes.

Q What was that?

A It was a screw driver.

Q Where did you find the screw driver?

A It was underneath the driver's seat.

Q And when you found the screw driver, what did you do with it?

A I pulled it out to better photograph the screw driver.

MR. GREEN: Would you display Plaintiff's Exhibit MM

just for the witness? Actually, try 7300.

BY MR. GREEN:

Q What do you recognize 7300 to be a photograph of?

A The screw driver.

MR. GREEN: Your Honor, the United States offers 7300 into evidence.

THE COURT: 7300 is admitted.

BY MR. GREEN:

Q And what is the jury seeing there, Ms. Bartch?

A That is the screw driver that was underneath the seat.

MR. GREEN: And if you would, just for the witness

only, go back to 73MM.

BY MR. GREEN:

Q What is that a photograph of, 73MM?

A This is a bag which contains three ignition mechanisms.

Q When you say ignition mechanisms, ignition mechanisms to

what kind of device?

A To a vehicle.

Q Why did you take a photograph of this?

A I felt they were pertinent to the case.

Q Pertinent as far as the stolen car?

A That is correct.

MR. GREEN: Your Honor, United States offers 73MM
into evidence.

THE COURT: 73MM is admitted and may be published.

BY MR. GREEN:

Q And what I circled right there is the bag with the

ignitions in them?

A Yes.

Q And, again, how many were in there?

A Three.

MR. GREEN: Before we move on from the photographs,

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would you display just for the witness 73KK?

BY MR. GREEN:

Q Do you see that, Ms. Bartch?

A Yes, I do.

Q What is 73KK a picture of?

A That is the rear cargo area of the vehicle.

MR. GREEN: Your Honor, the United States offers 73KK

into evidence.

THE COURT: 73KK is admitted and may be displayed.

BY MR. GREEN:

Q And what does this show?

A It shows the contents of the rear cargo area. There was a dog bed, some tools, broken glass.

Q I'm going to generally mark, what can you see in the area

I just circled?

A Broken glass.

Q Now, did you as part of your processing of this vehicle
did you have occasion to process the vehicle for
fingerprints?

A Yes, I did.

Q And is there a particular phrase or type of fingerprint
you were looking for?

A Latent fingerprints.

Q And explain to the jury what a latent fingerprint is?

A A latent fingerprint is something that you don't visibly

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see when you're looking at the item. It's developed by using a graphite powder.

Q And explain how you do that. What's the process you use?

A We have a gray graphite powder and when we're fingerprinting something, we have a fingerprint brush and we just put some powder on the brush and lightly dust it on to the item. And if there is a print there, it will develop the print. And then at that point we take fingerprint tape which is like a heavy scotch tape, put that over the print, lift it and put it on to a fingerprint card.

Q And then what do you do with the fingerprint card?

A The back of the fingerprint card is filled out with the information from the case, from the location and from the description of the item that it was collected from. Then it's taken back to the crime lab and then it's given to the fingerprint section to analyze the print.

Q And did you do that in this case?

A Yes, I did.

Q And what areas of the car did you process?

A I processed the entire vehicle. I processed the outside of the vehicle and the interior of the vehicle, any items inside the vehicle that had a smooth surface that would be likely to get prints from.

Q And did you have occasion to recover some latent prints in

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your processing of the Jeep Cherokee?

A Yes, I did.

Q Ms. Bartch, I'm going to approach you and show you what

has been marked for identification as Plaintiff's Exhibit

72A. Can you identify what that is?

A Yes, I can.

Q What is it?

A This is what I refer to as Item No. 16 in my report. It

is a lift which I took from a CD from inside the vehicle.

Q And you eventually forwarded this off to the crime lab to

be analyzed or compared?

A Yes, I did.

Q Is 72A in substantially the same condition it was when you

forwarded it on for comparison?

A Yes, it was. I mean, yes, it is.

MR. GREEN: Your Honor, United States offers 72A into evidence.

THE COURT: 72A is admitted.

BY MR. GREEN:

Q Does this, now that it's in evidence, Ms. Bartch, can you

tell us exactly where this latent print was recovered

from?

A It was recovered from a Trick Daddy CD.

Q Do you recall where you found that Trick Daddy CD.

A It was in the front console of the vehicle.

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Q

Did you actually recover the CD itself?

A

No, I did not.

Q

Why is that?

A We don't know, when we're working stolen autos, on what items belong to the victim and what items were left and so we generally will just, I took all the evidence I could from the CD, meaning I processed it for prints. And so that's all I needed to take.

MR. GREEN: May I have one moment, Your Honor?

THE COURT: You may.

BY MR. GREEN:

Q

Lastly, going to show you, Ms. Bartch, what we're going to mark for identification as 72B. And ask if you can identify that?

A

This is what I refer to in my report as Item No. 12 and it is three lifts which were taken from the right front window of the Jeep.

Q

Is 72B --you forwarded this on for comparison, is that correct?

A

That's correct.

Q

And is 72B substantially in the same condition as it was

when you forwarded it on for comparison?

A Yes.

MR. GREEN: Your Honor, United States offers 72B into evidence.

THE COURT: Are you saying B as in boy?

MR. GREEN: Yes.

THE COURT: 72B is admitted.

MR. GREEN: Your Honor, I think that is all the

questions I have of this witness.

Yes, it is.

THE COURT: Cross-examination?

MR. SANDAGE: Briefly, Your Honor.

CROSS-EXAMINATION

BY MR. SANDAGE:

Q Good morning.

A Good morning.

Q Lance Sandage. I represent Mr. Eye. You had testified on

direct examination that you recovered the bullet from the

Medical Examiner's Office, is that correct?

A Yes.

Q And that when you recovered it, there was only one initial

on it from the doctor, correct?

A That is correct.

Q Then you took possession of it, is that right?

A Yes.

Q So that would indicate there was no testing done of that

bullet or any type of examination or anybody from your

unit or anybody with the Kansas City Police Department

that would have done any testing or touching of that

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bullet from the time the doctor took it until the time you took possession of it. Is that correct?

A That is correct.

Q When you responded to recover that bullet, did you take anybody else with you from your lab?

A No, sir.

Q So there wasn't a ballistics or firearm expert there looking at the bullet as you were taking possession of it?

A No.

Q You recovered clothes from the victim at that time, correct?

A Not at that time. They were collected on the day of the examination.

Q On the day of the examination was there any type of ballistics expert with you on that date to examine the clothing?

A No, sir.

Q Did you do any testing of the outer clothing for trace evidence?

A No.

Q You also -THE

COURT: Excuse me, Mr. Sandage.

We're going to take a break in just a minute, folks.

But would you, please, stand right now and stretch.

Thank you. You may be seated.

Mr. Sandage.

MR. SANDAGE: Thank you, Your Honor.

BY MR. SANDAGE:

Q Did you also report that you also worked the scene at 9th and Brighton, is that right?

A Yes, sir.

Q I think you testified on direct examination you were there with another crime scene technician, is that right?

A Yes.

Q What was your responsibility at the scene?

A The secondary person at the crime scene. The primary takes the photographs and writes the report. As the secondary, I do a sketch and I later generate a diagram but we, basically, work the scene together as a team.

Q Do you remember where the backpack that was recovered in evidence by you and your co-investigator was found?

A It was found on 9th street.

Q Was it found near a fence line?

A I would have to refer to my diagram.

Q If you'd like to do that, please.

A Yes, it was.

Q Was that fence line examined by you or --to look for any type of blood on the fence?

A Yes, we looked for blood.

Q Did you see anything by the naked eye?

A No, sir.

Q Is there any way to test, for instance, the fence for any type of blood that wouldn't be seen by the naked eye?

A Yes.

Q What type of testing would you do to look for that?

A There are certain cases where we would use luminal or we would use a hemastix.

Q Did you do either one of those tests on that fence line?

A No, sir.

Q Did you have a chance to --We don't need to put the picture up but it's an intersection, 9th and Brighton, correct?

A Correct.

Q Did you examine the streets, the actual physical streets for any type of blood evidence on the actual street?

A Yes.

Q Was there any recovered?

A No.

Q Did you perform any type of similar testing, we just talked about, luminal or the other testing you referred to to the street?

A No.

Q Thank you. Nothing further.

THE COURT: Mr. Rogers?

CROSS-EXAMINATION

BY MR. ROGERS:

Q Be real quick, ma'am.

When you were present at the external examination of Mr. McCay's body, you were looking for any signs of injury, correct?

A That is correct.

Q And Ms. Keller has testified and showed us pictures of what was called to her attention or what she thought was relevant but did you notice any injuries at all to the facial area?

A I don't recall.

Q Okay. And once you recovered the latent fingerprint lifts from the Jeep? Okay? What did you do with them?

A They are taken back to the lab and the information is filled out on them and they are given to the fingerprint identification section.

Q And the fingerprint identification section is located some place else, not in the same building as your unit or the lab?

A It is in the same building.

Q It is in the same building?

A Yes, it is.

Q So you take them down the hall?

A Well, we log them in and an evidence custodian takes them down the hall.

Q Okay. Thank you.

THE COURT: Redirect?

MR. GREEN: No, Your Honor. May the witness be

excused?

THE COURT: Yes, the witness may be excused.

(Witness excused.)

THE COURT: Please don't talk about the case yet.

Keep an open mind. We'll see you back here at 1:30. We'll be in recess.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: See you in an hour.

(Noon recess)

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Ketchmark.

MR. KETCHMARK: Thank you, Your Honor.

We call Kevin Westland to the stand.

KEVIN WESTLAND, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Sir, would you please introduce yourself to the ladies and

gentlemen of the jury?

A My name is Kevin Westland. I'm a criminalist in the

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firearms section of the Kansas City, Missouri Police Crime Laboratory.

Q How long have you been employed in that capacity, sir?

A Since October of 2004.

Q What is your educational background?

A I have a bachelors degree in biology, minor in chemistry and a masters degree in forensic science.

Q And in terms of your current duties and assignment with the Kansas City Crime Lab, can you explain what your general duties and job duties and descriptions are?

A The majority of my job is to attempt to identify firearms through examination of the ammunition components, the bullets and cartridge cases.

Q And have you testified in court before, in court proceedings?

A Yes.

Q Approximately how many times?

A Probably a dozen or so.

Q Are you familiar with a gentleman who used to be affiliated with the crime lab by the name of Michael Ward?

A Yes.

Q Can you tell the ladies and gentlemen who Mr. Ward was?

A He was a criminalist in the firearms and tool mark section, Kansas City Police Crime Laboratory.

Q And is Mr. Ward currently with the Kansas City Crime Lab?

A No. He currently works for the Fort Worth, Texas Police Department Crime Lab.

Q Would you be referred to as a pinch hitter, somebody who is coming to testify on some work Mr. Ward has done initially in connection with this investigation?

A Yes.

Q And to do that, Mr. Westland, did you have an opportunity to review the file that the Kansas City Crime Lab would have had reflecting the work that Mr. Ward had done?

A Yes.

Q And would that also include not only his lab reports but also his bench notes in connection with any tests he would have performed?

A Yes.

Q In addition to doing that, were there also additional tests that we had you, yourself, perform?

A Yes.

Q Let's start, if we could, Mr. Westland, with the information that Mr. Ward would have initially looked at.

I'm going to show you, sir, what has been previously offered or actually what was referenced as -While they're looking for a pair of gloves, can you explain to the ladies and gentlemen of the jury generally the mechanism by which a gun fires a bullet?

A Basic operation is the firing pin strikes a primer which

actually causes the primer material to detonate. That ignites a propellant inside the cartridge case. It's a build up of gas pressure that actually pushes the bullet out of the cartridge case and down the barrel down range. In the case of this particular firearm, it's what is called a rim fire firearm which is the primer is actually in the rim of the cartridge case versus a center fired cartridge where there is a separate primer in the middle of the cartridge case.

Q And there is a pair of gloves there, if you would like to put them on you're welcome to.

I'm going to have you reach inside of this cooler that we marked as 47A and pull out a firearm that's been marked and admitted as 47B and have you take a look at that.

Do you recognize that firearm, Mr. Westland?

A Yes.

Q And what is the particular make of that particular firearm?

A It's a JC Higgins.

Q Is there a particular caliber that is associated with that gun?

A .22 caliber.

Q And explain to the ladies and gentlemen of the jury, if you could, the difference in the various types of calibers

as it relates to firearms?

A Caliber is the designation of the diameter of the barrel from what we call a land to land across the diameter.

When a barrel is manufactured there's a process that puts in what is called rifling. Rifling is a series of high spots and low spots down the length of the barrel that when the bullet travels down the barrel, it actually engages the bullet and gives it a twist, a spin, which imparts stability in flight.

The most notable example is a quarterback throwing a football. He's more accurate and has more distance if he throws a spiral than not.

Q And you mentioned lands and twists. Are each gun or is a particular firearm unique in terms of the manufacturing process that enables you --Well, let me ask you this way.

Are you familiar with what is called class characteristics?

A Yes.

Q Can you explain what the term class characteristics means?

A Class characteristics is basically what is determined prior to the manufacturing of an item. It's like the size and the shape. In this case manufacturing a barrel is what is called a rifling signature which is the number of lands and grooves, the direction that they're going to twist down the length of the barrel, how wide or narrow

those lands and grooves are, the rate at which they twist which is how fast the lands and grooves actually turn one revolution. Things like that are class characteristics.

Q In addition, sir, are you familiar with the term single action or double action?

A Yes.

Q What is the difference? What do those terms mean?

A Single action or double action is the way of making the firearm ready to fire. A single action firearm, you have to physically pull the hammer to the rear until it cocks or locks back.

Q And referring again to 47B, can you show the jury what you're referring to when you're talking about the hammer?

A You would have to manually pull this part to the rear to have it lock fully back. And then pull the trigger and it would fall forward and fire one time.

A double action revolver the hammer is to the forward position. You simply pull the trigger. It travels to the rear until it hits a release point then comes forward and fires one time.

Q And with respect to the gun that is contained in 47B, are you able to tell me is that a single action or double action revolver?

A This particular revolver fires both single and double action.

Q And by firing both is there a mechanism that somebody would change in between one or the other? How can it fire both?

A No. It simply, as you're using it, either you pull the hammer to the rear to lock it or you simply pull the trigger. There is no switch or anything.

Q So you have the option to do either one?

A Yes.

Q I kind of indicated but we're talking about this particular gun in 47B being a revolver?

A Yes.

Q And what is the identifying characteristic of a revolver if you can use 47B to illustrate?

A The revolver refers to the cylinder which is where the cartridges are placed prior to firing. As you work the action or pull the hammer back or pull the trigger, the revolver, the cylinder actually turns to the next available round. You'll fire one time. Either cock the hammer, pull the trigger and the cylinder will turn to the next position.

This is different than a semi-automatic that holds the live ammunition and the gas pressure from firing actually operates, moving the spent case out of the way and next live round into the chamber.

Q In this particular firearm, in 47B, this revolver, when

there is a bullet in the cylinder, after the bullet is fired, what happens to the casing that would be holding that bullet?

A Just to clarify, what's loaded into a firearm is called a cartridge.

Q Okay.

A And that is the bullet with the case including the propellant and the primer. So you load a live round or cartridge into the cylinder, then as it's fired the bullet travels down the barrel. The case actually remains in the cylinder in the chamber itself. You have to manually remove it at some point in order to get it out of the firearm.

MR. KETCHMARK: I would offer, Your Honor, at this

time, I believe, without objection Government's Exhibit 248

which appears to be some test rounds from Michael Ward.

MR. OSGOOD: No objection.

MR. ROGERS: No objection.

THE COURT: 248 is admitted.

BY MR. KETCHMARK:

Q

With respect to the firearm that is there, 47B, how many rounds is that capable of holding?

A

Nine.

Q

In addition to, well, let me ask you this. In looking

back at the reports from Michael Ward when this particular

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gun was received in the Tool Mark and Firearm Section, was

it loaded?

A Yes.

Q And did it have, how many rounds in it, do you know?

A It had nine.

Q It was fully loaded?

A Yes.

MR. KETCHMARK: And again, Your Honor, I'm going to offer Government's Exhibit 299 and represent that it's an envelope containing nine smaller envelopes being the rounds that were loaded in the firearm that was submitted to the lab.

THE COURT: 299 is admitted without objection.

BY MR. KETCHMARK:

Q Mr. Westland, I'm going to show you Government's Exhibit

299 which is an envelope. And inside it appears there are several smaller envelopes. Would you agree with me in looking at these smaller envelopes it indicates chamber and the number?

A Yes.

Q On most of them. Then one that's chamber behind the barrel?

A Yes.

Q

And then there is also on each of the individuals it notes it appears that there is some initials and a number, is

that correct?

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A Yes.

Q And do you recognize that as being Michael Ward's initials?

A Yes.

Q And would these have been the rounds that would have been submitted in that firearm when it was submitted to the lab?

A Yes.

Q I'm going to show you or direct your attention to the screen. And I'm placing, recovered out of 247, a small envelope that was contained in that. Can you tell the ladies and gentlemen of the jury what they're looking at there?

A These are empty cartridge cases that were test fired from this firearm.

Q And, again, do we see the initials MJW which would be or M something W which would be Michael Ward?

A MSW, yes.

Q MSW. Okay. Now, I'm going to show you also coming out of Exhibits 248 another small bag with four items inside. Do you see that?

A Yes.

Q Can you tell the ladies and gentlemen of the jury what those items are?

A Those are the test fired bullets from the firearm.

Q And when you're saying test fired bullets, what are you referring to?

A As part of our process to develop items for examination we fire firearms into our water tank and the water stops the bullet without imparting any marks on it. So what Mr. Ward would have done is after receiving this and actually getting the firearm to function, he fired several times into our water tank so we had both bullets and cartridge cases to use as comparison.

Q And, again, it might sound silly or obvious but what is the purpose in terms of comparing to what?

A We compare the test fires to the evidence recovered using what is called a comparison microscope. It allows us to see through one set of eye pieces both the evidence and the test fire and allows us to line up the individual markings on each one to make an identification.

Q And, now, sir, I'm going to also place on the screen in front of you what's previously offered and admitted as Government's Exhibit 247 as a bullet recovered at the autopsy of William McCay. Do you see that other item?

A Yes.

Q Now, there's marked difference between that item which is the bullet recovered at autopsy and the test fire, is that correct?

A Yes.

Q Can you explain to the ladies and gentlemen of the jury why there would be such a striking difference in appearance between those two?

A The four test fires on the left, you're looking at them in profile. For the evidence on the right, it's actually looking at it from the nose end. And what happened is it struck something and it actually mushroomed back. So if you took the one on the right and turned it on its side, you would be able to see the base of it through the plastic itself. Kind of difficult but -Q

If I turn it over on the back side, does that show?

A You can kind of see the outline of the circle. That's the base of the bullet.

Q And so, just so I'm clear then what is looking at the other side would be the cone area and that's basically been mushroomed is what you're indicating?

A Yes.

Q When this gun was initially submitted to the crime laboratory, it had been recovered out of a river and was submitted in a cooler?

A Yes.

Q And it's my understanding that the cooler would have had water that was taken from the river and the gun was still submerged within the water when it was transported to the lab.

My question is, is there a reason why that would have been requested of the crime scene tech by Mr. Ward or somebody in the ballistics and firearm section?

A Once you remove the item from the water, the corrosion process begins a lot more rapidly. So by keeping it in the water, you kind of keep it in a suspended state so that it doesn't corrode much more than what it was.

Q And you talked about Mr. Ward having taken the gun and getting it, I think you said, cleaned it up to get it to function properly or determine if it functioned properly.

For a gun that would have been in the water for a period of months, would it take, what would he have to do to get that cleaned up? Would that be a very involved process?

A I'm not entirely sure what he did, by his notes he had to force the cylinder open to unload it. But as far as I recall there wasn't a whole lot of note on what exactly he did to it.

Q But, nonetheless, Mr. Ward was able to get the gun functioning properly to get test fires?

A Yes.

Q Are you aware, Mr. Westland, if Mr. Ward then compared those test fires to the spent bullet that was recovered at autopsy that we just previously looked at on the ELMO device?

A Yes.

Q

And what was, well, let me ask you this. Did Mr. Ward generate a report in connection with looking first at the bullet recovered from autopsy in terms of determining class characteristics and things of that nature?

A

Mr. Ward looked at the bullet prior to the gun being received and determined it was a .22 caliber class bullet.

Q

I'm going to show you what's been previously marked as Government's Exhibit 297 and ask you to take a look at this.

And that one-page document, do you recognize

what is contained in that one-page document?

A Yes.

Q What is that one-page document?

A It's the report by Michael Ward explaining that the

submitted bullet was a .22 caliber class bullet.

MR. KETCHMARK: Your Honor, at this time I move

admission of Government's Exhibit 297.

MR. OSGOOD: No objection.

MR. ROGERS: No objection.

THE COURT: 297 is admitted.

MR. KETCHMARK: I ask that be allowed to be published

to the jury.

THE COURT: You may display it.

MR. KETCHMARK: Thank you.

BY MR. KETCHMARK:

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Q Again, looking at the report, does it indicate that the victim in the case was a William D. McCay?

A On the left?

Q There should be a screen?

A On the left-hand toward the top.

Q The left-hand side, yes?

A Yes.

Q Does it indicate the victim was a William D. McCay?

A Yes.

Q Indicates the type of offense investigated was homicide?

A Yes.

Q There's a case number. Is that the Kansas City, Missouri Police Department case number?

A Yes, it is.

Q And, again, the date reflected was on March 16 of 2005?

A Yes.

Q And the report was by Michael Ward?

A Yes.

Q Upon his examination of the bullet what did Mr. Ward determine in terms of the --you indicated he determined it was a .22 caliber bullet. But did he also determine basically the twisting and the lands and grooves on that particular bullet that was submitted?

A He determined it had six land and groove impressions with a right-hand twist.

Q And then once this firearm would have been submitted-When the firearm would have been submitted after it was recovered, would Mr. Ward have also generated a report in connection with his examination of that particular firearm?

A
Yes.

Q And, again, if I could direct your attention to this screen--in a moment will be displayed, I believe, Government's Exhibit 67.
Do you see that there in front of you?

A
Yes.

Q
And does this appear to be Report No. 4 with the same

police report number generated by Michael Ward with the date of 6-8 of 2005?

A Yes.

MR. KETCHMARK: Your Honor, at this time I move

admission of Government's Exhibit 67.

MR. OSGOOD: No objection.

THE COURT: 67 is admitted.

MR. KETCHMARK: Ms. Marko, if you could blow up the

portion of the evidence and results section, Item 7-1.

BY MR. KETCHMARK:

Q

Again, looking at your screen, Item 7-1 indicates it's an unknown revolver and it indicates it as being single action with the serial number of 956815, is that right?

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A Yes.

Q And it indicates single action but does that mean that obviously with the gun here it could fire in double action mode as well, correct?

A Correct.

Q It also indicates that the bullet was manufactured and it talks about the land and groove impressions. What was Mr. Ward's conclusion with respect to the lands and grooves on the particular gun that was submitted?

A The revolver had six lands and grooves with a right-hand twist.

Q So based on the fact that that was the conclusion and the spent bullet also had that, was it possible that the spent bullet could have been fired from this particular firearm?

A Yes.

Q Now, all .22 revolvers wouldn't necessarily have six lands and grooves with a right-hand twist, would they? Or would they?

A No. There's different numbers in different directions in .22 caliber revolvers.

Q So we're still talking about class characteristics, correct?

A Yes.

Q Now, is there a step beyond class characteristics when you're trying to determine if a spent bullet was fired

from a particular firearm?

A Yes. We do what I mentioned before about the comparison, looking for what we call individual characteristics.

Q And, again, with respect to individual characteristics, would you have to have class characteristics before you would go on to determine if you had individual characteristics?

A Yes.

MR. KETCHMARK: Ms. Marko, if you could blow up the

summary of the results portion at the top.

BY MR. KETCHMARK:

Q Again, turning your attention to the monitor under

Government's Exhibit 67, this is a summary of the results section. It indicates that the firearm, the JC Higgins revolver, Item 7-1, was submitted to the laboratory in a styrofoam container submerged in water. The revolver was cleaned, test fired in the laboratory and found to be capable of discharging cartridges.

The previously submitted spent bullet, Item 2-2 was compared to test fire 1 from the JC Higgins revolver and the JC Higgins revolver and the spent bullet exhibited class characteristic agreement however the spent bullet, Item 2-2 was poorly marked and a determination of origin was not made.

Is that the conclusion that Mr. Ward reached?

A Yes.

Q And by indicating that the spent bullet was poorly marked and therefore, a determination of origin was not made, what did Mr. Ward, what was he indicating?

A Basically, that there were similarities but there weren't enough matching individual characteristics to determine that it was fired from this particular firearm.

Q And then, Mr. Westland, did we ask you to take a look at Mr. Ward's bench notes as well as the file and determine if you were in agreement with his assessments both as to the spent bullet being a .22 and bearing the same class characteristics?

A Yes.

Q And did you do that?

A I did.

Q And are you in agreement with the information that is set forth in these two reports that we have admitted?

A Yes.

Q Now, in addition to looking at the bullets, we talked briefly in the beginning about what happened when a bullet is discharged. Do you remember that discussion?

A Yes.

Q And you talked about kind of --Maybe the way to recap this is, explain, again, when I pull the trigger what happens.

A The firing pin strikes the primer which detonates the primer material and the primer material ignites the propellant inside the case. It burns at a high rate of speed which carries gas pressure that pushes the bullet down the barrel.

Q And what is, what is, basically, happening to the gun powder as this reaction is happening?

A It's burning.

Q Are you familiar with the term sooting or stippling?

A Yes.

Q What do those terms refer to?

A Sooting is basically the smoke that comes out of the end of the barrel with, along with the projectile. The powder propellant doesn't burn cleanly or it doesn't burn completely so when the bullet actually exits the muzzle, there is also smoke from the combustion as well as partially burned, unburned particles that exit the firearm as well. Stippling is actually these particles getting lodged into skin, essentially.

Q So in terms of using the term stippling, is it always related to skin?

A Yes.

Q So if, with the particles being sprayed, obviously, they can hit an object such as clothing?

A Yes.

Q But if it's on the clothing, would that be called stippling?

A It's considered gunshot residue.

Q Gunshot residue. But in order to be called stippling, it is the context of the burning particles with the skin?

A Yes.

Q With respect to this action of pulling the trigger and this reaction of the bullet being expended, are you able to at times make range determinations on how far an object would have had to have been away from a particular item of clothing or --let's say clothing?

A Okay. Yes. By the amount and the dispersion pattern of the particles as they leave the firearm, you can determine a range of muzzle to item distance.

Q Now, in order to do that, can you always determine a range or what is the one requirement before you could determine range?

A There is actually few requirements.

Q Okay.

A First and foremost, you have to actually have the particles deposited on the item. If, for instance, the firearm is far enough away, the particles will fall off and they won't make it to the item, actually just fall to the ground so they won't actually deposit on the item. In doing the range determination you also want to use the

firearm and the ammunition that was used originally. That way there are less variables included in the experiment.

Q And looking at the first requirement about the actual particles needing to be deposited on the items, if the particles aren't there, then you simply just note that the particles aren't there, correct?

A Correct.

Q You can't then say, the gun --you would only be able to conclude that the gun was far enough away the particles didn't get deposited?

A Correct.

Q In this particular case, well, let me ask you as a preface to that, too, Mr. Westland, in examining, say, clothing and not finding particles, are you able to do controlled tests in the laboratory that enables you or allows you to know how far the gun would have had to be away from the object at least in that controlled environment before there would be depositing of burned particles on a particular items?

A I'm not sure I understood the question.

Q Well, you looked at clothing in this particular case with this particular homicide, did you not?

A Yes.

Q You looked at a number of items of clothing and what were we asking you to do?

A Originally, to look for gun powder residue pattern on the items. For the items that I looked at, there was no positive reaction for the gun powder residue. So then I was asked that I determine how far away the firearm had to be from the item so there was no pattern left on it.

Q Would you have generated a report in connection with your review of these items and the conclusions that you reached?

A Yes.

Q I'm going to show you what's been marked as Government's Exhibit 298. And it is a copy of a 3-page document. It purports to be a photocopy of Report No. 7 in this case number, is that correct?

A Yes.

Q And is this a report that you would have generated in connection with your tests that you would have done in this particular case?

A Yes.

MR. KETCHMARK: Your Honor, at this time I move admission of Government's Exhibit 298.

THE COURT: 298 is admitted.

BY MR. KETCHMARK:

Q Let's first -

Could I have it converted to ELMO, please?

And, again, referring to Government's Exhibit 298, we

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see that, again, the victim in the case is William D. McCay, correct?

A Yes.

Q The offense is homicide and here's the Kansas City case

number?

A Correct.

Q It also shows it's Report No. 7?

A Yes.

Q And it indicates the date was on March 14 of 2008. Is

that the date that you would have generated the report or

the date the test would have been done?

A That's the date the report was printed.

Q Again, it indicates it was done by you, Kevin A. Westland,

Forensic Specialist 3, correct?

A Yes.

Q Now, turning to the second page, you had mentioned several

items that you had looked at. And there are several items that are listed. There is Item 5-35, which is a denim shirt. Item 5-36, which is a purple T-shirt. 5-37, which is blue jeans. 5-38, which is a black belt. And then there is 6-43, which is a blue and brown coat. Is that correct?

A Yes.

Q And there is an indication with respect to 5 dash, the denim shirt, the purple shirt and the blue and brown coat

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that there is an apparent bullet hole in the left chest area of those three items, correct?

A Yes.

Q Turning to page 3 of the report, it indicates as well, does it not, that the gun used or the gun that you were dealing with was Item 7-1, which was the .22 caliber JC Higgins revolver and the serial number and the caliber as we previously discussed, correct?

A Correct.

Q Did you check the blue and brown coat, which was Item 6-43, to determine if there was any gun powder residue on the jacket?

A I did.

Q And what were your results?

A They were negative.

Q Did you then take a next step after determining there was no gun powder residue and determine how far this particular revolver would have had to have been away from the jacket before it would have deposited gun powder residue?

A Using this particular firearm and stock ammunition we had in our possession, the firearm had to be 38 inches or greater away from the target. To not deposit anything.

Q I'm sorry?

A To not deposit anything.

Q So you're saying, basically, how do you do the test? How do you determine the distance?

A The original searching for gun powder residue, it begins with a visual examination. We actually look at the item and use magnification to try to find any particles. Then we do chemical testing to it in a process that will turn the particles either orange or in this case it was orange or another chemical that will turn them purple. In that process no color change happened.

For a basic range determination what you would do is take the submitted firearm and fire it at known distances to a target to try to come up with a pattern that is similar to what is found on the item of evidence. In this case, I simply kept moving away from the target until no particles were left on the target.

Q So when you're saying 38 inches or greater, would that be another way of saying, basically, once you got to 38 inches and you're firing, you're not seeing any type of gun powder residue deposited on what you're testing against?

A Yes.

Q That being said, if you're at 50 inches would you expect you would see any gun powder residue?

A No.

Q What about say 10 feet, 20 feet?

A At that distance was the limit for depositing particles on the target.

Q So inside of 38 inches there would have been some gun powder residue deposited?

A I would expect to find some, yes.

Q You mentioned the items or the factors in terms of dealing with particles being deposited on items. And you talked about, obviously, whether the items, the gun has to be close enough to deposit was one of the first factors you talked about. Then you also talked about using the particular firearm and the original ammunition, if at all possible?

A Yes.

Q Did you attempt to use any of the nine rounds of ammunition that were sent in with the particular firearm when it was recovered?

A Yes.

Q Were you successful in using any of those in determining or doing your test on the gun powder residue?

A I was able to have one cartridge discharge at 38 inches and it actually did deposit a few particles on to the target.

Q Were you able to get any other of the cartridges to fire?

A I only attempted to fire certain cartridges based on the color and design of the bullet that was recovered from the

victim. I stayed with what is called a Remington Yellow Jacket and there were three of them recovered with the firearm and only one of them would fire.

Q Again, with this particular firearm, you were aware it was recovered after having been in the bottom of a river for potentially a period of time, correct?

A Yes.

Q And is there anything about the fact that those rounds would have been submerged for an extended period of time that might impact or affect how the gun powder would be, whether it be wet, dry? Would that impact the firing?

A It may.

Q Additionally, when you were doing your test patterns and you're running your experiments, are you doing that in your laboratory?

A Yes.

Q Is that a controlled environment?

A Yes.

Q When a gun is fired in a setting outside of the laboratory, are there environmental factors that can potentially impact the test?

A Yes.

Q Could you tell the ladies and gentlemen of the jury what type or what type of factors those might be that exist in a real world setting when a gun is being discharged not in

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that laboratory?

A

Wind is probably the biggest factor.

Q

And explain to the ladies and gentlemen of the jury why wind would be a big factor?

A These are very small particles so they would be easily blown any direction. Also just the motion of the victim may have changed where they actually ended up.

MR. KETCHMARK: One moment, Your Honor.

That's all I have at this time, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q

Now, was this gun originally manufactured by High Standard? Did you check the lab on it?

A

I don't believe it actually has a manufacturer on it.

Q

JC Higgins is not a gun manufacturer. It was a sales outlet?

A

Usually sold through like a catalog type store, Montgomery Ward or Sears.

Q

You don't know if it was originally a High Standard?

A

No, I don't.

Q

They made a lot of guns like that at one point?

A

Yes.

Q

So I guess you can't tell me whether or not that gun is rated in terms of durability to fire long rifles versus

just .22 longs?

A The only designation on it was .22 caliber. All of the ammunition that was fired through it was .22 long rifle.

Q Long rifle?

A Yes.

Q Tell the jury, .22 ammo comes in three sizes?

A .22 ammunition, you can have what is called -Q
I mean for this gun. I'm not talking --I know they come in not talking about military rounds or anything?

A Sure. There are three basic .22 rounds in rim fire. Actually, four, I guess. .22 short, which is a very small cartridge. Overall length is very small. The actual projectile is very tiny. .22 long rifle is a little bit bigger. .22 long, the case is a little bit bigger and the bullet is a little bit bigger. The .22 long rifle, the case is the same size but the bullet is larger than a .22 long.

Q You're not going to talk to .22 Magnum. Got to have a special cylinder -A

--would not fire -Q

Exactly.

Let's get back to the three types of bullets.

Are there grain weight differences on the bullets then?

A Yes.

Q Where is the significant difference? Between the long and

long rifle?

A There is a greater difference between the .22 short and the .22 long, I believe, than between the long and long rifle.

Q All right. Now, they all fire, do they not, fast burning powder?

A Yes.

Q Which is typically used in a pistol round?

A Yes.

Q And the fast burning powder is called fast burning because the idea is it burns up the powder as fast as it can before the projectile leaves the end of the barrel?

A Yes.

Q Is it not true that the velocity of the round leaving the end of the barrel is going to vary depending on the barrel length?

A Yes, that's correct.

Q So when you're designing a round to fire from the gun, you try to design the round ballistically so it fires optimally in most guns realizing that some are going to be a longer barrel than others?

A Yes.

Q So if you had a .22 snubnose, for example, it would be more apt to spew out more residue, wouldn't it?

A Yes.

Q Because it's not consuming all the powder?

A Correct.

Q This is what a 4-inch, 5-inch barrel?

A I don't believe I have a measurment but that looks to be about right.

Q So it's average, wouldn't it be?

A Yes, I would say so.

Q In fact, I think they made these things in what was called a buntline special, back when these cowboy-look-alikes were popular, weren't they?

A I've heard of buntline.

Q Colt made one, a .22?

A Sounds correct.

Q It would be less apt to leave residue, wouldn't it?

A Yes.

Q Because it's all consumed as it goes out the barrel?

A Not necessarily all of it but it would burn more.

Q And leave at a higher velocity?

A There would be an upper limit where you wouldn't be able to push the bullet any faster but, yes.

Q Incidentally, I'm going to side track a minute. A lot of these guns were made in what is called alloy, were they not?

A The particular metal, I don't know.

Q You've seen them though in what we call, what I refer to

as an alloy metal that is kind of a, color-wise would be halfway between being chrome and blue?

A I'm not sure halfway between chrome and blue.

Q I just meant color-wise. I don't know how else to describe it. It's a mixed alloy element of some kind that is typically not blued, isn't it?

A I'm not sure what you're trying to describe I guess, as far as color.

Q Let's back up. Most guns, rifles and revolvers, most of us are familiar with, come blue, don't they?

A Most of them.

Q What is the bluing process?

A It's a chemical added to the metal to keep corrosion down, essentially.

Q And, basically, you've got steel, which is chemically treated, that puts a bluing on it to prevent corrosion, is that correct?

A Yes.

Q Then guns are also made in stainless, aren't they?

A Yes.

Q Stainless steel?

A Yes.

Q A stainless steel gun wouldn't look much different than a stainless steel knife and fork or pot and pan in your house, would it?

A Probably not.

Q Have a metal-like, distinct metal-like silver appearance for want of a better term?

A Yes.

Q All right. Now, where I was going with this is somewhere in between that is a dull unblued alloy frame that a lot of these guns had with a blued barrel. Have you seen those?

A Not that I can recall.

Q Never?

A Where the barrel would be a different color than the rest of the firearm?

Q Yes, sir. In the original model 1873 Colt single action revolver that that's modeled after, it was two different colors on the receiver and the barrel, wasn't it?

A I don't know.

Q The receiver itself was treated with an acid and has an acid finish on it and the barrel is blued?

A I don't know.

Q You ought to check on that when you get back to the lab. Well, let's move on. They all come in either a left-hand or right-hand twist, don't they?

A Yes.

Q So 50 percent of the guns in the world are right-hand twist and 50 percent of left-hand twist?

A I wouldn't say that. The more common rifling pattern would be actually six lands and grooves with a right-hand twist.

Q Like this?

A Yes.

Q So this actually represents a greater percentage of the guns of the world?

A Yes.

Q All right. Now, you said that you found three rounds of one, by one manufacturer and then five rounds from another in the gun?

A There was three rounds of one particular brand, I guess, would be the best term.

Q Okay.

A Remington makes different, I don't know how to describe it, different runs of cartridges. Some of them are called high velocity. Some of them are standard velocity. This particular one was what is called their yellow jacket which is ultra high velocity is what they call it.

Q Okay. And that would have more of this fast burning powder?

A According to the manufacturer.

Q So it would be more apt to spew out more residue as it came out of the barrel?

A Yes.

Q

Which would mean it would tend to have to be further away before it would stop leaving residue than perhaps just a regular round? Greater distance away?

A

Another round, not a yellow jacket, I guess?

Q

Yes, sir.

A

Yes.

Q

Okay. Now, you had the lead from the deceased?

A

Yes.

Q

And it was, of course, smashed on impact?

A

Yes.

Q

And that's not uncommon in this type of a wound, is it

not?

A I don't know anything about the wound.

to have that kind of mushroom effect.

Q Okay. Are these jacketed bullets?

A No.

Q They're just lead?

A Yes.

Q Soft lead?

A Yes.

Q So they tend to mushroom when they hit?

A Yes.

It's not uncommon

Q

That's why you weren't able to put them side by side. I guess the most famous pristine bullet is the Kennedy pristine bullet. Do you know what I'm talking about?

A Yes.

Q Where they were able to take the bullet off the gurney and lay it right beside a test bullet and they could see the lands and grooves of the two that matched up, couldn't they, and the barrel marks?

A Yes.

Q Why are you smiling, sir? You don't believe that that bullet was real?

A I didn't want to get into the Kennedy thing, I guess.

Q That's for another day. But that's the kind of test we're talking about?

A To actually lay them side by side, what you could see was the class characteristics which is the width of the land and groove impressions. This particular bullet while the nose end was mushroomed, you could see the base on it still when he showed it up here and the base is where the markings are.

Q I'm not disputing that. I'm saying if you had a pristine bullet you would be able to take it a step further and say this bullet came from this gun?

A Certain guns and certain bullets are going to mark differently. Not every bullet out of every gun is going to mark well enough to make an identification.

Q But, hopefully, that's what you get as the lab guy?

A Yes.

Q Then you can come in and say that bullet came from this gun?

A Yes.

Q But you can't do that in this case?

A No.

Q What does lot number mean in ammunition?

A It's basically a shipping kind of number. They're not manufactured with a control to a particular lot number. While they do do testing, the number's assigned actually during packaging.

Q So is there any way for example to submit that lead to some kind of mass spec analysis and say the lead from the spent round is from the same lot of ammunition as the round you recovered in the revolver?

A No.

Q That's a discredited test now that you used to use?

A Yes.

Q No longer use?

A Correct.

Q Okay. You've been doing this how long, sir?

A Since October of 2004.

Q Okay. Reviewed a lot of test results, done a lot yourself?

A Yes.

Q Been to school?

A Yes, in-house training.

Q Now, that you've got some advanced degrees also?

A Yes.

Q Sounds like you're pretty good at what you do?

A I hope so.

Q I think so. So I'm going to ask you a hypothetical question. If someone walked up to another person and put their arm around their neck and jammed that gun into their side and pulled the trigger, would you expect to find, first of all, stipplings on the body itself even through clothing?

A No.

Q Why not?

A With the muzzle being tight to the person, everything expelled out of the barrel would go into the wound.

Q Okay. Would part of it leave on the clothing?

A There would be possibly some gas and particles from what is called the cylinder gap which is the place between the end of the cylinder and the first part of the barrel, where actually some of the gas escapes at that point.

Q But if you're the lab guy and if it's close or even this close or inch or two up against the body, you're going to find some stuff that you can use as the lab guy to say?

A I would expect to see some gunshot residue from the cylinder gap but stippling, there's not enough powder

behind the cylinder gap to actually impregnate it into the skin.

Q That takes us to the next question. One of the things a common lab person should do is be at the medical examiner's office to examine the wound, itself, is that not correct?

A I don't make any determination on wounds.

Q But you just said it might be possible to find some powder in the wound itself. Is that up to the medical examiner?

A Yes.

Q Would they routinely tell you that if they do find something?

A I don't have routine conversations with the medical examiner, no.

Q In a typical autopsy, if that's present have you seen it in past cases?

A I have seen it.

Q Okay. Now, you don't attend the initial examination of the body then?

A No.

Q That's crime scene tech people?

A Yes.

Q All right. Now, one of the disputes if you read, sounds like you read this Kennedy stuff, one of the disputes was to whether or not the jacket was pulled up when the round

was fired to get at the tissue of the front or rear wound entrance. Do you recall that?

A Vaguely.

Q All right. What I'm getting at, the position of the clothing can actually effect where the hole is vis-a-vis in the clothing versus the body, doesn't it?

A Yes.

Q You want to know that, don't you?

A It would be good to know, yes.

Q So if there was a struggle and I'm rolling around on the ground and my clothing is all bunched up, the hole in the clothing could well be somewhere other than where it would normally appear if I'm just walking or standing when I get shot?

A Correct.

Q So if I'm rolling all around, the hole could even be around here by the side by my pocket or anywhere we could speculate about but if I'm walking, you would expect to find the hole next to the body?

A Yes.

Q Was that done in this case?

A Not that I'm aware of.

Q All right. What size shirt you got on, sir?

A Probably 19 and a half collar, 37, 36, 37 sleeve.

Q All right. So hold your arm out. All the way. Stand up

if you would, please, with the Court's permission. I don't want to frighten anybody so maybe you want to turn around and point it at Judge Bartlett there. Hold the gun with your firing hand. Now, to deposit something on your jacket from 38 inches, holding that gun that way, would it be possible to do?

A I suppose if the wind was blowing back toward me.

Q No, not shooting the other way. You're trying to shoot yourself right now. You're trying to commit suicide. And do it so that you don't leave powder burns. It's impossible, isn't it?

A I don't see how it would be possible, I guess.

Q Thank you. You can sit down. We don't want you to perform that test. You get what I'm getting at?

A Yes.

Q It would imply that it's impossible in a struggle for that gun to have been the gun that was the fatal shot in a struggle based on everything we know?

A Okay.

Q I don't want to put words in your mouth.

A I'm not sure that was a question.

MR. KETCHMARK: May we approach, Your Honor.

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. KETCHMARK: I'm going to object. I think it's inappropriate. He's airing his theory of the case. He can ask this gentlemen on his conclusion, how far that gun was away when he's doing test fires. But now to get into it's impossible for this gun to be used in a fatal shooting. This witness doesn't have any knowledge. All he knows is -

MR. OSGOOD: I said in the struggle.

MR. KETCHMARK: You said the fatal shot in this case, John, is what I heard.

MR. ROGERS: I think it's been asked and answer.

THE COURT: (Judge reading back).

MR. OSGOOD: I'll rephrase.

MR. KETCHMARK: Everything he knows, he's clearly

trying to argue his theory of the case.

THE COURT: I think you've probably gone as far as you can, John.

MR. OSGOOD: I'll move on.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. OSGOOD: I think I'm pretty well finished. Thank

you.

Oh, I'm sorry. I do have --Your Honor, may I?

THE COURT: Sure.

BY MR. OSGOOD:

Q I wanted to ask you, we talked about the single action and

the double action revolver?

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A Yes.

Q You said this was both. All double action revolvers or most of them have the capability of being fired single action, don't they? There are some that do not?

A Most of them.

Q Most of them do. By single action we merely mean pulling the hammer back and setting the trigger, it locks?

A Yes.

Q You release it, goes forward, strikes the firing pin which strikes the primer which fires the weapon?

A Yes.

Q In a double action revolver, you can simply pull it out and start pulling the trigger?

A Correct.

Q If there is not a safety on it and it fires?

A Yes.

Q Which is more susceptible to rapid fire?

A I would say the double action.

Q The double action revolver?

A Yes.

Q If you're going to fire three quick shots, all you've got to do is pull the trigger, pull the trigger, pull the trigger, do you agree with me?

A Yes.

Q Whereas if you're going to fire single shot, you've got to

cock it, aim it, pull the trigger, recock it, aim it?

A Yes.

Q Would you agree with me that someone who is reasonably competent with firing a weapon, when they cock it they're going --even the person who is good, when they cock it, they're going to pull themselves off the target?

A Yes.

Q One of the things they teach police officers, is it not, is that in combat stance, they take the combat stance they fire in double action, don't they. Or do you know?

A I haven't had firing training for police officers.

Q I assumed you had.

A No.

Q So it's easier to fire in double action?

A It's faster.

Q Faster to fire. Then, again, if you were up close to someone and you were pulling the trigger three times, you would expect to find some powder residue. Three rapid fire rounds, bam bam bam?

A Yes.

Q On the other hand, if you're at a distance, one of the advantages of single action is you can cock the weapon and take an aimed shot?

A Yes.

Q It's actually a --most people would be more apt to fire a

far more accurate shot with a cocked aim shot, wouldn't

they?

A Yes.

Q Because they don't have to pull the trigger because when

you pull the trigger, you tend to pull yourself off target, don't you?

A Yes.

MR. OSGOOD: That's all. Thank you.

CROSS-EXAMINATION

BY MR. ROGERS:

Q

You can breath easy, sir, I know nothing about the Kennedy investigation. I'm still back at ABCs. Okay?

When you say six lands and grooves inclined to the right, that's based upon the number of lines that are incised on the inside of the barrel, is that correct?

A

I don't know how to describe it. It's a section of metal within the barrel that has some width to it, not simply a line or -

Q You, basically, the barrel is made and drilled, right?

A Yes.

Q And it's smooth or as smooth as they can get it on the

inside, right?

A Yes.

Q Then they use something called a rifling tool?

A Yes.

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Q And a rifling tool cuts these lines, right?

A Yes.

Q And the way it does it is by removing metal from the inside of the barrel?

A In some processes there's metal actually removed. There's actually other processes where it's just impressed into the metal.

Q Okay. That would be a pretty soft barrel, wouldn't it?

A No. The metal might be soft at that point and then hardened after the fact or it could just be the amount of pressure that they use.

Q And as that rifling tool passes through the barrel, it is turned?

A Yes.

Q Mechanically. It's not done by hand these days?

A Yes.

Q And that is what cuts these grooves?

A Yes.

Q And the places where the grooves are not cut or impressed or whichever one it is, are what are called the lands?

A Yes.

Q So if you're looking at a cross section of the barrel, if you're looking at a cross section of the barrel, it would show these grooves, right?

A They would be on, actually on the inside of the circle.

Q Okay.

A And they would be almost like a rectangular shape placed against the edge of the circle.

Q I'm not going to try and do that. In fact, I'm going to take this off because it looks silly but having said that, that is, basically, what you talk about in terms of the lands and grooves, right?

A Yes.

Q Okay. So how long the barrel is would determine how many times the bullet would spin around coming out, right?

A The rate of twist is based on how they manufacture it. It's in the manufacturing process. So it wouldn't necessarily make one revolution throughout the length of the barrel. It's possible that the barrel would be shorter than the amount of time it would take to actually spin one time before it exited.

Q Or it's possible it could spin several times if it's a long gun, like a rifle?

A I think even --I don't know on that. I wouldn't think so but.

Q You can't tell in terms of the class characteristics you can observe on this spent bullet what the rate of spin was?

A You probably could measure the angle, depending on how well it marked, you might be able to measure the angle and

determine the rate of twist on it.

Q If you knew the length of the barrel?

A Yes.

Q Now, you said earlier, I believe, with regard to one of Mr. Osgood's questions that six lands and grooves inclined to the right is the most common rifling pattern on firearms you see in the United States. Is that accurate?

A It's the most common one that we see, yes.

Q Okay. And so in terms of the class characteristics that you describe with regard to wherever that gun is, Exhibit 47B? Okay. Exhibit 47B, it is a .22, correct?

A Yes.

Q It can --it's a long rifle?

A It can fire a long rifle cartridge, yes.

Q Can fire a long rifle cartridge. Now, am I correct that a firearm that can fire a long rifle cartridge, can fire a long cartridge or short cartridge?

A Most times it can fire a long cartridge. Short cartridges are some times a little difficult to fire.

Q But those are the class characteristics you're talking about. It's a .22 caliber with six lands and grooves inclined to the right, capable of firing a long rifle cartridge?

A Yes.

Q Okay. And there are many, many other kinds of .22 caliber

firearms which share those class characteristics, aren't there?

A Yes.

Q And we're not only talking revolvers. Also there are .22 automatics?

A Yes.

Q And some of them have six lands and grooves inclined to the right?

A Yes.

Q And there are also .22 caliber rifles?

A Yes.

Q And they also, some of them have six lands and grooves inclined to the right?

A Yes.

Q They can also fire the long rifle cartridges?

A Yes.

Q And some of the automatics can fire long cartridges?

A Yes.

Q And even if we just talk about .22 caliber revolvers that can fire long rifle cartridges, we're not limiting ourselves to the JC Higgins in front of you, are we?

A No.

Q There are many, many other manufacturers, correct?

A Yes.

Q Many, many manufacturers, because like Mr. Osgood points

out, JC Higgins is just a brand name used by a catalog company?

A Yes.

Q And you don't know who made those JC Higgins?

A No, I don't.

Q But there are several manufacturers of .22 caliber revolvers who market their products in the United States?

A Yes.

Q And many of them, in fact, most of them are also probably six lands and grooves inclined to the right?

A Yes.

Q Okay. Now, Mr. Osgood talked about stuff I don't understand, about alloy frames with blue barrels and things. But aside from that, have you seen what are commonly referred to as chrome revolvers?

A Yes.

Q And are there chrome .22 caliber revolvers?

A Yes.

Q And they don't look like that, do they?

A No. They're usually a shiny silver-color.

Q And are some of them manufactured with six lands and grooves inclined to the right?

A Yes.

Q And are some of them capable of firing long rifle ammunition?

A Yes.

Q Okay. Now, so you're not saying that's the gun that fired the bullet that was recovered from the autopsy?

A No. It was unable to be determined.

Q And all you can say is you can't rule it out because it would, in fact, fire a bullet like that with the six lands and grooves?

A Yes.

Q You're not saying we looked under the microscope and we could tell, due to the individual characteristics imparted at the time of rifling, that this gun, out of all the guns in the world, is the one that fired it?

A Correct.

Q Okay. And, in fact, those class characteristics, I think we already established, are very common?

A Yes.

Q Okay. Now, were you able to determine, well, you didn't weigh the bullet but you saw Mr. Ward's report, correct?

A Correct.

Q Something like 30 grains or something?

A Yes.

Q Is that consistent with a .22 long rifle bullet?

A Yes.

Q Is that heavier than the bullet would be in the .22 short ammunition?

A Yes.

Q And is that also heavier than the bullet would be in a .22 long round?

A No.

Q Same?

A It's within a few grains in this case. It's also a fragment so we don't know exactly how much it weighed prior to. But what we currently have is within the range of a .22 long, .22 long rifle.

Q And what's the range for a .22 long?

A Right around 36, I believe.

Q 36 grains?

A Yes.

Q And the .22 long rifle?

A I believe it's 42.

Q Okay. So this -A

It's usually a somewhat standard weight.

Q Okay. So this is actually, if you saw nothing else, you would look at it and say it's closer to a long than to a long rifle?

A Yes.

Q You also mentioned something about the color of the lead being similar to this yellow jacket?

A Yes.

Q Now, is the yellow jacket also a --brand is Remington,

right?

A Yes.

Q Is it also a variety which is made in long caliber as long as the long rifle caliber?

A I don't believe so. I believe it's a long rifle.

Q And are there other varieties of .22 caliber bullets which have the same general color, the lead is the same color?

A Yes.

Q So when you said it looked like a yellow jacket that was because there were two different kinds of bullets submitted with the recovered firearm, correct?

A There was at least two other kinds.

Q And some were yellow jackets and some weren't?

A Right.

Q Of those kinds, the fired bullet, the autopsy bullet I'll call it, looked more like the yellow jacket?

A Right.

Q But you didn't choose that as the yellow jackets opposed to all kinds of .22 caliber ammunition, say available on the market, right?

A I didn't choose it as what?

Q You didn't choose the yellow jacket as being the closest in color to the autopsy bullet of all .22 caliber ammunition?

A No.

Q Okay. Now, in making your determination of the distance at which the weapon could be fired without leaving gun powder residue, we'll talk about first. Okay? You operated under the assumption that this weapon in front of you, Exhibit 47B is the actual weapon that was fired there at the scene, right?

A Yes.

Q And if it were a different weapon with the same class characteristics, your result might be different, correct?

A Correct.

Q There are other .22 caliber weapons which would leave, which would leave no stippling at a --no gun powder residue, I'm sorry, at a much shorter range or at least somewhat shorter range?

A Possibly.

Q And you also, I think, qualified your opinion based upon the yellow jacket ammunition?

A Yes.

Q And if it were not long rifle ammunition but just long ammunition, then it would cease to leave gun powder residue at a shorter range, wouldn't it?

A It could.

Q Now, Mr. Osgood was talking about a hypothetical situation in which an individual grabs somebody around the neck and puts the gun up against him and discharged the gun, right?

A Yes.

Q And that's what is called a contact wound?

A Yes.

Q And in a contact wound, it's not just the gun powder we're talking about, is it? You can tell a contact wound by looking at the wound?

A The medical examiner could.

Q Okay. Even if there was clothing in between, correct?

A I would assume the medical examiner could make that distinction.

Q And if there were a contact wound through clothing, you could tell by the hole in the clothing, couldn't you?

A You would expect to see some singeing of the material if it was a contact wound through the clothing.

Q Because the same gases which are propelling the bullet through the barrel also exit through the barrel to some extent?

A Yes.

Q And these are very hot gases?

A They are.

Q Because they just exploded or were created by an explosion, more correctly?

A They're burning, yes.

Q So there would be singeing around the holes of the clothing, correct?

A Correct.

Q And you looked, when you were looking for the gun powder

residue, you looked at the clothing?

A Yes.

Q No singeing?

A I would have to check my notes.

Q Okay. Do that.

A I don't make a note of seeing any singeing around the

defect on the exterior of the coat. But I did open, actually, the outer layer of the coat and located what appeared to be singed fibers on the insulating layer of the jacket.

Q On the insulated layer of the jacket?

A Yes.

Q Is that reflected in your report?

A No. It's in my notes.

MR. ROGERS: May we approach, Your Honor?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. ROGERS: We don't have the notes. Have not been given the notes.

MR. KETCHMARK: I don't have the bench notes either, Judge. I just have the lab reports. That's what I passed over.

MR. ROGERS: I'm kind of surprised. I'd like to take a look at them and have a little bit of time to digest them and discuss them.

MR. KETCHMARK: I have no problem with, I mean, obviously, we can't do that at this point. I do not have problems asking him for copies of the bench notes, having him subject to recall and get copies of them, give them to them and have him come back at some point if we need to have him come back. It was a surprise to me.

MR. ROGERS: My point is -

MR. KETCHMARK: Are you going --no possibility to look at them right now and make -

MR. ROGERS: I'm asking for some time.

MR. OSGOOD: Here's my job. We have a firearms expert. I declined to have these things examined. I asked to have the lab test done. Long time ago he told me there were negative reports so I did not submit a request to have him actually examine the clothing.

THE COURT: The report is negative as I understand it. It's his bench notes that he's looking at.

MR. KETCHMARK: What he was looking at was not singed fibers. What Charlie wanted him to --for gun powder residue.

We had that test done. It came back negative. In his, Mr. Rogers in his question was asking him about something else. I didn't know because it's not in the report. It was not what

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he was asked to look at. He's now asked a question and got an answer he wasn't expecting.

THE COURT: I thought Charlie said he was going to look at his report but you did say look at your notes. Why don't we go ahead and take our afternoon break. You can look at the notes and -

MR. KETCHMARK: I'll get copies. In fairness to Mr. Osgood, too, I mean, I did tell him that but he had indicated you know we performed the tests he wanted done so obviously the clothes were available. But I think what he said was, well, that's what we were going to have him look at, whether there was gun powder residue on the clothing and there wasn't. He said, that's -

MR. OSGOOD: Stippling and gun powder residue.

MR. KETCHMARK: Singeing of fibers was not what we were discussing.

THE COURT: Let's take a break. You can look at the notes.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: This is going to take more than just a minute or two so let's go ahead and take our afternoon break. Don't talk about the case. Don't make up your mind. See you back here in about 15 minutes.

(Witness temporarily excused.)

(The following proceedings were had OUT OF THE

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PRESENCE AND HEARING OF THE JURY:)

THE COURT: Let's see if we can do this in 15 minutes.

(Recess)

(The following proceedings were had OUT OF THE

PRESENCE AND HEARING OF THE JURY:)

MR. OSGOOD: I think we resolved our heated dispute.

THE COURT: Do you want to tell me?

MR. OSGOOD: He decided it's not what he thought it was after looking at the jacket itself. Very best --I don't mean to speak for him --looks like possibly a friction but his report actually says he couldn't make a determination, negative, in his notes.

MR. KETCHMARK: I think we'll be able to clear it up.

THE COURT: All right. Let's bring the jury back, please.

(The following proceedings were had IN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Rogers, you may resume.

MR. ROGERS: Thank you, Your Honor.

KEVIN WESTLAND, RESUMED

CONTINUED CROSS-EXAMINATION

BY MR. ROGERS:

Q Mr. Westland, during the break did we have an opportunity,

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you and I, to not only go over your bench notes but also to get out the actual jacket itself?

A Yes.

Q And we looked at it, looking for the singeing that you noted in your bench notes, is that correct?

A Yes.

Q And when we were finally able to locate it, after some difficulty, is it fair to say that it's a very slight discoloration?

A Yes.

Q And that that would be consistent with the heat generated by the friction of the bullet passing through the jacket?

A It could be created that way, yes.

Q And it certainly is not indicative of it being a contact wound with the barrel of the gun being in contact with the jacket as described?

A Correct.

Q Okay. Now, let's go the other direction, now. And by the way, in terms of the contact wound or contact gun, contact shot, I guess, that inflicts a wound?

A Yes.

Q If there is a shot that is so close that the barrel of a revolver is in contact with a piece of fabric, then there will not be stippling or not gun powder residue on the fabric from the barrel, correct?

A Correct. It will pass through the opening.

Q But there would be, in most instances, especially with a revolver such as that one, and not very carefully engineered revolver, there would be some gun powder residue that would come out of the area around the cylinder?

A I would expect some to come out of the area of the cylinder gap.

Q And it would go at least as long as the barrel, right?

A It's really hard to say how far it would actually travel from the cylinder gap.

Q Okay. But you would expect to see at least some residue around the point of entry, if it was a contact wound?

A Yes.

Q Okay. Now, let's go back the other direction, now.

Assuming it's not a contact wound but close enough for there to be powder deposited. Would that powder travel through clothing?

A Depending on the weave of the fabric. It's possible that it would pass through the actual material.

Q How about a nylon jacket like you examined in this case?

A I would doubt it would make it through the jacket on to the underlying person or clothing.

Q And a bullet goes through clothing because a bullet is designed to be heavy, made out of lead, and it's propelled

at a very rapid rate and clothing is not much of a barrier, right?

A Right.

Q But gun powder particles on the other hand are much lighter and smaller?

A Yes.

Q And they are not, I guess they start out at the same rate but they don't leave the barrel at the same rate as the bullet, do they?

A I wouldn't think so.

Q So they don't travel as far?

A Correct.

Q And they also don't travel as --with the same momentum?

A Right.

Q They're not going to go through things a bullet can go through?

A Right.

Q So a piece of fabric would be an effective shield for gun powder?

A Yes, I think you could say that.

Q In fact, you heard people firing a gun through a handkerchief to reduce the gun powder residue, correct?

A I've heard that, yes.

Q And it works?

A I think it limits the amount of powder residue that would

make it.

Q And it certainly would have shortened the distance at which a firearm would have to be for powder to be deposited?

A Yes.

Q Okay. And so if somebody has a gun and ammunition like what you tested, 247B, and the Yellow Jacket long rifle and the furthest you got was 38 inches, right?

A Yes.

Q But if that were being fired through an item of clothing, it could be much, much closer?

A Yes.

Q And if a gun were in a pocket and fired through the pocket, could be much closer?

A Yes.

Q And if the gun were in the front pouch-type pocket of a hooded sweatshirt, the gunshot could be fired much closer?

A Through the fabric?

Q Through the fabric?

A I could see that.

MR. ROGERS: Those are all the questions I have, Your Honor.

THE COURT: Redirect examination?

MR. KETCHMARK: No, Your Honor.

THE COURT: Thank you. You may step down,

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Mr. Westland.

(Witness excused.)

MR. KETCHMARK: May he be allowed to be excused?

THE COURT: Without objection this witness will be

excused.

(Witness excused.)

MR. GIBSON: Government calls Brian McDaniel.

BRIAN MCDANIEL, GOVERNMENT'S WITNESS, SWORN

MR. GIBSON: May I proceed?

THE COURT: Oh, yes. You may.

MR. GIBSON: Thank you.

DIRECT EXAMINATION

BY MR. GIBSON:

Q

Good afternoon, sir.

A

Good afternoon.

Q

Sir, I'm going to need you to situate yourself a little bit closer to the microphone so everybody can hear what

you say. Now this young lady right in front of you is taking down everything you say. She can't take down a nod or a shake so you have to answer the questions. Okay?

A
Okay.

Q
If I ask you anything that you don't understand, just indicate that and I'll either rephrase the question or I can repeat it for you. Okay?

A
Okay.

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Q Now, I want to direct your attention, if I could, back to 2005. Were you living in the Kansas City area in 2005?

A Yes.

Q Specifically, what area of Kansas City were you living in?

A Independence.

Q You were living in Independence?

A Yes.

Q And where were you working at that time?

A Southwestern Bell.

Q And where is Southwestern Bell located?

A 500 East 8th.

Q Is that right across the street, essentially?

A Yes.

Q Now, approximately what time or did you get to work around the same time every day?

A I usually got there no later than quarter after, varied 10, 15 minutes every day.

Q Quarter after what?

A 6 in the morning.

Q And to get to work around quarter after 6, what time would you leave your house?

A Between 5:30 and quarter till 6.

Q And what would be the route that you would take into Kansas City to get to work?

A 24. Then go over on 9th Street and take 9th Street all

the way into downtown.

Q Took 9th Street all the way into downtown?

A Yes.

Q And when you were driving to work, would you drive alone or did you car pool with someone?

A Alone.

Q Now, if I could, specifically, I'd like to direct your attention to March 9th of 2005. Did you go to work on that day?

A Yes.

Q Did you leave the house around the same time?

A Yes.

Q That would have been between 6 or what time would you have left?

A Between 5:30 and quarter till 6, I would leave.

Q Now, when you drove to work that particular morning, what kind of vehicle were you in?

A Jeep Cherokee, white.

Q When you drove to work on that day, were you alone or were you with somebody?

A Alone.

Q And when you started out for work, was it light out or was it dark out or what were the conditions?

A It was dark.

Q Did the lighting conditions change at all as you were

driving into downtown Kansas City?

A Very little.

Q And while you were in route to downtown Kansas City from Independence, up 9th Street, did anything happen that caught your attention?

A Yes.

Q Could you describe that for us, please, sir?

A I was approaching Brighton and I noticed somebody standing on the north corner of Brighton and 9th street. And they stepped out into the street and I had to slow down because he walked out in front of me that day.

Q And were you close enough to get a look at this person's face?

A No.

Q Do you have a sense of whether or not you saw this person ever before?

A No, I haven't.

Q And you said you slowed down. Did you have to slam on your brakes or did you just ease on the brake? How did that work?

A Just eased on the brake so I could stop before I got there if I had to stop.

Q And the person that stepped out in front, did he, in fact, get across in front of your car?

A Yes.

Q Did you pass that individual?

A Yes.

Q Now, at some point as you're driving down 9th Street do you hear anything?

A I heard what I thought was a small caliber gunshot.

Q Now, do you have any military background, sir?

A Just basic training.

Q How long did you serve?

A 16 weeks in basic training.

Q And what branch was that?

A Army.

Q And do you have guns yourself?

A Pardon?

Q Do you have guns yourself.

A Yes.

Q Have you had guns since you were a kid?

A Pretty much, yes.

Q Now, when you hear what you believe to be a gunshot, what, if anything, did you do?

A I looked in my rear view mirror.

Q And when you looked in your rear view mirror, what did you see?

A Saw two individuals fighting with each other in the middle of the street.

Q In the middle of the street. Would that be 9th Street?

A Yes.

Q And these individuals, are they upright or on the ground?

A Upright.

Q Upright. And what, if anything, did you see next?

A Seen headlights approaching from the east from the railroad track direction. Then last thing I remember seeing is somebody running through the Brighton intersection there on the north side.

Q And was that one of the individuals that you earlier described as having been in this fight?

A Yes.

Q And at any point while you were watching this, did anybody end up on the ground?

A I didn't notice anybody go to the ground.

Q Anybody rolling around or anything like that?

A Didn't notice it, no.

Q Did you see any cars at that time?

A I seen a car parked on the north side of 9th Street on Brighton.

Q And did you pay any specific attention to that car?

A No.

Q Were there any other cars or any other traffic in the area at the time?

A I seen headlights approaching from the east behind me.

Q Did you continue on to work?

A Yes.

Q Did you call 9-1-1 or anything like that at that time?

A Not immediately.

Q And at some point did you speak with police?

A Yes.

Q What prompted you speaking with police?

A A co-worker of mine comes to work the same direction I did. He said when he came through, the intersection there was taped off.

Q And do you have a sense of how or what time it was he arrived at work and when you had this conversation?

A About 30 to 45 minutes after I arrived at work.

Q And as a result of that conversation, what, if anything, did you do?

A I called the Kansas City Police.

Q And did you talk to the police?

A Yes.

Q And at some point did a detective come out to where you work to talk to you?

A Yes.

Q Was that later in the afternoon?

A Yeah.

Q Did you have any recollection of specifically what either of the individuals were wearing?

A Well, the guy on the north side that walked in front of

me, looked like he was wearing sweatpants, maybe a stripe

down the side. It was dark clothes, it looked like.

Q Dark clothes?

A Yes. That's about all I could tell.

Q And at the time that you looked back in your rear view

mirror, approximately how far down the road were you from

where the individuals were?

A Maybe 50, 60 feet.

Q Other than the gunshot that you described hearing, did you

hear any other sounds?

A No.

MR. GIBSON: May I have a moment?

THE COURT: Uh-huh.

BY MR. GIBSON:

Q Thank you, sir.

A Thank you.

THE COURT: Cross-examination? Mr. Sandage?

MR. SANDAGE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SANDAGE:

Q Good afternoon. My name is Lance Sandage. I, along with

Mr. Osgood, represent Mr. Eye.

A Okay.

Q We have never spoken before, have we, sir?

A No.

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Q On the March 9th you had made a phone call to law enforcement around 8:30 in the morning after you had heard about that, is that correct?

A Yes.

Q And an officer, I suspect, took your statement?

A Yes.

Q You had not --you did not call 9-1-1 or made any call until your co-worker had told you about the incident, is that correct?

A Yes.

Q And when you called then you give, are you kind of ramped up or excited about what you might have just seen?

A Just a little freaked out, a little bit, yeah.

Q That's fair. When you first made that phone call to law enforcement did you know the exact address of where the incident occurred?

A I didn't know the cross street but I knew the buildings in the area right there.

Q Is it fair to say as the day went on your memory got a little bit better and you were kind of able to determine exactly where that incident happened?

A Yes.

Q In fact, you were able to share that type of information with the detective that came out later that afternoon and actually interviewed you, is that correct?

A Yes.

Q Also in that initial conversation did the officers taking your report ask you the race of the individuals involved in the incident that you saw?

A Yes, he asked.

Q What did you tell him?

A I told him I thought it looked like dark skin but I told him that I couldn't really tell because it was dark. It was hard to tell.

Q And later on when you had that second opportunity, that second interview with law enforcement, he actually, physically, came to your --Did he come to your business?

A Yes.

Q Detective Blehm. Does that name sound familiar to you?

A I can't remember his name.

Q And at that time were you able to tell him that you saw one African-American?

A I don't recollect that.

Q If I hand you a copy of a report that he took, would that help refresh your recollection?

A I don't know if it would or not to look at it.

MR. SANDAGE: May I approach?

THE COURT: You may.

BY MR. SANDAGE:

Q Just one paragraph report. Go ahead and read that.

A Where?

Which one? Upon arriving -Q

No. No. Just read it to yourself.

Are you done reading it, sir?

A Yes.

Q Does that refresh your recollection and all as to the interview that you had with the detective later on in the afternoon of March 9th?

A I don't remember discussing for sure what the skin color was. It's been awhile.

Q I believe on direct examination, sir, you said that you drove through the intersection, you heard a gunshot and then you saw two people involved in a fight. Was that your testimony?

A Yes.

Q Later on that afternoon when you were interviewed by Detective Blehm, did you tell Detective Blehm that you saw a fight and then heard a gunshot?

A No. I heard the gunshot and that's what made me look in my rear view mirror. That's when I saw the fight in my rear view mirror.

Q Again, it had been --Detective Blehm interviewed you around 2:00 in the afternoon. Does that sound about right?

A Yeah. Something like that. It was afternoon.

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Q

And after that you had a period of time to think about the incident, is that correct?

A

Yes.

Q

And, in fact, you were able to remember that it was actually at 9th and Brighton, is that right?

A

Uh-huh.

Q

Whereas earlier in the morning when you made that call to report you couldn't ascertain or determine exactly where it was?

A

I knew what building it was. I just didn't know the cross street.

Q

So your memory got a little bit better as you kind of thought about the events, is that right?

A Plus I looked at a map, too.

MR. SANDAGE: May I have a minute, Your Honor?

THE COURT: You may.

MR. SANDAGE: Nothing further, Your Honor.

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q

Good afternoon, sir.

A

Good afternoon.

Q

This will be brief. All right. Between 6:10 and 6:15 in the morning, roughly, would have been when you were traveling westbound on 9th Street. Is that correct?

A

Correct.

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Q And you were approaching what you didn't know to be a street by the name of Brighton but the intersection of 9th and Brighton?

A Correct.

Q And as you --when you spoke to Detective Blehm later in the day, did you indicate to him that as you entered the intersection you noted a black male fighting someone else in the intersection there?

A As I entered?

Q Yes, sir.

A No. It was after I passed, is when there was fighting.

Q And you did not see anyone well enough to be able to ID them. Is that correct?

A Correct.

Q You travel the same route roughly every morning, every workday morning, anyway?

A Yes.

Q You would also be passing through 9th Street between Hardesty, say, and Van Brunt, Spruce and on down between the same time frame, 6:15, every morning?

A Yes.

Q And you indicated I think when you gave your initial report that you often see people standing around out there on 9th street. Is that correct?

A Different areas, yes.

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Q But along this same neck of the woods you might expect to see someone as you go to work every day?

A Yes.

Q These people might be African-American, is that correct?

A African-American, Hispanic.

Q Hispanic, white?

A Yeah. All depends.

Q Okay. And that's fairly common to see people along that stretch of road?

A Yes.

Q And I want to confirm you only saw two people out there, is that correct?

A That's all I noticed, yes.

Q And according to the report any way, when you looked back after hearing the gunshot, it was the same two people you initially saw out there?

A Yes.

MR. GROMOWSKY: One moment, Your Honor.

BY MR. GROMOWSKY:

Q Sir, do you recall whether or not you told Detective Blehm that as you entered the intersection of 9th and Brighton

you saw a black male fighting with an unknown subject? Do you recall telling Detective Blehm that?

A Not in those exact words.

Q What words did you use?

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A I told him that somebody walked out in front of me and as I passed, looked, and heard the shot, looked in the rear view mirror. Saw them fighting in my rear view mirror.

Q You saw no one fighting as you entered the intersection. It wasn't until after you looked in the rear view mirror?

A Right.

MR. GROMOWSKY: Thank you, sir.

THE COURT: Redirect examination?

MR. GIBSON: No, Your Honor. May he be excused?

THE COURT: Without objection, he is excused.

(Witness excused.)

MR. GREEN: United States calls Jerold Tapscott.

JEROLD TAPSCOTT, GOVERNMENT'S WITNESS, SWORN
DIRECT EXAMINATION

BY MR. GREEN:

Q Would you, please, tell us your name, sir, and spell your

first and last name?

A Jerold Tapscott. J-E-R-O-L-D, T-A-P-S-C-O-T-T.

Q Maybe make an effort to lean toward that microphone so we

can pick up everything you say.

Sir, how are you employed?

A I'm employed with the City of Kansas City, Missouri.

Q And in what department are you employed in?

A In the Public Works Department.

Q And are you in a certain division?

A The Street and Traffic Division.

Q Street and what?

A Street and Traffic Division.

Q And what is your title?

A I'm an Assistant Division Engineer.

Q And how long have you had that title?

A Since 2002.

Q And as the Assistant Division Engineer in the Street and Traffic Division, what are your duties and responsibilities?

A My duties are to permit construction in the right of way and we also answer complaints in the right of way.

Q And you're talking about in the right of way. Explain a little bit more what you're talking about?

A That includes the travel way plus the areas behind the curb to the property lines.

Q Would that, so does your, basically, your jurisdiction includes the streets of Kansas City?

A Yes.

Q And the sidewalks of Kansas City?

A Yes.

Q And the alleyways of Kansas City?

A Yes.

Q I should be clear, Kansas City, Missouri, correct?

A That's correct.

Q And do you have people, do you oversee a certain --do you oversee some employees?

A Yes.

Q Who do you oversee?

A Well, I have seven field inspectors and I have five people in the office.

Q And the inspectors, what are they inspecting?

A They're inspecting traffic control and complaints in the right of way.

Q Now, I just want to ask you a general question. The streets of Kansas City, Missouri, who owns the streets of Kansas City, Missouri?

A The city owns the streets.

Q Who owns the sidewalks of the City of Kansas City, Missouri?

A The city owns the sidewalks.

Q And who owns the alleyways in the City of Kansas City, Missouri?

A The city does.

Q Now, I'm going to show you, focus on two separate areas. And the first I want to show you.

Just for Mr. Tapscott, exhibits, Plaintiff's Exhibit 127.

Do you see that on the monitor in front of you, Mr. Tapscott?

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A
Yes.

Q
And what is Plaintiff's Exhibit 127?

A
That plan shows the right of way as the white areas and the yellow are the properties.

Q
And is that Plaintiff's Exhibit 127 a document that, in fact, you provided to the United States that was requested of you and that you provided to us?

A Yes.
Q And this is a document that's kept and maintained by your traffic division?
A It's maintained by the City Development Department.
MR. GREEN: Your Honor, the United States offers Plaintiff's Exhibit 127 into evidence.

THE COURT: Without objection, 127 is admitted and

may be displayed.

BY MR. GREEN:

Q And I'm going to highlight a certain area here. I just

sort of tried to circle a particular intersection. What intersection would that be?

A That would be 9th and Spruce.

Q And, again, 9th Street runs east and west, is that correct?

A Yes.

Q And Spruce runs north and south, is that correct?

A Yes.

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Q And there are also, did I just make a mark there by an alleyway?

A Yes.

MR. GREEN: Now, going to have displayed just for the witness, Mr. Tapscott, Plaintiff's Exhibit 128.

BY MR. GREEN:

Q

Do you recognize Plaintiff's Exhibit 128?

A

Yes.

Q

What is Plaintiff's Exhibit 128?

A

It has the, shows the street and the curbs and sidewalks and pavement markings that are on the street in this field.

Q

And is Plaintiff's Exhibit 128, it's a photograph, aerial

photograph, correct?

A

Yes.

Q

Is this a document that, again, you provided to us?

A

Yes, it is.

Q

Is this a document kept and maintained by the City of

Kansas City, Missouri?

A

Yes, it is.

Q

And what is the purpose of this document?

A

So that we can see all the features that are on the, in

the area that we're looking at.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibit 128.

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THE COURT: 128 is admitted and may be displayed.

MR. GREEN: And, Ms. Marko, if you could just blow up sort of the center portion of it. Okay. I'll clear the mark.

BY MR. GREEN:

Q And do you see that, Mr. Tapscott?

A Yes.

Q Now, do you see 9th Street going east and west, correct?

A Yes.

Q Again, who owns that section of 9th Street?

A The City of Kansas City.

Q Missouri?

A Missouri.

Q And who's responsible for maintaining that street?

A The City of Kansas City, Missouri.

Q Now, there are also sidewalks along 9th Street, this area

of 9th and Spruce, isn't that correct?

A Yes.

Q And who owns the sidewalk in this section?

A The city owns the sidewalk.

Q And who's responsible for maintaining the sidewalk?

A The property owners.

Q And is that by city code?

A Yes, it is.

Q But who has overall authority over the sidewalk?

A The City of Kansas City.

Q And if a property owner isn't properly maintaining his or her section of the sidewalk, what will happen?

A We will send them a notice and ask them to get it repaired. If they don't repair it, then we have a contractor come in and we assess it back to the property with the cost.

Q And does a property owner with the sidewalk on their property, do they have the right to block that sidewalk?

A No.

Q And so who's ultimately responsible for seeing that the right of way is maintained?

A The City of Kansas City.

Q Missouri?

A Missouri.

Q Now, I want to show here, if I'm correct here. Would this street here, what I'm kind of indicating there, sort of circling, is that 9th and Spruce?

A Yes.

Q And then we made reference to an alleyway. I'm sort of putting a purple mark where that alleyway dumps into 9th Street, is that correct?

A Yes.

Q And, again, who is responsible for maintaining that alleyway?

A The City of Kansas City, Missouri.

Q And the next area I want to focus on is the area of 9th and Brighton.

So if you would display just for Mr. Tapscott Plaintiff's Exhibit 129.

Do you see that, Mr. Tapscott?

A Yes.

Q And, again, this is a record you provided to us, correct?

A Yes.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibit 129 into evidence.

THE COURT: 129 is admitted and may be published.

MR. GREEN: And also, Ms. Marko, if you would enlarge

the 9th and Brighton area of that.

BY MR. GREEN:

Q You can see, I'm not going to put a mark on it. You can

see the 9th and Brighton intersection, is that correct?

A Yes.

Q And the intersection of 9th Street that you see running

through Plaintiff's Exhibit 129, would the City of Kansas

City, Missouri own that section of 9th Street?

A Yes.

Q And Brighton which runs north and south, City of Kansas

City, Missouri would own Brighton?

A Yes.

Q And there are sidewalks along 9th Street and as well as

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Brighton in that area, is that correct?

A Yes.

Q And who would, the City of Kansas City, Missouri would own those sidewalks, is that correct?

A Yes.

MR. GREEN: If you would just, again, display for just the witness, Plaintiff's Exhibit 130.

BY MR. GREEN:

Q And this is the same type of aerial photograph which we saw previously of the other area, only this is showing 9th and Brighton, is that correct?

A Yes.

MR. GREEN: And, again, Your Honor the United States would offer Government's Exhibit 130 into evidence.

THE COURT: 130 is admitted and may be published.

BY MR. GREEN:

Q On this here, on this Plaintiff's Exhibit 130, I'm

circling the 9th and Brighton area, is that correct?

A Yes.

Q Now, I think my last question would be the City of Kansas

City, Missouri is a political subdivision of the State of

Missouri, is that correct?

A Yes.

Q And also you kind of talked generally about, would the same thing be true for this area about the sidewalks that

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the particular property owner would have the responsibility for maintaining that sidewalk, correct?

A Yes.

Q But if the property owner wasn't doing it correctly, the City of Kansas City, Missouri would step in and make sure it was done correctly, is that right?

A Yes.

Q And it's also true that the City of Kansas City, Missouri has ultimate say so over the right of way of those sidewalks, correct?

A Yes.

MR. GREEN: Your Honor, United States has no further

questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Mr. Tapscott. Is it Tapscott?

A Tapscott.

Q T-A --I'm sorry.

A That's all right.

Q Do you know how far it is from 9th and Spruce to 9th and

Brighton? Can you tell that from your maps?

A No. There's some --they're not connected together.

Q The maps aren't?

A The maps aren't connected together.

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Q By looking at the aerials or the maps themselves, could you quickly tell us, is it about a half mile? Sound right?

A Let me, that's about right. I suspect.

Q Okay. Are you familiar with that area there called, the Island, we see in the one map which is kind of an odd shaped building that goes around by the alley?

A Yes.

Q We had an aerial view of that?

A Yes.

Q It's a little curved side street, comes in and joins 9th Street?

A Yes.

Q I believe it's actually 9th Street Terrace. Would that be right?

A Yes.

Q Now, do you know when that aerial was first platted?

A No, I don't.

Q Is it possible to develop a subdivision in the City of Kansas City as a private development and have private streets in it?

A Yes, it is.

Q That's quite common, isn't it, in new developments?

A Not so much.

Q Well, some times it's called a gated community. Some

times it's not gated?

A We have very few gated communities.

Q But you know what I'm talking about?

A Yes.

Q And the property is deeded, platted and deeded to the individuals by the developer and they own property, don't they?

A Yes.

Q And the homeowners association for that piece of platted property is responsible for the maintenance of the streets and sidewalks, aren't they?

A That's correct.

Q At some point in time they may decide to dedicate some of those streets to the city?

A Yes.

Q What does that mean? Tell the ladies and gentlemen of jury what a dedicated street is?

A Dedicated street is where they want to take the existing street and turn it over to the city so the city will maintain it for them.

Q All right. Now, before we get into that, with respect to a plat map, does the property owner's property run from the --to the edge of the street? He owns the sidewalk, doesn't he? You have an easement on it, don't you?

A He owns, he maintains the sidewalk.

Q My question is does he, on the plat map, where does his property line end? Do you have an easement on the sidewalk?

A His property ends before it gets to the sidewalk.

Q On the plat map?

A Plat map.

Q Doesn't the plat map show the sidewalk as being part of the street?

A Yes.

Q Okay. I thought it was the other way around but if that's what you say. Now, over the course of time you discovered that your maintaining streets you shouldn't be maintaining because they actually were never dedicated or turned over? You've gotten in legal disputes with property owners, haven't you?

A I believe so, yes.

Q So my question is, did you go back and check the original plat maps and the original platting and determine, in fact, that this development area at 9th and Spruce was, in fact, developed properly, the streets dedicated to the City of Kansas City? Did you do that in anticipation of this testimony?

A No.

Q You're just assuming that it's a city street then, aren't you? Because cars drive up and down it and people live

there and it looks like a city street. It's an assumption, isn't it?

A Yes.

Q You're not convinced beyond a shadow of a doubt that that is, in fact, truly a city street. Then you can't say that with a moral certainty, can you?

A Well, because we maintain the surface of the street, I believe that we are maintaining the street and it is ours.

Q But, again, by way of what, adverse possession, just because you're doing it?

A Could be.

Q But, again, my question is you cannot state with a degree of moral certainty on the stand that it, in fact, was a dedicated street because you never checked before you came to court here?

A That's correct.

Q Same thing for 9th and Brighton?

A That's correct.

Q Do you even know whether or not those were separate subdivisions or all one subdivision?

A I don't know.

Q Thank you, sir.

MR. GROMOWSKY: Your Honor, I have no questions.

Thank you.

THE COURT: Redirect examination?

MR. GREEN: Yes, Your Honor.

REDIRECT EXAMINATION

MR. GREEN: If you could show 128.

BY MR. GREEN:

Q Can you see that, Mr. Tapscott?

A Yes.

Q That's the section, the street being displayed on 128. In

your professional judgment do you consider that section of
9th street is a public asset of the City of Kansas City,
Missouri?

A Yes.

Q As well as the sidewalks in this area?

A Yes.

Q And would you even consider this area to be a gated

community that's being displayed?

A No.

MR. GREEN: And if you could then show Plaintiff's
Exhibit 130.

BY MR. GREEN:

Q That section of 9th Street that's being displayed there,

in your professional judgment is that section of 9th

Street an asset of the City of Kansas City, Missouri?

A Yes.

Q As well as that section of Brighton?

A Yes.

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Q

As well as the sidewalks in that area?

A

Yes.

Q

Would actually, in fact, as far as your duties and responsibilities, come as a shock to you if you found out that the City of Kansas City, Missouri didn't own those streets and sidewalks?

A

Yes.

Q

Do you have any reason to believe that the City of Kansas City, Missouri doesn't own those streets and sidewalks?

A

No.

Q

In fact, well, in fact, there is a vacant lot displayed in the lower half of Plaintiff's Exhibit 130. Do you see that?

A

Yes.

Q

Who owns that?

A

City of Kansas City.

Q

Missouri?

A Yeah, Missouri.

MR. GREEN: No further questions.

THE COURT: Recross?

RECROSS-EXAMINATION

BY MR. OSGOOD:

Q

How do you know they own the vacant lot?

A

I looked up the property ownership and it was ours when I was in the Transportation Department.

Q

Again, this is a criminal trial, sir, you know we expect precise testimony.

MR. GREEN: Your Honor, I object to that. That's argumentative.

THE COURT: Sustained.

BY MR. OSGOOD:

Q You didn't check. That's the bottom line. You just

assume?

A I did check the ownership on that piece of property.

Q Not the lot. What we're talking about, the plat, you did

not check?

A No, I did not.

Q Okay. Thank you.

THE COURT: Any other cross?

If not, thank you, sir. You may step down.

MR. GREEN: May he be excused, sir?

THE COURT: Without objection, the witness is
excused.

(Witness excused.)

MR. GIBSON: May I call the next witness?

THE COURT: You may.

MR. GIBSON: Government calls Regennia Rios.

May I proceed?

THE COURT: You may.

REGENNIA RIOS, GOVERNMENT'S WITNESS, SWORN

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DIRECT EXAMINATION

BY MR. GIBSON:

Q Good afternoon, Ms. Rios.

A Good afternoon.

Q Ms. Rios, I'm going to need you to use the microphone.

You have to keep your voice up. The young lady in front of you is taking down everything you say so you can't nod your head and you can't shake your head because she can't take that down.

A Okay.

MR. OSGOOD: May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: I'm not sure what Ms. Rios' status is vis-a-vis Jackson County. As we all know there is no double jeopardy between two different sovereigns here. She is subject to prosecution for first degree murder, as far as I know, in Jackson County. We've been given nothing to indicate that she's been given immunity in Jackson County and that she's not going to be prosecuted. I've been told all along that such paperwork doesn't exist. If it does, I'm making a demand for it at this time, any agreement between Jackson County and this witness. If not, I'm asking to have her advised to protect her under the Fifth Amendment of her right to --she could

incriminate herself on a first degree murder charge in Jackson County, Missouri.

MR. GIBSON: Your Honor, this is an attempt to intimidate the witness. She's been fully immunized. The state is not going to prosecute her. The United States has given her immunity and nothing she has said in the process of this investigation could be used against her, nor would it be possible to set out in a Kastigar fashion what she has told us. She couldn't be prosecuted using any independent evidence at the state level. She's has immunity. She's here willing and free to testify.

MR. OSGOOD: They have no authority to immunize her from state prosecution. From everything I've heard in this trial there was sufficient evidence developed to make --in fact, the Court has characterized her as a co-conspirator. There was sufficient evidence in the police reports that we got originally, before we ever saw one FBI document, to prosecute her for first degree murder, premeditated first degree murder in Jackson County and seek the death penalty.

THE COURT: What's the harm in advising her? In the United States' point of view, you say she knows, what's the harm in my telling her?

MR. GIBSON: This is an attempt to intimidate the witness. It's not an accident she's brought out and put on the witness stand when he could have raised at any point in the

last three years.

MR. ROGERS: Your Honor, this is the first time --I didn't make this objection but I join in it or this request, I guess is what it is. But this is the first time in the last three years they have told us that she has been promised immunity in the state.

MR. GIBSON: I'm not saying she's been promised immunity by the state. I'm saying the federal government has immunized her and the state would not be in a position to prosecute her with the federal government having done that.

MR. OSGOOD: That's not law.

MR. ROGERS: That's not the law. No question in my mind, that's not the law.

THE COURT: I, frankly, don't see the harm in advising her and it seems to me to be the safest course. What I'll do is excuse the jury and advise her of her rights. I'll tell the jury not to go anywhere. We'll bring them right back in.

MR. GIBSON: Okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: We're going to take about a three-minute

recess. So if you would, please, go to the jury room and don't go anywhere because we're going to bring you right back in in about three minutes. Please don't discuss the case yet.

(The following proceedings were had OUT OF THE

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PRESENCE AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Ms. Rios.

MR. GIBSON: Your Honor, she has counsel. Her counsel is present. I would ask that her counsel be given an opportunity to discuss it with her also.

THE COURT: Well, let's do that before I question her.

MR. GIBSON: Very well.

THE COURT: Do you understand what the issue is? You probably don't. Under the dual sovereign doctrine the fact Ms. Rios has been prosecuted federally, convicted federally, would not prohibit the State of Missouri from filing an independent action should the state decide to do so. And I think that Ms. Rios needs to be advised of that before she testifies today and before she says anything which might tend to incriminate her in the event there is a charge brought by the State of Missouri.

MR. GIBSON: Judge, frankly, and I didn't mention this when we were at side bar but the prosecutor's office had a state prosecutor cross designated in this investigation from the inception. They were aware of the immunity decision as

well. And, again, I would submit under those circumstances the prosecutor's office is clearly bound by the immunity agreement having participated in the investigation from the initial

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stages on. Again, this is an 11th hour attempt by the defense to prevent us from going forward at this point.

THE COURT: I understand but at least theoretically the State of Missouri could attempt to prosecute her. I think she needs to be aware of that.

If you would like to take a moment to visit with her about it, then I'll question her.
(The witness and her attorney are having a discussion.)

MS. ALTIERI: Your Honor, at this time we would request that I have a little bit of time to work through this with my client, just until tomorrow morning.

THE COURT: We haven't got any more witnesses for today?

MR. GIBSON: No. In fact, Your Honor, I fully expect this would have gone into a half day tomorrow as well.

MS. ALTIERI: Your Honor, if I could have been apprised this would have been an issue earlier -

THE COURT: Oh, I think we all would have liked that, Ms. Altieri.

MS. ALTIERI: Right.

THE COURT: Okay. We'll break for the day. And we'll expect to see Ms. Rios back here at 8:30 tomorrow.

Let's bring the jury back in and we'll send them home.

MR. OSGOOD: Your Honor, I apologize.

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MR. GIBSON: This was deliberate, Judge. It's mission accomplished. This is exactly -THE

COURT: Mr. Gibson. Mr. Gibson. Enough.

MR. OSGOOD: I did make -THE

COURT: Mr. Osgood.

(Witness temporarily excused.)

(The following proceedings were had IN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Be seated, please.

Ladies and gentlemen, we have hit a snag that's going to take us more time than I want you to sit and wait for us to work out. So I am going to recess for the day.

And I'm going to remind you, again, of Instruction No. 8. You must not discuss the case with anyone including your fellow jurors, members of your family, people involved in the trial or anyone else. If anyone tries to talk with you about the case, report that to me immediately. Do not read, watch or listen to any news reports of the trial. Do not read, watch or listen to any news reports about the trial. And, finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

Thank you very much for your attention today. We'll see you at 8:30 tomorrow morning. Good night.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: I assume that there will be some

discussions with the State of Missouri between now and tomorrow morning.

MR. KETCHMARK: Your Honor, I will get in touch. Just to add to the record, Michael Hunt was a cross-designated Special Assistant United States Attorney at the time. He actually participated in the investigation and was aware of what was going on, what it involved, not necessarily directly with Ms. Rios but was aware at the time. So I don't think there's going to be any problem.

The other thing I can tell you from my own experience because I dealt on the other end from state immunity grant in Clay County and I looked at the issue. And because the immunity is compelling her to testify in a proceeding, it gives her the protection that anything she says can't be used against her. The immunity is testimonial in nature. It's not transactional under the United States Code sections and so the preclusion is from using anything she says against her. And she is protected with the cloak because what it is doing is taking away the Fifth Amendment and, basically, saying, you no longer have the right to claim the privilege to not incriminate yourself. That doesn't mean if there isn't a bit of evidence -

THE COURT: My only concern, David, is that the State of Missouri is technically not a party to that agreement. And

at least in theory, I think the State of Missouri has the option of proceeding independently of the federal courts. Whether the likelihood of that may be miniscule but whatever it may be, this witness is entitled to know about it and to be aware of the potential consequences before she makes statements which may tend to incriminate her.

MR. KETCHMARK: Again, I understand, we're not quibbling. We'll get a resolution. From what I looked at on the recess, the only reason she's testifying is because she's being compelled to do so. So it's not a voluntary relinquishment. It's a compulsion that the Court is making her. So therefore the state can't come in and take this transcript and say this is a voluntary waiver of your Fifth Amendment, Ms. Rios, and we can use that as substantive evidence of your guilt.

THE COURT: To be clear, I'm not making anybody testify.

MR. KETCHMARK: I understand. We'll get it resolved. I'm just telling you, I don't think it's going to be a snag. We can do it with a phone call but for her benefit, I'll get something from Jackson County.

MR. OSGOOD: That's all I wanted, Your Honor. I asked Mr. Ketchmark on more than one occasion --I think he'll tell you --what is her status in Jackson County? What is going on over there? It's Giglio material. We're entitled to

have it to cross-examine with. And they basically told me, it's not a big issue. Well, I think it is a big issue. That's why I raised it. I know maybe I disrupted the proceeding today and I apologize for that but I have asked about this on a number of occasions and have not gotten a satisfactory answer.

MR. KETCHMARK: My recollection of that, Your Honor, is it was mentioned to me first when we were doing jury selection. I told Mr. Osgood I don't think there's anything

with Jackson County. We'll get it resolved.

THE COURT: Good night.

(End of session)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)

)

Plaintiff,)

)

vs.) Case No. 05-00344-01/02-CR-W-ODS

)

GARY EYE and) Tuesday, April 22, 2008

STEVEN SANDSTROM,) Kansas City, Missouri

Defendants.)

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ORTRIE D. SMITH
UNITED STATES DISTRICT JUDGE

VOLUME 7 OF 17

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MAY 1, 2008 -DAY 7

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Good morning. Have a seat.

Where are we this morning?

MR. KETCHMARK: Well, Your Honor, Mr. Osgood, I think did some research last night and filed a trial brief indicating that he understands that Jackson County will not be able to use her testimony and, Your Honor, because she's here pursuant to the immunity order that Judge Gaitan issued back on July 18th of 2005.

I do have Michael Hunt, who is the Assistant Jackson County Prosecutor, who I had indicated yesterday was also cross-designated and participated in the investigation. And Mr. Hunt, when I spoke to him last night, graciously agreed to come up here and represent to the Court, obviously, that he understood as a representative of Jackson County that they would be precluded from using any testimony Ms. Rios would provide here pursuant to the original immunity order. And he actually signed a copy of the statement on the immunity order acknowledging such. But I think that might be a moot issue in light of what Mr. Osgood's research, basically confirming what I was representing to the Court on that particular issue yesterday afternoon.

MR. OSGOOD: That's part one of the issue, Your

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Honor. I concede that under that Supreme Court case it appears that they can talk about adoption through the 14th Amendment of that right and as a citizen's right now. And it's true that testimony itself cannot be used. Derivative evidence, of course, could be used.

More importantly, what I want to know is what her understanding is and what counsel has explained to her as to her status. Because the problem is they do not have authority under state law to give her immunity. If you read the state cases, it's --there's only one statute under the State of Missouri that allows for immunity given by the prosecutor's office and that's debtor collection. And that statute was enacted as a result of prior Supreme Court, Missouri Supreme Court law saying you can't give immunity, therefore they enacted a special statute for debtor collection proceedings.

The issue is what is her understanding and what can we cross-examine her on. Because clearly a newly elected prosecutor could elect to file under the law and could use the original police reports and everything to pursue her, if they chose.

MR. KETCHMARK: Your Honor, along that line, just one clarification. And I don't know if Mr. Osgood, when he suggested derivative use, I would adamantly disagree with that in terms of there is Kastigar issues for anything that was developed in the investigation that was derived out of her

testimony. It couldn't be used against her. And there would be a Kastigar hearing that would, in essence, be insurmountable because all that Kansas City had or all that Jackson County would have had was the original police interviews where the people were denying that Ms. Rios was even present at the time of the homicide. And there would be some subsequent statements. I think this is --and to suggest that a newly elected prosecutor could come in and that Mr. Hunt can't speak for their office on the immunity order now because under the State of Missouri there is no statute of limitations for a class A felony murder, first degree. Is he suggesting we figure out who the prosecutor will be in ten years, 15 years? I mean, at some point, it borders on the absurdity, the issue that Mr. Osgood is raising.

And I think what is important, this is the bottom line from the standpoint of her testimony and the immunity order. It enables her or rather compels her that she doesn't have a Fifth Amendment right. And she has two choices. She can either testify or she can potentially be held in contempt. That's the whole notion of what the immunity order did back then and that's what the immunity order is still doing here today. Because it was a valid order issued by Judge Gaitan after we got the requisite approvals from Washington. Now, to suggest it needs to be dealt with further and try to determine what her representations and her understanding of that is, I

think that that starts to get into a situation where you're asking, I mean the representation we have made to Ms. Rios, we have disclosed. She's immunized. I mean, as a practical matter, too, we told her from a federal standpoint we're not prosecuting her because we realize we wouldn't have the ability to do that with the information and the Kastigar related issues that would come from that.

Now, in terms of what is happening at the state or not happening at the state, we did tell her that there is no way that the state can use this because it is compelled testimony. And Mr. Hunt is here, representing that that was their understanding and when he was involved in the investigation that was their understanding.

Now, in terms of what, above and beyond, Ms. Rios may be thinking about that, that is discussions that she's probably had, I would assume, with her attorney, Ms. Altieri. Those aren't discussions that necessarily involve our office because we have fully disclosed what our office's involvement is. This is testimonial or use immunity. It's not transactional immunity. In theory, in theory the government could bring a case against Ms. Rios but we know we can't. And that's why we have said as much that we can't because we realize the hurdles that would be involved from a Kastigar tainting out hearing that are insurmountable.

So I think that this is just a situation where they

don't want her to testify and they're scared of her testifying. And it's not trying to delve into what her understanding is or her belief. It's that they're trying to intimidate to the point that, hopefully, she won't testify. And I think it's improper. The immunity order is the immunity order. There is an understanding what the immunity order is and there is an understanding from Jackson County that they can't use it.

THE COURT: Mr. Hunt, is that your understanding?

MR. GREEN: Yes, sir, Judge, it is.

THE COURT: And is that the understanding of the

present prosecutor of Jackson County? Have you discussed this?

MR. HUNT: I did speak with him last night and he concurs with my conclusions that we could not use this. And it would not be, it's compelled testimony. We can not use it in any way, shape or form.

THE COURT: Ms. Altieri, have you had an opportunity to speak with your client this morning?

MS. ALTIERI: Yes.

THE COURT: And she's been fully advised of the status of things as they stand at the moment?

MS. ALTIERI: She has, Your Honor, with the exception she knew I would be securing Mr. Hunt. And would -

Your Honor, I did speak with her at length yesterday.
I haven't had the opportunity to speak with her this morning.
But it was her understanding that I was going to do just what

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happened this morning. Get with the Jackson County Prosecutor's Office and Mr. Hunt would testify to the same. And maybe I'm at a loss and I know both sides are arguing as to what is in her best interest but, you know, she's been advised of everything and it's her call whether or not to testify. I just think that's it.

THE COURT: Is there, in your judgment, a need for me to question her on the record concerning her understanding?

MS. ALTIERI: No. But you're welcome to.

THE COURT: Ms. Osgood, what is it that you propose to do?

MR. OSGOOD: Actually, I was going to ask you for guidance on that, Your Honor. For example, the proffer letter, and this was disclosed to us, the immunity was only disclosed several weeks ago. We did not realize she had formal immunity. That was a sealed order. The proffer letter, itself, says, they even highlighted in bold and underlined it, I should point out that Ms. Rios was involved in this more substantially than first believed. She might be a candidate for immunity. She did not have immunity when she appeared and gave her proffer.

MR. KETCHMARK: That is standard Department of Justice procedure, Your Honor. At the time of the proffer we are required to let the department know if they agree to proffer or didn't proffer whether or not they would provide information. The information provided in the proffer is done

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under the context of the Kastigar case law. And it does provide her with the protection. I don't know that that in any way changes the dynamics of the analysis that needs to be done and the immunity is in place, and the immunity and her testimony in grand jury. The proffering information in those sessions are used as the foundation for an understanding that can then be developed in the grand jury session. I don't think it changes in any way, shape or form the dynamics at play here.

MR. ROGERS: Let me throw another monkey wrench into the works, Your Honor. I'm looking at the immunity order entered by Judge Gaitan. Does the Court have a copy of that?

THE COURT: I do not.

MR. ROGERS: And my understanding, Your Honor, is that the government's position is that that order precludes any use or derivative use of testimony she would give at this trial. And it's my understanding that the position of the Jackson County Prosecutor's Office as relayed by Mr. Hunt is that they are bound by that use immunity at the very least. And I haven't read Mr. Osgood's brief so I don't know about the derivative use counts. But if you look at the terms of the order, it does not grant use immunity at trial or for any immunity for testimony at trial. It only grants immunity for testimony given before the grand jury. I don't think it protects her in the least with regard to testimony here.

MR. GIBSON: Your Honor, that is the most

disingenuous argument I have heard to date. The immunity order compelled her to testify before the grand jury. Nothing she said before the grand jury could ever be used against her either directly or through derivative use. Therefore anything she said at the grand jury is covered, covers what she would say today. We can't put her in front of the grand jury, immunize her and say testify, now you have no Fifth Amendment. Then bring her into the trial and say, by the way, you're not immunized here. We're going to use the trial testimony against you in some future procedure. That is absolutely not the law. That is clear black letter. She was given immunity for the grand jury proceeding and it covers her forthwith because of the content of the testimony. This isn't a new situation.

MR. ROGERS: Maybe my understanding of the term disingenuous is different but it seems to me the order says what it says. And I do not believe that testimony in court is a derivative use of the grand jury testimony. Necessarily. Some of it may be. Some of it may not be. My understanding, that she lied to the grand jury every time she got the chance and that they have used that to prosecute her for not lying to the grand jury but lying to them. Having said that, I don't think that that order confers immunity from testimony. If I were to ask her on cross-examination a question, the answer to which would incriminate her, it would be a judicial admission. There would be no need for any showing of any corpus delicti.

It, in and of itself, would be sufficient to support a prosecution and a conviction. And they can't bind my cross-examination through their immunity agreement. And so I don't think that that order protects her from admissions she may make on cross-examination. I don't think it protects her from other admissions except to the extent that they are directly derived from the grand jury testimony.

MR. OSGOOD: Maybe you'd like to speak to this--that case that I cited from the Supreme Court cited a long line of cases that held what I argued.

Mr. Gromowsky just pointed out to me --Mr. Gromowsky just pointed out to me an old law review article pulled up on the Internet argues a more recent Supreme Court case involving the Brady handgun bill has, apparently, according to the law review article, in effect overruled the case that I cited, Murphy, and the law is back on dual sovereignty the way it is. That dual sovereignty and preventive commandeering, by the federal use statute cannot preempt state prosecution by Scott Sinclair. So, it's a delicate issue, Your Honor. I don't know how else to phrase it.

THE COURT: Give you one more shot at it, Eric, then I'll tell you what we're going to do.

MR. GIBSON: Your Honor, Mr. Osgood, the case he cited in his trial brief was overruled on other grounds. It wasn't overruled on this particular ground. And the testimony

before the grand jury was compelled by the grant of immunity. Once compelled, forever compelled. Your Honor could no more find that a police statement had been compelled pre-proceedings and then find at some subsequent later stage that it was not compelled. That's the issue here.

The grant of immunity compelled her to come forward and give the information that she gave and that's the circumstance under which it was provided. Because it was compelled, it can never be used against her. Grand jury, motion to suppress, pretrial, post-trial. It was compelled. And the content of that information cannot be used against her. That's how the immunity works.

THE COURT: Okay. I don't believe anyone here realistically believes that Ms. Rios is ever going to be prosecuted for any of the events which occurred on March 8th and 9th beyond what has already occurred. I don't think that anybody expects the United States will seek further prosecution nor the State of Missouri.

She is an important witness. The question of whether she testifies or not is hers to make. And I accept Ms. Altieri's word she has fully advised her of her rights and that she will advise her immediately as to the recent developments. And then if Ms. Rios chooses to take the witness stand and testify, we will hear her testimony.

The extent to which all of this can be covered on

direct and cross-examination is that the United States may choose to bring out the terms of its agreement with Ms. Rios and fully explain the extent of any promises that it has made to her as a result of her cooperation. The defendants will be permitted to cross-examine her fully concerning any promises the United States has made to her with respect to her cooperation and further her understanding about whether her testimony here might be used at any other prosecution, whether she believes that she is immunized, that her statements here and before the grand jury are immunized and that those statements can't be used against her at any subsequent prosecution and whether she understands that the State of Missouri has no intention of prosecuting her for any of the events related to the killing of Mr. McCay.

Any questions?

MR. OSGOOD: No, Your Honor.

THE COURT: All right. Ms. Altieri, talk to your client. And when we're ready to begin, we'll bring the jury in and get started.

(Recess)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Did you check and see how much more time she needs to talk to her client?

Ms. Altieri, would you join us up here?

Let me see counsel up at the bench.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: I just want the record to reflect that you have met with Ms. Rios, Ms. Altieri?

MS. ALTIERI: Yes, sir.

THE COURT: And she is fully apprised of the situation as it stands at the moment?

MS. ALTIERI: Yes, sir.

THE COURT: Is it her intention to testify, knowing everything that's been discussed?

MS. ALTIERI: Yes, sir.

THE COURT: All right. Let's swear her in and get started.

MR. KETCHMARK: I have a new list for today. Apparently I sent out the wrong list yesterday.

THE COURT: Let's bring the jury in.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Good morning, ladies and gentlemen. Welcome back.

Mr. Gibson, Ms. Rios, I think you were sworn yesterday before we began and you may resume your examination, Mr. Gibson.

REGENNIA RIOS, RESUMED

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MR. GIBSON: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. GIBSON:

Q Good morning, Ms. Rios.

A Good morning.

Q Ms. Rios, I'm going to need you to keep your voice up.

There is a microphone in front of you. We need to make sure we can hear you. Okay?

A Okay.

Q You need to answer the questions with your voice. If you nod your head or shake your head, the young lady in front of you can't take down what you're saying. Okay?

A Okay.

Q How old are you today, Ms. Rios?

A 20, sir.

Q And where did you grow up?

A Northeast Kansas City, Missouri.

Q And did you spend your entire growing up in northeast Kansas City?

A Yes.

Q Now, do you know Gary Eye?

A Yes.

Q Do you see Gary Eye in the courtroom?

A Yes.

Q Could you indicate where he's sitting?

A In the defendant's seat.

Q Indicating by point of the finger the defendant, Gary Eye.

How long have you known Gary Eye?

A Nine or ten years.

Q And do you know the defendant, Steven Sandstrom?

A Yes.

Q Do you see Defendant Sandstrom in the courtroom?

A Yes.

Q Where is he?

A Behind Gary.

Q Indicating by point of the finger the defendant, Steven Sandstrom.

Who did you know first?

A Steven.

Q And approximately how much longer did you know Steven than Gary?

A I don't know, about a year maybe.

Q And at some point did you ever have a dating relationship with Steven Sandstrom?

A Yes.

Q And, approximately, how long did that last?

A A few months.

Q Now, at some point you met Gary Eye, is that correct?

A Yes.

Q Did you also know Vincent Deleon?

A Yes.

Q How did you know Vincent Deleon?

A We dated.

Q You dated. Did Vincent introduce you to Gary?

A Yes.

Q And how long did you date Vincent?

A About 5 or 6 years.

Q And at some point did you spend, start to spend time with Steven and Gary?

A Yes.

Q Around when would that have been?

A February of '05.

Q February of '05. And when we say spend time, what are we talking about? Is that like 24/7, is that on again, off again? How would you describe it?

A For a few weeks we were together for about 24/7.

Q 24 hours a day, 7 days a week, more or less?

A Basically.

Q Now, when you were living in the northeast, did Gary also live in the northeast?

A Yes.

Q What street did he live on?

A White.

Q What street did you live on?

A I didn't live on a street, specifically.

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Q Well, where did you spend most of the time?

A Drury.

Q And how about Steven? Where did he stay most of the time that you knew him?

A Drury.

Q Is that in the northeast?

A Yes.

Q Now, I want to direct your attention to March, specifically, of 2005. Do you recall the date that William McCay was killed?

A Yes.

Q Now, I want to start with the day prior to that, on March 8th of 2005. Do you recall when you first came into contact with Steven and Gary on the 8th of March 2005?

A I had been with them prior to that.

Q You had been with them?

A Yes.

Q Do you have a sense of how long you'd been with them?

A Probably a few days.

Q On March 8th, did you do any methamphetamine?

A Yes.

Q How long had you been doing methamphetamine?

A A few years.

Q And when you were with Steven and Gary on March 8th, did Stevie do any methamphetamine?

A Yes.

Q Did Gary?

A Yes.

Q Now, did you go, did you do anything with Stevie and Gary on March 8th prior to William McCay's killing?

A Yeah. We went out north and stole a Jeep.

Q And when you say up north, do you mean north of the river?

A Yes.

Q And where was the Jeep situated?

A Parked in somebody's driveway.

Q And when you went to steal his Jeep, describe that for us?

A The three of us rode in an Intrepid out north, pulled in behind the Jeep. Steven and Gary got out, stole it and we left.

Q Now, you mentioned an Intrepid?

A Yes.

Q Who was driving the Intrepid when you went north of the river?

A Steven.

Q And where was Gary?

A Passenger.

Q Where were you?

A Behind Gary, back seat.

Q And when you located this Jeep north of the river who got out of the car?

A They both did.

Q Where did you go?

A I stayed in the back seat.

Q And who moved the Jeep out of the driveway?

A Gary.

Q And did you leave the location in a car?

A I left the location in the Intrepid.

Q Who was driving the Intrepid when you left?

A Steven.

Q At some point did you change vehicles?

A Yeah. I got into the Jeep with Gary.

Q And what happened next?

A We got on the highway. And me and Gary separated from Steven on Parvin Road. And went to these apartments where we had sex.

Q How would you describe your feelings for Gary Eye at the time on March 8th of 2005?

A I liked him. I was trying to be with him.

Q What does that mean, trying to be with him?

A Be his girlfriend.

Q And when you stopped the Jeep, what, if anything, happened to the Intrepid?

A Stevie kept going. He left. We separated.

Q Did Stevie know or did you or Gary explain to Stevie that you were going to stop in the Jeep?

A No.

Q And when you stopped in the Jeep, the Intrepid kept going, is that correct?

A Yes.

Q Now, while you were parked in the Jeep with Gary, what, if anything, happened?

A We had intercourse.

Q And was anybody trying to get in touch with you?

A Steven.

Q How do you know that?

A The cell phone was ringing.

Q Who had a cell phone in the Jeep?

A I did.

Q And did Stevie also have a cell phone at that time?

A Yes.

Q Now, how long did you stay at this apartment complex?

A About 20, 25 minutes.

Q And how often did the phone ring?

A A few times, a couple.

Q And did either you or Gary answer the phone?

A Not at that time, no.

Q How did you know it was Stevie calling?

A Caller ID.

Q And at some point did you leave the apartment complex?

A Yes.

Q Where did you go?

A We were heading back toward northeast when we got a call from Steven saying to meet him at Jonnie Renee's house.

Q And who is Jonnie Renee?

A My cousin.

Q What is Jonnie Renee's last name?

A Chrisp.

Q At the time that Steven Sandstrom asked you to meet at Jonnie Renee's, how would you describe your relationship with Jonnie Renee?

A There wasn't one. We didn't speak.

Q And after Steven called you, did you, in fact, go to Jonnie Renee's?

A Yes.

Q And when you were arrived, was Steven there?

A No. He pulled up after.

Q How long did you have to wait for Steven?

A Not very long.

Q What, if anything, happened when Steven arrived at Jonnie Renee's?

A He pulled up next to me and Gary, frankly talked about how he just shot at a nigger at 7-Eleven.

Q Now, at the time this took place, were you still in your vehicle?

A Yes.

Q In the Jeep?

A Yes.

Q And was Stevie still in the Intrepid?

A Yes.

Q The same Intrepid that you took to go north of the river?

A Yes.

Q Now, after Steven said that, what happened next?

A Basically, me and Gary just brushed it off, like whatever, and we went back to Steven's parents' house on Ewing.

Q Now, at the time that Steven said he had shot at some nigger at 7-Eleven, what was his demeanor like at that time?

A It was kind of frantic. He was intense.

Q And did you stay --how long did you stay at Jonnie Renee's?

A Not at all. He pulled up, said that. We drove off.

Q Did you ever go inside Jonnie Renee's at that point?

A No.

Q And you indicated you went to Stevie's house after that conversation?

A Yes.

Q What happened at Stevie's house?

A We parked the Jeep. We all went in the house. Stevie's mom, we walk in and Bonnie, Stevie's mom, said, what's up? Stevie is going --Stevie tells her that he just shot a

nigger. And, basically, he wasn't trying to hear her. He just goes in the room and closes the door.

Q Now, when you went to Jonnie Renee's, did you all go in the Jeep or did the Intrepid go to Jonnie Renee's, also? How did that work?

A Me and Gary were in the Jeep. Steven pulled up in the Intrepid.

Q To Steven's house?

A Oh, Steven's? Yes.

Q And what happened next at Steven's house?

A We sat in the room and smoked meth.

Q Who is we?

A Me, Steven, Gary.

Q Which room of the house are you talking about?

A Steven's room.

Q Do you know where Steven's parents were at that time?

A Somewhere in the house.

Q Do you know if anybody else was in the house at that time?

A Probably his siblings.

Q About how long did you stay at the Sandstrom house?

A I'm not real sure how long. We got a phone call from Vince and we left. I don't know how long we were there.

Q When Vincent called, did he call you or did he call Stevie or did he call Gary?

A He called Gary.

Q And after Vincent placed this call, what happened next?

A We went and picked Vincent up at Jonnie Renee's house and took him to Independence to steal a car.

Q And what vehicle did you pick up Vincent in at Jonnie Renee's?

A The Intrepid.

Q When you left the Sandstrom house, who was driving the Intrepid?

A Steven.

Q Who was in the front passenger seat?

A Gary.

Q Where were you seated?

A Behind Gary.

Q How long did it take you, about, to get to Jonnie Renee's from the Sandstrom house?

A Maybe ten minutes or so.

Q And when you got there, was Vincent there?

A Yes.

Q Did Vincent get in the Intrepid?

A Yes.

Q Where did Vincent get in the Intrepid?

A Behind Stevie.

Q Behind Stevie?

A Yes.

Q What happened next?

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A We drove out south to get a car. Stevie asked Vincent had he heard about the shooting at the 7-Eleven and told him about how he had just shot at some nigger. And that's when Gary made the comment, you get to do one --if you get to do one, I get to do one.

Q And who did Gary direct that comment to?

A Stevie.

Q What, if anything, did Steven say in response?

A He told him it wasn't like that, dawg. And that's when Gary said, you started it. Let's finish it.

Q And where was Vincent seated at that time?

A Behind Steven.

Q Are Steven and Gary whispering in the front seat?

A No.

Q Could you hear them from where you were seated?

A Yes.

Q What happened next?

A We pulled up at some house out south and Steven and Vincent got out to steal this white Jeep out of the driveway.

Q Now, when Steven and Vincent got out of the car, did you get out of the car?

A No.

Q Did Gary get out of the car?

A I don't think so, no.

Q Had you seen a firearm up to that point?

A Well, when we left the house I seen it and Steven gave it to Gary to make sure no one came out on them while they were stealing the car before he got out.

Q Now, you indicated you saw a firearm when you left the house, which house are you talking about?

A The Sandstroms.

Q Where did you first see the firearm?

A Stevie put it in his Ace bandage as we were leaving.

Q When you say put it in his Ace bandage, what do you mean? Can you show us?

A He used to wear like a back brace. He would keep it tucked in there under his shirt.

Q Before you left the house, you saw him tuck it in that brace?

A Yeah.

Q Now, you indicated that he passed the gun to Eye at some point?

A Yes.

Q And is that while Stevie and Vincent are stealing the other vehicle?

A Yes.

Q Do you recall what kind of vehicle that was?

A It was a white Jeep.

Q Who drove away in the Jeep?

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A Vincent.

Q And who left in the Intrepid, that location?

A Me, Stevie and Gary.

Q And what happened next?

A We went back to Stevie's house and started smoking meth again. Just hanging out, I guess.

Q When you drove away from the location where you stole the Jeep, where was the gun at that point?

A I think Gary still had it. I never seen it get switched back but it ended up back with Stevie.

Q Who drove the Intrepid away from the scene of the stolen white Jeep?

A Steven.

Q And you indicated that you went to the Sandstrom house next?

A Yes.

Q Do you recall about what time of day this would have been on March 8th, roughly? Was it still dark out? Was it light out?

A It was probably the early, early morning of March 9th or the end end. I don't know. 12, 1 o'clock-ish. It was dark.

Q Now, approximately how long do you stay at the Sandstrom house doing meth?

A Until we get a phone call, like 5:00 in the morning-ish

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from Vincent saying that he needed Jonnie Renee picked up at Inner City Oil.

Q And who did Vincent call to ask for help in getting Jonnie Renee picked up?

A Gary.

Q And did you, in fact, go to Inner City Oil?

A Yes, we did.

MR. GIBSON: Could I have Government's Exhibit 1A

displayed for the witness, please?

BY MR. GIBSON:

Q Do you see the screen in front of you, Ms. Rios?

A Yes.

Q Do you recognize that?

A There's nothing on it.

MR. GIBSON: Is Your Honor's screen on?

THE COURT: It is.

MR. GIBSON: I don't think this is powered up.

THE WITNESS: That's Inner City Oil.

BY MR. GIBSON:

Q Is that the Inner City Oil you're talking about?

A Yes.

Q Is that about how it looked in March of '05?

A Yes.

MR. GIBSON: At this time the government would move for admission of Government's Exhibit 1A. I would ask it be

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published to the jury.

THE COURT: Without objection, 1A is admitted and may

be published.

BY MR. GIBSON:

Q

Did you, in fact, go to the Inner City Oil?

A

Yes.

Q

When you left the Sandstrom house to go to the Inner City Oil, how did you get there?

A

In the Intrepid.

Q

Who was driving the Intrepid?

A

Steven.

Q

Who was sitting in the passenger seat?

A
Gary.

Q
And where were you seated?

A
Behind Gary.

Q
And when you got to the Inner City Oil, what happened next?

A
Jonnie Renee was standing inside the door, right there as you walk in. She came out, got in the car with us.

Q
And when Jonnie Renee got in the car, where in the car did she get?

A
Behind Steven.

Q
Behind Steven?

A
Yes.

Q

What happened next?

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A Jonnie Renee was saying how Vincent was driving stupid and she was -MR.

OSGOOD: Objection, Your Honor, to the hearsay.

MR. GIBSON: Not offered for the truth, Your Honor.

THE COURT: Overruled.

BY MR. GIBSON:

Q

Please continue.

A

She was saying how Vincent was driving stupid and she just wanted to go home. And that's when Gary said that's probably a good idea because being with us, she would probably see something that she didn't want to see.

Q

And when Gary said this, was he facing Jonnie Renee or still facing forward in the car?

A

I don't remember.

Q

Did Jonnie Renee respond?

A

She got uncomfortable. I don't remember anything at that

exact time but that's when Stevie told her that --he asked her about seeing anything on the news or whatever about the shooting in front of 7-Eleven. And he told her he had shot at some nigger. And that's when she got really uncomfortable. She just said she wanted to go home.

Q

Did she indicate whether or not she had heard anything about the shooting at the 7-Eleven?

A

She said, no.

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Q Now, did you start out in the direction of Jonnie Renee's home?

A Yes.

Q Was there additional discussion in the car before you arrived at Jonnie Renee's?

A Not that I recall.

Q Have you heard the term, on site?

A Yes, I have.

Q What does on site mean?

A Meaning if when you see something, like where we come from, if I was to say when I see her it's on site, and there was a problem between us, that means we would fight as soon as I seen her.

Q Now, when did you first hear that term that evening?

A On the way to Inner City Oil.

Q And who said it on the way to Inner City Oil?

A Gary.

Q And what did he say or what was the context in which he used the phrase, on site?

A Steven had asked him, did he think that he hit the nigger at 7-Eleven and Gary's response was, how was he suppose to know but when I see one, it's on site.

Q What did you understand that to mean?

A When he saw a black person there would be a problem.

Q Now, and that took place, that conversation that you

recounted took place on the way to Inner City Oil, is that correct?

A That's right.

Q Then you're on the way from Inner City Oil to Jonnie Renee's house. Approximately how long does it take to get to Jonnie Renee's?

A No more than 15 minutes.

Q When you arrive at Jonnie Renee's house, what happens?

A She gets out of the car and she tells me to be careful. I realize I need cigarettes. I tell Stevie to take me to the gas station.

Q Were you and Jonnie Renee speaking in the car to each other prior to that?

A No.

Q And, in fact, were you still on the outs with her, so to speak?

A Yes.

Q When she said to you to be careful, was she facing you or was she facing everyone in the vehicle?

A She was speaking directly to me.

Q Now, you said you went back to Inner City Oil?

A Yes.

Q Now, you went back to Inner City Oil, why?

A To get cigarettes.

Q Now, as you're going back to Inner City, do you see

anybody at Inner City Oil?

A There's people every where.

THE COURT: Let me pause just a moment, Ms. Gibson.
Proceed.

BY MR. GIBSON:

Q

When you arrived at Inner City Oil, you indicated there were people about?

A

Yes.

Q

And were any of those individuals African-Americans?

A

Yes.

Q

Did anything happened at Inner City Oil when you arrived

there to pick up cigarettes?

A No.

Q Why not?

A Well, because there were a lot of people there. I mean,

it wasn't a stated conversation or anything but just because there were a lot of people, busy area. He didn't say that but that's just what -

Q Were you concerned that there were witnesses present?

A Yes.

Q And when you had been to Inner City Oil, previously, to

pick up Jonnie Renee, had there been people about at the

Inner City Oil at that time?

A Yes.

Q Did that include African-Americans at that time?

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A Yes.

Q Did anything happen prior to picking up Jonnie Renee?

A No.

Q Same reason?

A Yes.

Q Now, when you leave or do you leave Inner City Oil at some point?

A Yes.

Q Approximately, how long are you there to get cigarettes?

A Long enough to run in and run out.

Q When you run back out, where do you go?

A Back to the Intrepid.

Q And what seat do you get in?

A Behind Gary.

Q Do you leave the Inner City Oil?

A Yes.

Q Who's driving?

A Steven.

Q And where do you go from Inner City Oil?

A We drove down 8th Street because there was discussion about going to Leon's, some kind of a car place to get beats out of the back of one of the cars over there.

Radio equipment.

Q Is there any other reason why you went down 8th Street?

A Well, because it's early in the morning, shift change.

The main streets have a lot of police on them at that time.

Q You said when it's early morning shift change, are you referring to police?

A Yes.

Q And by selecting 8th Street, were you attempting to avoid police presence?

A Yes.

Q And the reason for going towards Leon's was what?

A Because there was a car that had stereo equipment in it and they were suppose to get it out.

Q Who was suppose to get it out?

A It was --they were discussing it between both of them so I guess both of them.

Q And beats refers to the stereo equipment?

A Yes.

Q And as you're heading towards Leon's. What, if anything, happens?

A Well, we get to Kensington and that's the first time that I saw Mr. McCay. He was walking on the left side of 9th Street but Steven went to take a right and Gary told him to hit the alley. So instead of going right, he goes a couple feet and goes to the alley. And we're in the alley, Gary tells him to give him the strap. And he says he doesn't have the heart.

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Q Let me back you up for a second. You refer to Mr. McCay by name. On March 9th of 2008, did you know William McCay?

A No.

Q Or 2005, excuse me, did you know William McCay?

A No.

Q Did Steven Sandstrom know William McCay?

A Not to my knowledge.

Q Did Gary Eye know William McCay?

A No.

Q Who was the first to spot William McCay?

A I don't know.

Q Was he walking by himself?

A Yes.

Q Was there anybody else visible at that time on the street?

A Not that I recall, no.

Q And you indicated he was walking on 9th Street?

A Yes.

Q And who said, hit the alley?

A Gary.

Q And what happened after Gary said, hit the alley?

A Steven went to the alley.

Q And how far did you go down the alley?

A We went all the way down the alley.

Q All the way to where it intersects with 9th Street?

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A
Yes.

MR. GIBSON: Like to show the witness what was
previously marked as Government's Exhibit 3D.
BY MR. GIBSON:

Q Do you recognize 3D?

A Yes. That's the alley.

Q And is that the alley where it intersects at 9th Street?

A Yes.

Q And what happened when you, did the car stop at the end of
the alley?

A Yes.

Q What, if anything, happened when you stopped at the end of
the alley?

A Gary put his arm out the window and shot.

MR. GROMOWSKY: I'm sorry. What was that?

THE WITNESS: He put his arm out the window and shot
at the man.

BY MR. GIBSON:

Q
Now, I believe you referenced this already but tell me
again. How did Mr. Eye get the firearm?

A
Steven handed it to him.

Q

And was that the response to a request or a direction?

A

He told him to give him the strap.

Q

And what does strap mean? What does that refer to?

A

Gun.

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Q Now, did Stevie hesitate in giving him the gun?

A No.

Q And you indicated that Mr. Eye reached his arm out the window, is that correct?

A Yes.

Q Had the window already been opened or closed?

A It was opened.

Q And what, if anything, happened after Mr. Eye reached his hand out the window?

A Well, I ducked down behind the seat but I heard maybe two shots and then we left the alley.

Q Why did you duck down?

A Because I knew what was going to happen and I have previous experience with guns firing.

Q Now, at the time that you heard the shots fired, just prior to that, can you tell us how close was Mr. McCay to the Intrepid?

A Probably about as close as she is to me, if not closer.

Q As the stenographer is?

A Yes.

Q Indicating for the record 3 to 4 feet?

A If that.

Q And did you have a front view of Mr. McCay, a profile view, a rear view? In what direction were you looking at him?

A His face.

Q His face. Now, after the shots were fired, what happened next?

A Stevie drove out of the alley. And he was telling Gary that he was tripping. That he took things too far. Gary told Steven to hit the block, which means to go around the corner. So we went left on Spruce, I think is what it is, and came back out on Kensington. And when we got back to 9th Street, Gary started freaking out because the man wasn't there. And he didn't, he said, how is he not there? I shot him in the face. It's not possible. He was kind of frantic because the guy wasn't there any more.

Q What was the point of coming around the block, of hitting the block?

A I guess to verify that the man was dead.

Q And when you got around the block, did you see the individual that had been fired at?

A No. He was gone.

Q And what did Gary do next or what, if anything, did Gary say next?

A Like I said, he was tripping. He couldn't understand how he wasn't there and he wanted to go find him. And Stevie was still telling him he was tripping and doing too much. And Stevie looked at me. I told Stevie to go back, to find him.

Q And when you said that, do you recall what words he used?

A I told him that that was a case that we probably would catch. That he needed to find him.

Q Was there anyone in particular that you were concerned about at that time?

A Gary.

Q Why were you concerned about Gary?

A Because he was who I was messing with at the time and I didn't want him getting into trouble.

Q And when you indicated that was a case, what, if anything, happened next?

A Steven went down 9th Street and until Gary told him to turn on Van Brunt. He turned on Van Brunt, on 8th Street. Turned again on Brighton. All Gary's directions. On Brighton, we pulled over and that's where I seen the man again.

Q Now, I want to back up for a second. At the point that you were going down the alley to where it intersects with 9th Street and the gun was passed from Stevie to Gary, did you have any doubt in your mind what was going to happen?

A No.

Q Was it clear to everyone in the car what was going to happen once the gun was passed?

A Pretty sure.

MR. ROGERS: Objection. That calls for speculation

on the part of the witness. What was clear to her, she can

tell us, but not everyone in the car.

THE COURT: Sustained.

BY MR. GIBSON:

Q

Did Stevie hesitate in passing over the gun?

A No.

MR. GIBSON: Your Honor, I believe I neglected to

publish 3D. I would move that into evidence.

THE COURT: 3D is admitted and may be published.

BY MR. GIBSON:

Q

Again, is that the alleyway?

A

Yes.

Q

Now, after the conversation about catching a case, where did you go?

A

We drove down 9th Street until Gary told Stevie to take a

left on Van Brunt. And then he told him to go on 8th Street and then on to Brighton, which is where we pulled over.

Q
Gary is giving the directions?

A
That's correct.

Q
Is Stevie following the directions?

A
Yes, he is.

Q
Is Stevie hesitating?

A
No.

Q
Does Gary have the gun pointed at Stevie?

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A No.

Q What, if anything, happens next?

A Gary goes to get out of the car but before he does I tell him to give me his hat. It was a white KC hat, pretty, like noticeable. So I told him to give it to me. And I took it from him. He got out of the car and approached the man on 9th Street.

Q Well, let's back up for a second. At some point the vehicle stopped, is that correct?

A Yes.

Q Why did the vehicle stop?

A Because Gary said pull over.

Q And why at that particular point?

A Because Mr. McCay, the man was right there on the other side of the street.

Q On the other side of the street?

A Yes.

Q Could you see him?

A I could see him.

Q Now, after the vehicle stops, what happened?

A Gary goes to get out and I told him to give me his hat.

Q Why did you tell him to give you his hat?

A Because it's noticeable. It's white and blue and kind of distinctive.

Q Did it have a logo on it of any kind?

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A KC.

Q And why did it matter that the hat was noticeable?

A I didn't want anybody to be able to identify him.

Q Did he give you the hat?

A Yes.

Q What, if anything, did you do with it?

A Put it on my head.

Q And then what did you do?

A I put --my sweater had a hoodie and I put it over it.

That's it.

Q Put the hoodie up over the hat?

A Yes.

Q And where is Steven Sandstrom at that time?

A Driver's seat.

Q Now, Gary Eye got out of the vehicle, is that correct?

A Yes.

Q What, if anything, do you see after Gary Eye gets out of the vehicle?

A He approaches --they actually, he approached the man who actually came towards him. And they met like in the middle of 9th Street where Gary threw his arm around him like, I don't know how to explain it. Headlock kind of move and pulled him closer. And that's when I heard shots.

Q Now, when Gary got out of the vehicle, did you see the

gun?

A No.

Q Where was the gun the last time you saw it?

A Last time I saw, it was in Gary's hand.

Q What, if anything, was Gary doing with it at that point?

A Shooting it.

Q When he got out of vehicle, do you know where the gun was?

A I'm assuming it was in the pocket of his sweatshirt.

Q He had a hooded sweatshirt on?

A That's right.

Q Now, as he approaches McCay, can you hear Eye saying anything?

A No.

Q Can you hear whether or not Mr. McCay is saying anything?

A No.

Q Approximately, how long are they in this struggle?

A Not very long at all. I'm not real sure.

Q Do they fall to the ground?

A No.

Q Is Gary ever on the ground?

A No.

Q Are they ever rolling around?

A No.

Q How many shots did you hear?

A One or two.

Q After you hear the shots fired, what happens next?

A I tell Steven, I asked --my exact words, what was he doing? Go get Gary. And he pulled up, opened the door and Gary got in.

Q And did you see where Mr. McCay was at that point?

A At that point when we pull up, he ran in front of the car to the other side of the street.

Q Was he running?

A He was stumbling.

Q And where were his hands at that point?

A Mr. McCay?

Q Yes.

A I don't know.

Q Could you see his hands?

A I don't recall.

Q Were they in front of his body or behind his body?

A I don't know.

Q Did you see where Mr. McCay went?

A He went to the other side of 9th Street.

Q And what, if anything, happened when he got to the other side of 9th Street?

A I don't know. We left. We sped off. I don't remember seeing him.

Q At the point that you speed off from 9th and Brighton, did you see any other pedestrians on the sidewalk or in the

street?

A There was people out about. It was the morning commute.

Q Were there cars on 9th Street?

A Yes.

Q Now, where do you go next?

A To the house on Ewing, Sandstroms.

Q And when you go to the Sandstroms' house, do you make any stops before that?

A No.

Q Who's driving the car at that point?

A Steven.

Q Do you know where the gun is at that point?

A I think Gary still had it but I'm not real sure.

Q How long does it take you to get to Sandstroms' house?

A Not very long. Like ten minutes, maybe, if that.

Q And when you got to Sandstroms' house, what happened?

A We pull up next to the Jeep. And I don't know who said it but somebody said to get everything out of the car, like we had some paraphernalia and stupid stuff. So we all grabbed stuff and transferred it from the Intrepid to the Jeep. And I went in the house to grab a screw driver because that's what we used to start the car with. And Gary and I got in the Jeep and Steven in the Intrepid.

Q You went in the house to get a screw driver?

A That's correct.

Q And when you left Sandstroms' house approximately how long were you there?

A I'm sorry.

Q How long were you at Sandstroms' house, approximately?

A Maybe five minutes.

Q And you said you took your personal belongings out of the Intrepid, is that correct?

A That's correct.

Q Did Gary Eye take personal belongings out of the Intrepid?

A We all grabbed whatever we saw.

Q Where did you put those personal belongings?

A In the Jeep.

Q And did you leave the Sandstrom house?

A Yes, we did.

Q And when you left the Sandstrom house, were you on foot or were you in a vehicle?

A Me and Gary were in the Jeep and Steven was in the Intrepid.

Q Who was driving the Jeep?

A Gary.

Q Who was driving the Intrepid?

A Steven.

Q Where were you seated in the Jeep?

A On the passenger seat.

Q And where did you go?

A We followed Steven to under the Manchester Street Bridge.

Q Did you have any discussions prior to leaving the Sandstrom house about where you were going?

A No.

Q How close behind the Intrepid did you follow?

A Right behind.

Q And, approximately, how long did it take you to get to the bridge?

A Not very long.

Q And what, if anything, happened when you got to the bridge?

A We got to the bridge. Stevie kept going. He went behind the second pillar. Like there's cement pillars, he went behind it. And me and Gary pulled off to the side.

MR. GIBSON: Like to show the witness what was

previously marked and admitted as 19H.

BY MR. GIBSON:

Q

Do you recognize that photograph, ma'am?

A

Yes.

Q

Is that the pillar you're talking about?

A

Yes.

Q

Is that the Intrepid you're talking about?

A

Yes.

Q

Now, after Steven Sandstrom pulled the Intrepid behind the pillar, what, if anything, happens next?

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A He gets out and he gets in the back seat and then he approaches us and he tells us that there was someone in the train that was parked on the tracks.

Q Now, at the point that Sandstrom went to the back seat, could you see what he was doing at that point?

A No.

Q Do you recall, were you inside or outside the Jeep at that point?

A We were both outside.

Q You say we both, who are you referring to?

A Me and Gary.

Q And what, if anything, happens next?

A Steven approaches us and tells us about seeing someone on the train. We all get back into the Jeep and we leave.

Q See any smoke before you leave?

A Just very, very little.

Q Where was the smoke coming from?

A The Intrepid.

Q Why was the Intrepid being burned?

A Because it was the car that was used in the homicide.

Q Now, when you leave that location, it was by 23rd and Manchester, is that correct?

A Correct.

Q About how long are you there before you leave?

A Just long enough for him to do whatever it was he done and

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that was it.

Q

Now, when you leave the location, where do you go?

A

We went to the Stanley residence on 16th Street.

Q

And how long do you stay at the Stanley residence?

A

We pull up. Vincent comes out. I jump out. Steven jumps out. I change the front tag, license plate on the Jeep and Steven changed the back and then we left.

Q

Now, when Vincent came out, did you know he was at the Stanley house before you got there?

A

Yeah. He called Gary prior to.

Q

So what was the purpose of going to the Stanley house?

A

To pick up Vincent.

Q

And you indicated that you changed the tag.
reference to license plate?

A

That's correct.

Q

And which tag did you change?

A

The front.

Q

And who changed the back tag?

A

Steven.

Q

And where was Gary Eye at that point?

A

In the driver's seat.

Is that a

Q Do you know where the license plates came from?

A No.

Q Do you leave the Stanley house?

A Yes.

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Q When you leave the Stanley house, who is driving the Jeep?

A Gary.

Q And who is sitting in the front passenger seat?

A Steven.

Q And where are you seated?

A Behind Gary.

Q Where is Vincent seated?

A Behind Steven.

Q Where do you go next?

A We went to Bellaire, was where the white Jeep was the night before, so Vincent could get the flat screw driver.

Q You went back where the vehicle had been taken earlier?

A Yes.

Q How long were you there?

A Not long at all. He just jumped out, jump back in.

Q And what, if anything, did you do next?

A Well, at some point Vincent asked us what we had been doing. And that's when Gary told him that he killed a nigger on 9th Street. And Stevie told him that he had just burnt the Intrepid under the bridge.

Q Now, at the time that you're having this conversation, approximately, where are you in the northeast?

A In between the Stanley residence and the Bellaire location.

Q Did your route take you anywhere near 9th and Brighton?

A Afterward.

Q Approximately, how long afterward?

A Not very long at all.

Q And when you went into the area of 9th and Brighton, what, if anything, did you see?

A Police, ambulance, news vans, all kinds of commotion.

Q And by this time was it light out?

A Yes.

Q And was there any conversation after you saw the news vans and the police tape and so forth?

A Vincent said, hey, what's going on? Gary said, did you think this was a game? I told you, I killed some nigger.

Q And what was Gary Eye's demeanor at the time he said that?

A Serious. Like kind of bragging-type.

Q And did Vincent have a reaction?

A Vincent, basically, told him that he was stupid.

Tripping. He didn't really want anything to do with any of it. He told him that he was tripping.

Q When Gary Eye said, did you think this was some game?

A Uh-huh.

Q At that point did Stevie say anything in response?

A I don't remember.

Q Now, after this conversation, what, if anything, happens next?

A I didn't want to be in the car any more. I didn't want to

be out in the northeast. Not necessarily, I didn't want to separate from them but I wasn't comfortable in that situation any more so I suggested that we go back to Jonnie Renee's house. I told Steven to call her and tell her that I was coming and ask her if it was okay.

Q Now, why Jonnie Renee's house?

A I didn't have anywhere else to go.

Q And why did you ask Steven to place the call to Jonnie Renee?

A Because like it was said before, we weren't on good terms and I just wanted to know that it was okay that I be there before I went there.

Q Were you afraid she wouldn't let you in?

A Yes.

Q Did Steven place the call?

A Yes.

Q After Steven placed the call, did you, in fact, go to Jonnie Renee's?

A Yes, we did.

Q About how long did it take you to get there?

A Not very long. Maybe a couple minutes.

Q And when you got there, what happened next?

A Well, we went to the basement because that was her access to the house, me, Vincent, Steven and Gary. And as soon as I walked in, I turned on the news. First thing on the

news was the car under the bridge. And Stevie made the comment that it was a waste of a perfectly good car.

Q Let me back you up for a second. The car that you saw on the news, was that the Intrepid?

A That's correct.

Q And Stevie said what?

A That's a waste of a perfectly good car.

Q And where was Gary at that point?

A We were all in the basement.

Q And where was Jonnie Renee?

A In the basement also.

Q And where was Vincent?

A In the basement.

Q Was there anybody else in the basement at that time?

A No, just us five.

Q What, if anything, was Jonnie Renee's reaction to seeing the Intrepid on the T.V.?

A I don't really remember. She didn't really have one, I guess.

Q Now, while you were in the basement, did you make any comments?

A I said that if they just left it as the five of us, we'd probably be all right. No one else would find out.

Q And when you said, the five of us, who were you referring to?

A Me, Gary, Steven, Vincent and Jonnie Renee.

Q And what did you mean by that?

A Meaning that the five of us knew because Jonnie Renee was with us prior to all this happening so I figured she would put 2 and 2 together. Vincent was told, specifically.

And the three of us were all involved in the homicide and the car burning. So I meant that if we didn't tell anybody else, maybe it would just, like, go away.

Q Now, at that point in time did you believe there were any other witnesses to what had happened?

A No.

Q But Mr. McCay had been present at the shootings, correct?

A Correct.

Q Was he in any position at that point to be a witness?

A No.

Q Now, did you discuss Stevie's aim at any point?

A In the conversation in the Chirino basement.

Q In the Chirino basement. Now, how long do you stay at Jonnie Renee's?

A Maybe 25 minutes, half hour.

Q And while you're at Jonnie Renee's, do you do any meth?

A We all do, yes.

Q When you say we all do, who are you referring to?

A Me, Gary, Steven, Vincent, Jonnie Renee.

Q Do you go anywhere after you leave Jonnie Renee's?

A Me, Steven, Gary and Vincent went out north to Barry Road, I guess is what it is, to the K-Mart, steal a car.

Q And is another car stolen at the K-Mart?

A Yes.

Q Where were you in the vehicle as it was traveling to the K-Mart?

A In the back seat.

Q Which vehicle were you in?

A The Jeep.

Q And who was driving at that point?

A I think it was Gary still or maybe, I don't remember, honestly.

Q Do you remember, was Steven in the front or back?

A They were both in the front, Steven and Gary.

Q Where was Vincent?

A In the back seat with me.

Q And were you sitting behind Gary or Steven?

A Gary.

Q Did you always sit behind Gary?

A Always.

Q Why was that?

A It was just something I did.

Q Now, how long were you at the K-Mart?

A Long enough to steal the car.

Q Do you recall what kind of car it was?

A A white Stratus.

Q And who got out of the Jeep to take the Stratus?

A I know Vincent but I can't remember which one of the other two.

Q Did you --what vehicle did you leave the K-Mart in?

A I left in the Jeep.

Q Do you recall who was in the Jeep with you when you left?

A Me and Steven.

Q And where was Gary at that point?

A With Vincent.

Q Where do you and Stevie go?

A To my, to, well, I call my uncle, Danny.

Q Do you, in fact, go to your uncle's after you leave the K-Mart?

A Yes.

Q Does Sandstrom go with you to that location?

A Yes.

Q Did Vincent and Gary follow you to that location?

A No. We split up.

Q Do you recall, approximately, how long you were separated from Eye and from Vincent?

A I was separated from them throughout the whole day. I didn't meet back up with Gary until later on that night.

Q But you did meet back up with Gary?

A Yes.

Q Where was that?

A At my uncle's.

Q And was Steven Sandstrom still at your uncle's house when Gary arrived?

A I don't know. I wasn't there when they arrived. They were both there when I got back.

Q Now, you previously indicated that at some point you were present and participating in a conversation in the Chirino basement. Do you recall that?

A Yes, I do.

Q Let me back you up for a second. Do you recall, approximately, when you were in the Chirino basement in relationship to the McCay murder?

A Within the next few days. I'm not sure when it was exactly.

Q And how did you get to the Chirino house?

A Me, Steven and Gary.

Q And did you arrive on foot? Did you arrive in a car? How did you get there?

A A car.

Q When you and Stevie and Gary arrived at the Chirino house, was there anybody else in your car with you?

A No.

Q And where did you go in the Chirino house?

A To the basement.

Q And when you got to the basement, was there anybody else there?

A Jonathan and Kristina.

Q Was there anybody else in the basement?

A Little Veronica.

Q Do you remember anybody else being in the basement?

A No.

Q Did you do meth in the basement at that location?

A Yes, I did.

Q Did Stevie do meth?

A Yes.

Q Did Gary?

A Yes.

Q Did Kristina Chirino?

A I believe so, yes.

Q Did Kristina Chirino have a relationship with Stevie at that time?

A They were kind of dating, I guess.

Q And while you were in the house, tell us about the conversation?

A Gary said that he couldn't believe that the man wasn't there, that he had shot him in the face. And that is when Kristina asked Gary why he done it. She like probed information as to why and stuff. And Gary said because he was a nigger.

MR. OSGOOD: Object to the narrative nature of the

testimony, Your Honor.

THE COURT: Sustained.

BY MR. GIBSON:

Q

What did Gary say?

A

He said that he didn't understand how he wasn't there after he shot him in the face.

Q

Let me stop you there. Did he use the word he?

A

The nigger.

Q

And when he said he couldn't believe the nigger wasn't there after he shot him, what did Kristina say?

A

She asked him why he done it.

Q

And what was Gary's response?

A

Because he was a nigger in my hood.

Q

N-I-G-G-E-R?

A

Yes.

Q

Any doubt in your mind that's what he said?

A

No.

Q

After he says that, what happens next?

A

At some point I made a comment to Stevie about how if he had better aim there would be two dead niggers instead of one.

Q

And when you said that, did you say N-I-G-G-E-R-S?

A

E-R, yes.

Q

And as this conversation is going on, what, if anything,

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does Steven Sandstrom do?

A When I said that, he told me to cut throat it, basically quit talking about it because at that time Kristina and Jonathan didn't know about the first shooting.

Q Now, you made a gesture with your hand where you drew your finger across your throat, is that correct?

A Yes, that's correct.

Q And what did you take that to mean?

A To shut up about it, basically.

Q And when Gary referred to his hood, what did you understand him to be referring to, what area?

A Northeast.

Q Did he refer to Prospect at all?

A He made a comment about how he doesn't go to their hood or whatever and there's like more black people down at that side of town.

Q In the Prospect area?

A Yes.

Q Now, when you said that if Stevie had better aim there would be two dead niggers, what were you referring to?

A I was referring to the first shooting.

Q At the 7-Eleven?

A Yes.

Q That's the one that Stevie told you about?

A That's correct.

Q How long were you at the Chirinos?

A I don't know. Awhile, I guess.

Q And -

MR. GIBSON: May we approach?

THE COURT: You may.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: There is a subsequent conversation that takes place on the way to the mall between March 10th and March 16th in which Ms. Rios is selling drugs to one of Gary's customers. This was referenced in the motions that were filed before the Court. And when she does that, Mr. Eye, in response, tells her, selling to one of my customers is like being a nigger in the northeast, which she perceives to be a threat. It's my intention to elicit that now since the drug activity has already been discussed. And before I did that I wanted to make sure we were all on the same page.

MR. OSGOOD: Object to that.

MR. ROGERS: Your Honor, I would object. I think it's a Bruton violation. Mr. Sandstrom wasn't present when this conversation took place, is my understanding. Is that correct?

MR. GIBSON: Then it would have no relevance as to Mr. Sandstrom. And I don't see how Mr. Rogers has a dog in this fight. The statement wouldn't be admissible against

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Mr. Sandstrom, I agree. So the question is Mr. Osgood's position but, again, I believe the door has been opened on this and we've been repeatedly discussing the drug activity.

MR. OSGOOD: There's been no discussion of drug sales by Mr. Eye or any indication he was a dealer. All the testimony throughout this trial has focused on use. The only person that was dealing was Brandon Guy and Deleon.

MR. ROGERS: Furthermore, Your Honor, with regard to the discussion of the heart of the motion in limine pretrial, that the Court had basically sustained our objection to any of this kind of stuff. The basis for us advising the Court and the government that we would not object to drug use at the time was because that would put the conversations and the behaviors in context. This is not a conversation or behavior that needs to be put in context. We're not saying they were both high even when he said this, as I understand it.

To go back to my Bruton and hearsay objection, Your Honor, I believe this is an attempt to indirectly ascribe to, informally ascribe to Mr. Sandstrom a motive that they are attributing to Mr. Eye. So I think we do not have the opportunity to cross-examine Mr. Eye about his intent when he made the statement.

MR. OSGOOD: More importantly, it's just a pure 404(b) issue as to whether or not it goes to motive, opportunity, and intent or absence of mistake. It's a separate

conversation about the sale of drugs and the consequence of drugs, what can happen to a competitor trying to sell drugs in somebody else's territory. It's prejudicial and doesn't have any probative -

THE COURT: Of course, it's prejudicial. They wouldn't be offering it, if it wasn't.

MR. OSGOOD: I assumed that.

MR. GIBSON: Refers directly back to the McCay homicide. Again, it's not being offered against Mr. Sandstrom and the Court can even instruct the jury that that statement is not offered against Mr. Sandstrom. And it's clearly relevant regarding both consciousness of guilt on the part of Mr. Eye because he's acknowledging his participation in killing Mr. McCay by referring back to it. And to understand the context is important to understand why it is a threat against Ms. Rios. She needs to be able to explain that.

THE COURT: I really don't see the Bruton issue, Charlie. However the testimony that the jury has heard about thus far relates only to drug use and not to drug sales.

MR. GIBSON: Well, Judge, then I could tailor it to at some point was there a dispute between you and Mr. Eye regarding drugs. Yes. And as a result of that dispute what did Mr. Eye say to you.

THE COURT: Tell me, again, exactly what he said.

MR. GIBSON: Selling to one of my people is like

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being a nigger in the northeast.

THE COURT: I'm going to sustain the objection to it, Eric. I don't think that we need to get into that. I don't see the relevance as you say. I don't think it directly relates back to the McCay killing, necessarily. And I think that it hold out the risk of unfair prejudice to the defendants. So don't go there.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)
BY MR. GIBSON:

Q At some point after the shooting of William McCay, did you end up at a Travel Lodge?

A Yeah.

Q Who were you staying with at the Travel Lodge?

A Vincent.

Q Did you make any comments in reference to the McCay shooting?

MR. ROGERS: Objection, hearsay.

MR. OSGOOD: Objection.

MR. ROGERS: What she's telling Vincent, another

government witness at a Travel Lodge?

THE COURT: Step up.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: She's here subject to cross-examination.

MR. ROGERS: Still an out-of-court statement.

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MR. GIBSON: If they wish to preclude it, I'm fine with it. The shooting kind of turned me on. I anticipate they're both going to ask her about that on cross. If they're not and conceding it's not relevant, then I'm perfectly content.

MR. ROGERS: Your Honor -THE

COURT: You want to stand on the objection?

MR. OSGOOD: I withdraw mine.

MR. ROGERS: If that's what she's going to say. I

thought maybe she said to everybody that would listen. I didn't know this is what --I'll withdraw my objection.

MR. OSGOOD: I would just object ahead of time. I

don't want a bunch of self-serving -THE

COURT: Doesn't sound very self-serving to me.

MR. OSGOOD: No, it's not. But if it's exculpatory,

I don't think it's proper.

THE COURT: Objections are withdrawn.

You may ask the question.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GIBSON:

Q What, if anything, did you say in reference to the McCay shooting?

A

Kristina and Adriana were talking about how they thought

it was stupid and what not. I made the comment that it kind of turned me on.

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Q Now, this was at the Travel Lodge?

A That's right.

Q And who was present at the Travel Lodge?

A Kristina and Adriana.

Q When you say Kristina, which Kristina were you referring to?

A Chirino.

Q When you say Adriana, which Adriana are you referring to?

A Deleon.

Q And was Vincent present at that time?

A He was outside, I think.

Q Were you staying at the hotel with Vincent?

A Yes.

Q Why did you say that?

A Because at that time gun-toting, drug-doing, car-stealing, all of it, that's what I was into.

Q Now, you were contacted with respect to the investigation into the homicide, into the killing of William McCay, is that correct? KCPD spoke with you?

A That's correct.

Q And when KCPD, that is the Kansas City Police Department spoke with you, did you give them a statement?

A Yes, I did.

Q Did you give them a truthful statement?

A Some of it.

Q What was untruthful about the statement?

A I told them that I wasn't there, that I was picked up after the fact in Gladstone.

Q Did you tell them about Stevie burning the Intrepid?

A I told them I heard about it through conversation. I never said that I was actually there when it happened.

Q And did you tell them about Gary firing the gun?

A I heard about the homicide through like conversations also. I never indicated that I was there at that time.

Q Why did you not disclose to the Kansas City Police Department that you were present and in the car at the time that William McCay was shot?

A Because I didn't want to be around for a homicide and arson case.

Q Was that the reason why you didn't tell them you were at the scene when the Intrepid was burned?

A Correct.

Q Now, after you spoke, well, strike that.

Do you know a Carolyn Galyean?

A Carolyn Galyean.

Q Galyean?

A She's a really good friend of mine.

Q How good of a friend is she?

A One of my best friends.

Q In reference to where you told the police you were at the

time that William McCay was shot and the Intrepid was burned, where did you tell the police you were?

A That I was with Carolyn in Gladstone.

Q Was that true?

A No.

Q After you finished giving your statement to the police, did you contact Carolyn?

A Yeah.

Q How soon after you finished your statement to the police did you contact Carolyn?

A Probably the same day.

Q And why did you contact Carolyn after you spoke with the police?

A To let her know that if she was asked, to tell the police that I was with her.

Q And did you expect her to back up your alibi?

A Yes, I did.

Q After the killing of William McCay, did you continue to associate with Stevie Sandstrom and Gary Eye?

A Yes, I did.

Q In the days immediately after the killing of William McCay, did you see Stevie Sandstrom and Gary Eye?

A Yes, I did.

Q Now, you were, subsequent to your contact with the Kansas City Police, you were also approached by the Federal

Bureau of Investigation, is that correct?

A That's correct.

Q In fact, you were approached by these agents sitting right

over here, is that correct?

A That's correct.

Q And the first time that they talked to you was in May of

'05. Does that sound about right?

A Sounds right.

Q Were you truthful with the agents the first time you spoke

with them?

A In part.

Q What did you tell the agents that was not true?

A I don't remember specifically. I mean, I know that I

didn't tell the whole truth at that point though.

Q Would it refresh your recollection if you reviewed your interview from that date?

A Yes.

MR. ROGERS: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. ROGERS: I don't see the relevance on direct

examination of what she told them that was not true. That, you know, once she says she doesn't remember, I think that's pretty much collateral for the government's purposes because she's

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already saying it's not true. I mean, you know, I don't think that they need to refresh her recollection as to what she said that was not true.

THE COURT: I understand that may not be your preference but I'm going to allow it. Overruled.
(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Ms. Rios, the jury is having trouble hearing you. I'm going to ask you to speak up and speak loudly, please.

THE WITNESS: Okay.

THE COURT: Mr. Gibson.

MR. GIBSON: May I have one moment, Your Honor?

THE COURT: You may.

BY MR. GIBSON:

Q I believe I misspoke. Was it on May 5, about, that you first met with the agents?

A Sounds right.

Q Did you tell the agents at that time that you had picked up Jonnie Renee at Inner City Oil?

A No. I told them that Vincent called to be picked up and wasn't there.

Q Did you tell them at that time about the conversation in the Chirino basement?

A No, I did not.

Q Are you sure?

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A I told them, I didn't tell them about the comment that I made.

Q Didn't tell them about which comment that you made?

A That if Stevie had better aim there would be two dead niggers instead of one.

Q You told them about the conversation about what Mr. Eye said?

A That's correct.

Q And you told them what Stevie said and did, is that right?

A At that point I didn't because that would implicate that I said that.

Q Okay. And what was it that you kept from the agents at that time?

A The comment that I had made about there, if Stevie had better aim there would be two dead niggers instead of one.

Q Why did you not tell the agents about that comment?

A Because I was ashamed of it and because I was ashamed that I said it.

Q Now, you met with the agents again on May 19th and May 26th of '05, is that correct?

A That's correct.

Q And in the interim, counsel had been appointed for you, is that correct?

A That's correct.

Q And was your lawyer at that time Dana Altieri?

A That's correct.

Q Is she still your lawyer?

A Yes.

Q Has she been your lawyer since that time?

A Yes.

Q Is she present with you in court today?

A Yes.

Q And when you met with the agents on May 19th and May 26th of '05, was Ms. Altieri present?

A Yes, she was.

Q Did you understand at that time that you were meeting with the agents and were there also lawyers from the Justice Department there?

A Yes.

Q And had you read or discussed what is called a proffer letter?

A I believe so. At some point I did. I think.

Q Did your lawyer explain to you that under the terms of the proffer letter, nothing you told to the agents at that time could be used against you?

A Yes, she did.

Q And did you talk with the agents on those two occasions, May 19th and May 26th?

A Yes, I did.

Q Were you still completely honest with the agents during

those conversations?

A No, I wasn't.

Q Even with the proffer letter in your hand, you still held back?

A Yes, I did.

Q Subsequent to those interviews, did you appear before a federal grand jury?

A Yes, I did.

Q And at the time that you appeared before the federal grand jury, did you wish to appear before the federal grand jury?

A No.

Q And did you, in fact, communicate that to the government lawyers?

A That's right.

Q And as a result of your refusal to cooperate, were you advised that the government had obtained an immunity order?

A That's correct.

Q And what did you understand that immunity order to mean?

A That they couldn't come back and charge me with accessory to the homicide or the arson.

Q Based on anything that you said?

A Anything that I said.

Q In other words, nothing that you said to the grand jury

could be used against you subsequently. Was that your understanding?

A That was my understanding.

Q And with that immunity order and that understanding in hand, did you appear before the grand jury on July 19th?

A Yes, I did.

Q And did your attorney attend that proceeding?

A Yes.

Q Now, I understand she was not allowed in the room with you, is that correct?

A That's correct.

Q She was outside the room?

A Yes.

Q And did you consult with her before you went in?

A Yes, I did.

Q Did you consult with her afterward?

A Yes.

Q When you went before the grand jury on July 19th, were you completely candid with the grand jury?

A No.

Q Did you omit some facts from the grand jury in your initial appearance?

A Yes, I did.

Q Even knowing that nothing could be used against you that you said before that grand jury?

A That's correct.

Q When you went before the grand jury in July of '05, did you tell the grand jury that you had picked up Jonnie Renee at Inner City Oil?

A No, I did not.

Q Why did you not tell the grand jury that you had picked up Jonnie Renee at Inner City Oil?

A Two reasons. One being that I didn't want her to tell you guys that I knew prior to what was going to happen. And the other is that I didn't want her to be involved.

Q At the point that you appeared before the grand jury, was it your belief that Johnny Renee had been interviewed in connection with this investigation?

A Not that I know of, no.

Q And if Jonnie Renee had been interviewed by the agents or by detectives, what is it you were concerned about? Explain that to me.

A Her being able to tell them that I was aware that something was going to happen that morning.

Q By omitting Jonnie Renee, had you omitted the entire conversation, both, to the Inner City Oil and leaving the Inner City Oil prior to the McCay shooting?

A That's correct.

Q Did you understand you were under oath before the grand jury on July 19th?

A Yes, I did.

Q Did you tell the grand jury about the use of the phrase, on site?

A No, I don't think so at that time.

Q Why did you omit discussion of the phrase, on site?

A Because then again, it implicates that I knew what was going to happen prior to.

Q Did you tell the grand jury that as you were approaching the end of the alley for the first shooting, did you tell them whether or not you were aware of what was going to happen when you got to the end of the alley?

A I told them I wasn't.

Q You told them you didn't know what was going to happen?

A That's correct.

Q Was that true?

A No.

Q You knew what was going to happen when that car reached the end of the alley, is that correct?

A That's correct.

Q You also told the grand jury in reference to traveling down that alley, that the car stopped for the gun to be passed, is that correct?

A Correct. That was a lie.

Q Is that correct, that's what you told them?

A Yes.

Q Was that true?

A No.

Q At the time of your July 19th appearance in '05 before the grand jury, did you tell the grand jury that you had said anything about he had seen our faces and that was a case?

A No, I did not.

Q Why did you not tell the grand jury that you had said that?

A Because I didn't want them to know that I agreed to go back.

Q Did you tell the grand jury or what did you tell the grand jury about subsequently changing the license plates on the Jeep after the shooting?

A That Steven done it by himself.

Q Did you tell them that you had helped change one of the plates?

A No, I didn't.

Q Why not?

A Because I didn't, I tried to exclude myself from being involved as much as possible.

Q Did you tell the grand jury about the .22 pistol that Stevie had?

A No, I did not.

Q Well -A

Well, they knew the gun but I didn't -

Q Let me be more specific. What did you tell the grand jury about where it came from?

A I didn't tell them. I didn't know. I don't know if I told them I didn't know or what but I didn't tell them I did know.

Q How is it you knew where the gun came from?

A Because I was there when he got it.

Q But you didn't tell the grand jury that?

A That's correct.

Q Now, after you appeared before the grand jury in July of '05, did you, again, meet with the investigators?

A That's correct.

Q And in that meeting were also the attorneys from the Justice Department present?

A Yes.

Q Was your attorney present?

A Yes.

Q And in that interview, that first interview after your grand jury appearance, were you truthful with the agents about the conversations leading up to the McCay murder?

A I believe, I think that's when it came out, yes.

Q Was it then or was it later?

A I don't remember.

Q At some point you remember telling the agents the truth about those conversations, is that correct?

A That's correct.

Q Now, did you meet with the agents on September 26th prior to going into your second grand jury appearance?

A Yes, I did.

Q And at that time you had already told the agents about the conversation in the Chirino basement, is that correct?

A Yes.

Q Although leaving out the comment that you had made, is that correct?

A Yes.

Q Now, when you met with the agents on September 26th of 2005, did you attempt to take back that conversation?

A Yes, I did.

Q What did you tell the agents on September 26th about that conversation?

A That it didn't happen.

Q And at the time that you were interviewed then was your lawyer present?

A Yes.

Q Were the lawyers from the Justice Department present?

A Yes.

Q When you tried to take back that conversation in the Chirino basement, was that true that you told them it didn't happen?

A No.

Q Why did you tell the agents that that conversation didn't happen after you had already told the grand jury that it did and you told the agents on previous occasions that it did?

A Because I didn't want to admit saying the comment that I said and I was trying to exclude Jonathan Chirino.

Q Which comment?

A About if Stevie had better aim, there would be two dead niggers and not one.

Q Why did you want to exclude Jonathan Chirino?

A Because he was 14 and he shouldn't have had to deal with any of this.

Q Now, did you also tell the agents then that you had parted company with Eye and Sandstrom starting on March 10th?

A I told them at some point that, yes.

Q Was that true?

A No.

Q Why did you tell the agents that you had not been or why did you tell the agents and the Justice Department that you had parted company with Eye and Sandstrom on the 10th when that wasn't true?

A Because I didn't want them to think I actually stayed with them afterward.

Q Now, Ms. Chirino, you are in --Ms. Rios, I apologize. Obviously, you are in custody today, is that correct?

A That's correct.

Q In fact, you pled guilty to making material false statements to the Federal Bureau of Investigation, is that correct?

A That's correct.

Q And that plea took place on May 12th of 2006, is that correct?

A I think so, yes.

Q And you pled guilty because of the misstatements that you had made to the agents during the course of this investigation prior to your grand jury appearance in September of '05, is that correct?

A That's correct.

Q Now, at the time that you appeared in front of the grand jury the second time, you were under oath the second time as well, is that correct?

A Yes, I was.

Q And did you understand that as a result of the false statements you had made prior to that appearance that you were going to be charged?

A Yes, I did.

Q Was there an agreement with the government as to what sentence you would receive for pleading guilty to that count of making false material representations to the FBI?

A No. At that time I didn't even know what my charge was

going to be, specifically.

Q But you knew you would be charged?

A Yes.

Q In fact, you were told as much during the grand jury on your second appearance, is that correct?

A That's correct.

Q And you have already been sentenced on that matter, is that correct?

A Yes, I have.

Q What was the sentence that you received?

A 60 months.

Q 6 months?

A 60.

Q 60. And you're serving that sentence now, is that correct?

A Yes, I am.

Q Was that sentence in any way dependent on your appearance here today in this courtroom?

A No.

Q Does your sentence change as a result of your appearance here in this courtroom?

A No, it doesn't.

Q Does one have anything to do with the other?

A No.

Q Now, in reference to Carolyn Galyean, was it common

knowledge that she was a close friend of yours?

A Yes, it was.

Q And did Steven Sandstrom know of your relationship with Ms. Galyean?

A Yes, he did.

Q At some point did it come to your attention that Mr. Sandstrom was writing Ms. Galyean letters?

A Yes.

Q How did it come to your attention that Mr. Sandstrom was writing Ms. Galyean?

A She told me that she had gotten some from him.

Q Was there anything, particular --was there a reason she told you she received those letters?

A Because they were, basically, about me.

Q And at this time I would like to show what was previously marked for identification purposes only Government's Exhibit 186.

Do you see that, Ms. Rios?

A Yes.

Q Do you recognize that handwriting?

A Steven's.

Q And who is that addressed to?

A Carolyn.

Q Now, at some point did Carolyn, in fact, give the letters to you?

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A Yes, she did.

Q Was this one of the letters?

A Yes, it was.

MR. GIBSON: Your Honor, at this point the government would ask to display to the witness 186A which is an excerpt from this letter.

MR. ROGERS: May we see it first?

MR. GIBSON: I ask it to be displayed.

THE COURT: Permission granted.

BY MR. GIBSON:

Q Is that a portion of the same letter we were discussing?

A I can't really see it but I think so.

MR. GIBSON: Can we blow it up?

THE WITNESS: Yes.

BY MR. GIBSON:

Q Is that the same letter?

Ms. Rios, I want you to look at the screen and tell me if I'm reading this correctly.

And, Judge, at this point this is an excerpt -

THE COURT: Just a moment. Just a moment. Is this 186A?

MR. GIBSON: Yes, sir.

THE COURT: I don't see that it has been offered or
received.

MR. GIBSON: I'm offering it now, Your Honor.

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THE COURT: Is there an objection to 186A?

If not, 186A is admitted without objection.

MR. GIBSON: Your Honor, at this point I'll reference

186B and 186C. They're all excerpts from the same letter which was previously identified as 186 for identification purposes.

THE COURT: Without objection 186B and C are

admitted.

MR. OSGOOD: Your Honor, may I approach for a second?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

THE COURT: First paragraph is where -Only reference I see to Eye is that Regennia gave a

four-page statement to the police about me and Gary. Am I missing something?

MR. OSGOOD: No, Your Honor. They go on to say they

kicked in a house and committed a burglary.

MR. GIBSON: The police kicked in the house.

THE COURT: Isn't that when they were arrested?

Mr. Sandstrom?

MR. GIBSON: Correct.

MR. OSGOOD: Okay. It's okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GIBSON:

Q And, ma'am, this letter is dated, this letter is dated

July 31 of 2005, is that correct?

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A Yes, sir.

Q And am I reading this letter correctly? It's 186A.

Carolyn, what's up? Same shit my way. You're about ready to have that baby, huh? When does John John get out?

Tell him his cousin ain't right. Regennia gave a four-page statement to the police on me and Gary. Had my girl's house kicked in and all. Told homicide unit that I hid the murder weapon in my girl's house. That bitch ain't shit but a fucking dope whore. After all I did for the bitch it's real. I got her. That bitch better be out my hood when I get out. She can be a North Oak ho because she better not be in the northeast where it's like that for her. She called tell her dad or whoever else because I don't give a fuck. They don't want no problems. I tried to cover her ass, take the case for her and this is how she repays me. Well, fuck her. I ain't got time for a dope whore.

Did I read that portion correct?

A That's correct.

Q Does the excerpt go on to say, I read them statements last week. When I read them, everything made sense. I put 2 and 2 together on why everything was happening once I seen what that bitch said. When you see her, ask her why she told on me. She should have told on herself, too. She knows what she did.

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Did I read that correctly?

A Yes, you did.

MR. GIBSON: I would ask to display 186B to the witness at this time.

THE COURT: Proceed.

BY MR. GIBSON:

Q Do you see 186B in front of you?

A It's blown up.

Q Is that also a portion of the same letter?

A Yes.

Q Let me know if I'm reading this correctly, okay, Ms. Rios?

Let John John know that bitch crossed the line. She's done dealing. I told that cunt to not make me hate her. Hard headed bitch didn't listen. She knows as much as you do that I'm a killer. My whole family is and you don't try to play a nigga, N-I-G-G-A, that gets off on laying niggaz, N-I-G-G-A-Z, down.

Did I read that correctly?

A Yes.

Q Next portion, tell me if I'm reading this correctly.

Regennia told the police I called my gun the dirty deuce-deuce. Fucked up, huh? Let your man know I'm going to beat her ass if I see her.

Did I read that correctly?

A Yes.

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Q It goes on. I'm not talking about a little smack in the face either. I'm going to beat her ass worse than Greg Wilson or Vince ever has. I'm using my fist on my mom and who ever is around better lay on that.

Ask to display for the witness 186C?

THE COURT: Proceed.

BY MR. GIBSON:

Q

Is that a portion of the same letter?

A

Yes.

Q Tell me if I'm reading this correctly.
She told FBI and police I'm a killer and all kinds of other shit. Bitch must think I'm a pussy. I'm like Popeye. Me tooks all me could, till me can't take no more. Feel me. It's ass-whooping time. Hands must be laid. Nothing is going to stop that on my mom, on the northeast side, on my baby niece. I'm going to try to break her face.

Did I read that correctly?

A

Yes.

Q I'll holler at you. Let it be known that that bitch is a rat. Get back at me.

Did I read that correctly?

A
Yes.

Q
Is this signed, much love and respect, Stevie AKA
High-speed?

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A Yes, it is.

Q Do you see the notation NES to the left of that?

A Yes.

Q Does that stand for northeast side?

A Yes, it does.

Q High-speed. Who is High-speed?

A It's what Stevie signs his name. Stevie.

Q The letter goes on, tell me if I'm reading this correctly.

Tell everyone I said, what's up. Did you see me on T.V.?

If you can, get me Jonnie Renee's address. Regennia told police we all went over there after it all happened and was doing dope. Pretty much said it's a dope house. That bitch ain't right.

Did I read that correctly?

A Yes.

Q If I contacted Christina --Carolyn Galyean -A

Yes.

Q --in March of '05 or July '05 to get a message to you, would I be reasonably successful in getting that message to you?

A Yes, you would.

Q What did you take this letter to mean?

A A threat.

Q Against who?

A Me.

Q For what?

A For telling.

Q And who is making this threat?

A Steven.

Q Now, at some point after the McCay killing, was Gary detained by police on a 20-hour hold?

A He never got out, I don't think.

Q At some point he became detained, is that correct?

A That's correct.

Q And while Gary was in custody, did you participate in any telephone conversations with Gary or were you aware of any telephone contact that Gary had?

A Yes.

Q And, specifically, did you communicate with Gary Eye on March 16 of 2005?

A I believe so.

Q And that was via telephone?

A Yes.

MR. GIBSON: Your Honor, at this time the government

is going to offer 83D1A. We're going to ask that be moved into evidence. I provided copies of this portion to counsel yesterday. Specifically, as a separate exhibit they already had the transcribed conversation.

I'm going to ask this be admitted into evidence.

THE COURT: Without objection 83D1A is admitted and

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may be published.

BY MR. GIBSON:

Q Ms. Rios, I'm going to ask you to listen to a

conversation. I'm going to ask you to tell me who are the

voices participating in that conversation. Okay?

A Okay.

Q This is a call originating out of the Jackson County

Detention Center, Kansas City, Missouri, March 16, 2005.

It was identified as ID32, the CD, track 6.

May we have a moment?

(The tape is being played.)

MR. GIBSON: Pause it, please.

BY MR. GIBSON:

Q What female voice did you hear answering the phone?

A Mine.

Q Who is the male voice on the other end?

A Gary.

Q Gary Eye?

A Yes.

MR. GIBSON: Please play the rest of the excerpt.

(The tape is being played.)

BY MR. GIBSON:

Q Who is the other female voice?

A Stephanie Sandstrom.

MR. GIBSON: Your Honor, at this point I'm going to

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ask to play portion 83D1.

THE COURT: Without objection 83D1 is admitted and

may be played.

(The tape is being played.)

BY MR. GIBSON:

Q

Whose voice did you hear in that telephone conversation?

A

Stevie Sandstrom.

Q

Who is he talking to?

A

Gary.

Q

And did you also hear Stephanie's voice in that exchange

again?

A Yes.

MR. GIBSON: Please continue.

(The tape is being played.)

BY MR. GIBSON:

Q

Now, that's a conversation between Stevie and Gary, is that correct?

A

That's correct.

Q

Now, I'm going to play for you 83D2.

THE COURT: 83D2 is admitted and may be played.

(The tape is being played.)

BY MR. GIBSON:

Q Now, this is a part of the same conversation. Whose voices did you hear in that exchange?

A Stevie and Gary.

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MR. GIBSON: May I have a moment?

THE COURT: Yes.

BY MR. GIBSON:

Q Going back to the evening of, or excuse me, the early morning hours of March 9, 2005, when William McCay was first sited. Was he in the street then or was he on the sidewalk?

A On the sidewalk.

Q Was he headed towards downtown or away from downtown?

A Away.

Q I don't have anything further for you at this moment, Ms. Rios.

THE COURT: Let's take about 15 minutes and get

comfortable. Don't discuss the case. Keep an open mind.

We'll see you back here. We'll be in recess.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: See you in 15 minutes.

(Witness temporarily excused.)

(Recess)

THE COURT: Thank you. Be seated.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Cross-examination, Mr. Osgood?

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MR. OSGOOD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. OSGOOD:

Q How you doing, Ms. Rios?

A Fine.

Q You and I have never met, have we?

A No.

Q Never talked?

A No.

Q Never sat down in a room together in an interview, kind of

go over what your testimony might be, have we?

A No.

Q Haven't done that with the private investigator named Mark

Reeder who works for me, have you?

A No.

Q Have you ever heard Mr. Reeder's name?

A No.

Q Well, did your lawyer advise you that I filed a written request with her requesting that my private investigator interview you, the way you did with the FBI.

A I got that letter. I didn't remember his name.

Q You just didn't remember his name. You declined to meet with my investigator, didn't you?

A Yes.

Q Was there a reason for that?

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A I didn't have anything to say to him.

Q Well, don't you think it would be --you met with the FBI a number of times, haven't you?

A Yes, I have.

Q We're trying to find the truth here, aren't we?

A I was advised not to. I thought -Q

Who advised you not to?

A My lawyer.

Q Your lawyer advised you not to meet?

A She said it didn't need to happen so I decided not to do it.

Q Okay. Was that your decision then or hers?

A Yes, it was my decision.

Q I see. Okay. How old are you, ma'am?

A 22.

Q And how old were you then when this happened? When is your birthday? You don't need to put your birthday on the record. We're not doing that anymore.

A I was 18 at the time.

Q About 18?

A Yes.

Q Now, you grew up over in that neighborhood, is that right?

A That's right.

Q And met both of these defendants at a fairly early age, is that right?

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A Yes.

Q Who is Mrs. --I don't know that I'm saying it right.

Maybe you can help me Tresenriter, Gary's grandmother?

A I don't know his grandma.

Q You never went over to their house?

A Steven's?

Q Tresenriter. Does that name ring a bell to you?

A Yes.

Q Where did she live at?

A Drury.

Q Drury?

A Drury.

Q That's a street over in that area?

A Yes.

Q In the general area?

A Yes.

Q And when did you first start going over to that address?

A Probably twelve.

Q And did you have a relationship with Mr. Sandstrom during that time?

A We were friends.

Q Spend a lot of time over there?

A Off and on throughout the years, yes.

Q Would you at some point have called it dating? Also been referred to as, frankly, a sexual relationship? Did you

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have a relationship like that with Steve Sandstrom?

A Yes, I did.

Q How long did it go on for?

A Couple months.

Q And when was that?

A In 2004, I think.

Q So did that come to an end then for some reason?

A He went to prison.

Q Okay. So then -MR.

ROGERS: Objection. May we approach, Your Honor?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: I didn't know she was going to say that.

THE COURT: I didn't either.

MR. ROGERS: I didn't either. I would have objected earlier if I knew she'd say it. Soon as she said it, I objected. I object. I think it's clearly prejudicial. I think there's no way to unring that bell. It's nothing that's otherwise admissible and we've had no opportunity to litigate the admissibility. At this time I move for mistrial on behalf of Mr. Sandstrom.

MR. GIBSON: Your Honor, Mr. Sandstrom is sitting right next to Mr. Rogers. Mr. Rogers could have asked him at any time when the relationship ended. The government didn't

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introduce that but -

They've already heard from both sides about drug use, about the stolen cars. Mr. Sandstrom's side has already referred to the time Mr. Sandstrom spent in juvenile custody. At this point I hardly think there's any prejudice at all versus --prejudice versus probative that hasn't already been explored in front of this jury and that single reference certainly isn't going to impact a week long trial so far.

MR. ROGERS: If I may respond, briefly. It's not that I don't know when the relationship ended. It's that I did not know that was what she was going to say. She said 2004. As a matter of fact, I see no probative value, zero probative value whatsoever. So if there is any prejudice, the prejudice outweighs it. The question is does it substantially outweigh to require a mistrial. I think it does. There's been evidence of lots of bad behavior centering around and limited to the period of time and the events relating to the charged conduct. But that's totally different than the prior prison sentence which is a finding of guilt or plea of guilty or something.

MR. GIBSON: None of that has been introduced. This is a pleading and in addition I would add that at that particular time Mr. Sandstrom was incarcerated for an auto theft. And he's already been described as an auto thief. If they think that would relax any prejudice as having them assume he went to prison for something else, I have no objection to

them introducing that. In addition to that, if the Court felt it necessary, and I'm not clear that it is necessary at all here, but the curative instruction is more than sufficient to cover anything that just took place.

THE COURT: I'm going to deny the motion for a mistrial. I will admonish the jury to disregard that statement. In light of the avalanche of bad behavior that we have heard thus far, I don't see this snow flake as being a major item of evidence that the jury is going to consider. But I will instruct them to disregard it.

MR. ROGERS: I also at this time would renew our motion for severance as it's obvious Mr. Eye's trial tactics are at odds with ours and that led to the introduction of -

THE COURT: This answer to Mr. Eye's trial tactics, I think -

MR. ROGERS: His lawyer asked the question, the question that started with why. You don't hear me asking questions that start with why.

MR. OSGOOD: I'm going to ask other questions that start with why. That's just how I work. I usually think I know the answer I'm going to get.

THE COURT: If I should happen to suspicion that anyone is angling for a mistrial in this case, I'll be very, very upset.

MR. OSGOOD: And you know me.
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MR. ROGERS: I'm not saying that, Judge.

MR. OSGOOD: I've not tried to set up anything like that. I'm just trying to protect my client. And there are questions that I don't know the answer to. If I had met with her, with my investigator, I might know some of those answers. I'm at kind of a disadvantage.

THE COURT: That's my ruling. I will admonish the jury.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: There has been an objection lodged to the last question and answer. I have sustained that objection, and I instruct you that you are to disregard the answer given by Ms. Rios.

And, further, Ms. Rios, let me ask you to confine your answers to the questions asked and not volunteer information beyond what the question calls for.

BY MR. OSGOOD:

Q Who did you start dating or going with after you were no

longer dating, going with Mr. Sandstrom?

A I don't even know.

Q All right. Did you have a relationship briefly at some

point in time with Mr. Deleon?

A I have had ten years on-going, off-going relations with Mr. Deleon.

Q All right. You've had just a very brief relationship with

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Mr. Eye?

A We didn't date. We had a sexual relationship. That was it. We weren't like boyfriend-girlfriend.

Q How many times do you think you had sex with Mr. Eye over the ten-year period that you were apparently involved with Mr. Deleon?

A Several.

Q Several times?

A Yes.

Q Now, I, too, want to direct you back to the day or two before March 9th of 2005. Where were you, again, ma'am?

A I was with Steven and Gary.

Q And when did the intense togetherness commence?

A We had been hanging out for a few weeks prior. Around Valentine's Day that year is when we all started hanging out.

Q In February?

A Yeah.

Q And at some point in time then, well, strike that. Let me lay some ground work here.

I want to just, first of all, ask you, so we've got some idea what we're talking about here, you were first interviewed by the police department on April 1st of 2005, is that right?

A That's right.

Q Gave a statement?

A Yes.

Q By the way, I'll tell you what I told the other witnesses, if I ask you anything that you don't understand, I ask you to ask me to repeat the question. Would you do that?

A Yes.

Q And if I'm --I get to ask what is called leading questions in cross-examination. If I suggest an answer to you that's not correct, I want you to tell me so.

A Okay.

Q Do you understand the rules?

A Yes.

Q Okay. So on March, I'm sorry, on April first of '05, you met with the police department, is that right?

A That's right.

Q After that meeting, which was an interview, is that right? Kind of an interview room with detectives?

A Yeah.

Q Talked to them. Do you remember how long you spent with them?

A No.

Q Okay. They wrote a report on that. Have you seen that report?

A Uh-huh. Yes.

Q Okay. And then you went in for what is called a

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videotaped recording session, is that right?

A That's correct.

Q And we actually have a transcript of that. Did you review that transcript before coming in here today?

A I think I've seen it.

Q Okay. And that occurred, according to my records, on the same day, April first of 2005?

A That's correct.

Q And then following that, you eventually then on March, I'm sorry, May 9th of 2005 is when you have the first meeting with the FBI, is that right?

A Sounds about right. I don't remember the exact date.

MR. GIBSON: Your Honor, I believe counsel refers to

the date that the investigation occurred in as opposed to the

date the report was prepared, just for clarification.

MR. OSGOOD: That's correct.

MR. GIBSON: May 5th.

BY MR. OSGOOD:

Q The date of the interview with the FBI was May 5, 2005?

A Sounds right.

Q They generated a report on that?

A Yeah.

Q And you reviewed that report before coming to court today?

A I've seen the reports, yes.

Q And read that?

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A Yes.

Q And then it was after that report was generated that an attorney was appointed for you, Ms. Altieri, is that right?

A Sounds about right.

Q And around the 19th day of May is when you got what was called this proffer letter that Mr. Gibson asked you about?

A The formal immunity?

Q No. Just the proffer letter, telling you that you might get immunity. Do you remember that?

A Yes.

Q And you meet with them some more on two days, the 19th and 26th of May, don't you?

A I met with them in May, yes.

Q And there is a single report dated investigation on May 19th and May 26th of 2005. Did you review that report before coming to court here today?

A I think I've seen it.

Q That's the one where you say it's getting much more accurate, isn't it?

A I believe so.

Q Then after that is when you have another meeting with them on July 19, 2005?

A Yes.

Q Did you review that statement before coming in here?

A I think so, yes.

Q Following that, you go to the grand jury on the 19th of July?

A Correct.

Q So you had this 19th of July meeting the same day with these agents before you went into the grand jury room?

A Yes.

Q And the 19th of July meeting, grand jury meeting, you're in the grand jury quite awhile, aren't you?

A Yes, I was.

Q Some 80 pages. Do you remember how long that took?

A I think a couple hours. I'm not real sure.

Q Would you agree with me that you went in there, did you go in in the morning?

A Yes.

Q Was it afternoon before you were finished or around noon?

A It was around noon.

Q Then after that session, what happened next?

A I met with them again. I'm not sure how many times I met with them but I know I met with them again after that and they and -Q

Would that be, excuse me, maybe I can help. September 7th and the 9th ring a bell?

A Yes.

Q Okay. And you have seen that FBI report also?

A Yes.

Q And there is a 26th of September meeting with Agents Janke and Gothard in which they generated a report?

A That's correct.

Q And you reviewed that report?

A Yes.

Q Then you went in the grand jury on the 28th day of September?

A Yes.

Q So that's kind of the sequence of the times that you spent with these agents, is that right?

A Yes.

Q Now, at each of these interviews, excluding the police interview, what agents were present?

A Agents Gothard and Janke.

Q That's the two agents in court here?

A That's correct.

Q And from time to time there were other personnel there, lawyers and department people?

A That's correct.

Q And then eventually your own lawyer?

A Yes.

Q Is it true that when you had these interviews, you were confronted with a previous interview and there would be

conversation about what you said in the prior interview and trying to reconcile things that they didn't believe or didn't agree with?

A They wanted me to be honest.

Q But it was a patterned behavior, was it not, that something different was said at each one of these interviews as time progressed?

A Yes, because more came out.

Q Because as they did more investigation and suggested certain things to you that they thought were true?

A They didn't suggest but they did more investigating.

Q So that all culminated on March, I'm sorry, on the 28th of September '05, when you appeared in front of the grand jury?

A That's right.

Q That's the last formal testimony you gave before coming here today, isn't it?

A That's right.

Q And a lot of your testimony here today, to your recollection, coincides with your grand jury testimony?

A Yes.

Q The last one?

A Yes.

Q That also was about an 86 or so page session, wasn't it?

A It was quite awhile, yeah.

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Q And now where are you being housed while you're here,

ma'am?

A CCA.

Q That's the contract facility in Lansing or Leavenworth?

A Leavenworth, yes.

Q And how many times has Agent Gothard and Janke, one or the

other, been up to see you since you've been back here in

preparation for this trial?

A Four.

Q Four times?

A Yes.

Q And were reports, do you know, generated from those

interviews?

A I haven't seen them.

MR. OSGOOD: I'm making a demand on the agents,

again, Your Honor, if they exist at this point.

MR. GIBSON: May we approach?

THE COURT: You may.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. GIBSON: There is one from the first time we met with her which we had already been given to the defense. It

refers to her being present when the gun, the .22 caliber gun was taken by Stevie and Gary from the house. They have that information. That was the only report generated.

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THE COURT: There are no reports from the other three interviews?

MR. GIBSON: They weren't interviews. They were trial prep meetings. She wouldn't be the appropriate person to ask about those reports.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)
BY MR. OSGOOD:

Q During these meetings when they come up to visit you, did they have these prior reports?

A The ones prior, yes.

Q Did you sit and go over them?

A I went over some of them, yes.

Q When is the last time that you sat down with either the prosecutor or these agents to go over your testimony?

A About two weeks ago.

Q All right. And had you, prior to coming into here today, have you talked to anybody for the government, FBI agents down to including even paralegals, have you talked to anybody about your testimony here today prior to getting on the stand after you say it occurred two weeks ago?

A No.

Q All right. And did they leave copies of all these reports and the grand jury transcripts with you?

A No.

Q When is the last time you read your most recent grand jury

transcript?

A The time before last. I don't think I read it, went over it the last time. I don't remember.

Q The 28th of September, that very last grand jury transcript?

A Uh-huh. I don't think I went over it this last time I seen them. I think it was the time before that.

Q That's kind of the ground work. And Mr. --the prosecutor asked you, Mr. Gibson, about the sequence of events and that's your recollection of how this testimony evolved over time?

A That's correct.

Q Pardon?

A That's correct.

Q Now, I want to go to March 8th. Where were you in the early morning hours of March 8th?

A Where? With Steven and Gary.

Q You don't remember where?

A Probably at Steven's house. That's where we were at most of the time in the morning.

Q What was the continuous period of time that you were high from, say, March 6th through the date of the homicide? Were you continuously high that whole time?

A Yes.

Q Now, were you smoking meth or were you shooting it?

A I was smoking meth.

Q And how does it affect you when you smoke meth?

A I stay awake. I don't know how to describe it.

Q Pardon?

A I stay awake for days at a time. I get, I don't really know. I'm high.

Q Are you hallucinating?

A If I stay up long enough.

Q By hallucinating, what do I mean?

A Seeing things that aren't happening.

Q Seeing thing that aren't happening and hearing things that aren't happening?

A Yes.

Q That's a common phenomenon with the use of methamphetamine?

A That's what I hear, yes.

Q You were a heavy user, weren't you?

A Yes.

Q In fact, would it be fair to say, I never met you, never seen you, but I bet you're a different person on the stand today than you were when you were a meth head, weren't you?

A Completely.

Q Filled out. Your complexion is better. You feel better. Your health is better, all the way around?

A Yes.

Q Your thinking is better?

A Yeah.

Q Thinking is obviously more lucid today than it was then?

A Yeah.

Q What about --When were you arrested, ma'am?

A The first time I was arrested was April first of 2005.

Q And how long were you in custody at that time?

A 32 hours.

Q That was that police department interview?

A Yes.

Q Were you on meth at that time?

A I didn't smoke like a day prior to.

Q Were you using meth during the course of time, of the time that you were going in for these interviews with the FBI and holding stuff back?

A No, I was not.

Q Okay. So you had sobered up at that point?

A Yes.

Q Where were you living?

A With my dad.

Q All right. And when did you move back home?

A The day that I got released from the Kansas City police station I went to my dad's house and I stayed there.

Q Okay. At any rate you were high then on March 8th of

2005 and we talked about the effects that has on you. I believe your testimony was at some point you end up on 8th Street going east, is that right?

A Yes.

Q And you named the street Kensington but actually it was not Kensington, was it?

A I believe it was Spruce and Kensington.

Q Spruce. Okay. Kensington is the other way, isn't it?

A I think they're right next to each other. It's been awhile.

Q Pardon?

A It's been awhile since I've been there.

Q Okay. So you're going down 8th Street. And when is it that you say you first see Mr. McCay?

A On the --okay. I guess it's Spruce, Kensington, one of the two. That street right there before the alley.

Q Would you agree with me, ma'am, and I know it's been a long time but would you agree with me that 9th Street along there is a residential area? And there are single and two story houses all along that block?

A Uh-huh.

Q You can't see over to 9th Street, can you? You can't see the island, for example, from 8th Street, can you?

A No. But can see the corner, like the street corner, sidewalk.

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MR. OSGOOD: Now, can we throw up a picture of the alley, please, ma'am?

BY MR. OSGOOD:

Q This is the alley we're talking about, is it not, ma'am?

A That's correct.

Q And if we look -Can

I go over there, Your Honor? Just much easier.

BY MR. OSGOOD:

Q

If we look back this way, Spruce is right back over here, isn't it?

A

That's correct.

Q

Pardon?

A

I think so, yes.

Q

You might want to look this way, ma'am.

And so you're coming down 8th Street from this

direction down here, driving along. And is it your

testimony at some point someone sees Mr. McCay?

A
I saw him.

Q
Where did you see him?

A
On the sidewalk right there on the corner of 9th Street
and Spruce.

Q
Not before you turn into the alley, ma'am?

A
Before we turned into the alley.

Q
So you're back here. Before you turn in the alley, you

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see him?

A The alley from where you're standing is a different alley.
8th Street runs this way.

Q 8th Street is this way. I'm on 8th Street, now.

A Okay.

Q I'm coming up to the alley.

MR. GIBSON: No, he's not, Your Honor.

THE COURT: Well, we know he's not on 8th Street.

MR. GIBSON: But he's not even oriented.

THE COURT: Do we have a diagram that would give us a
better perspective?

MR. OSGOOD: This picture is pretty important.

BY MR. OSGOOD:

Q

Would you agree you were on 8th Street going east?

A

8th Street going away from downtown, yes.

Q

That's east.

A

Yes.

Q

That alley runs north and south?

A

I don't really know north and south that well but I have heard it does, yes.

Q

You had to take a right into the alley to get back down to 9th Street, didn't you?

A

Yes.

Q

So that puts you, from my example, I'm standing on 8th

Street looking down 8th Street?

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MR. GIBSON: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: This -

MR. OSGOOD: This is very clear.

THE COURT: Not clear to me.

MR. GIBSON: There are aerial maps provided in discovery. They have been given this in discovery, trying to position -

MR. OSGOOD: All right.

THE COURT: I mean, I'm going to let you do it, John,

but you're confusing me, the jury and everybody.

MR. OSGOOD: If you're confused then I'm going to do something different.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. OSGOOD: Put the diagram up, please.

BY MR. OSGOOD:

Q All right. Would you agree with me -

MR. GIBSON: For the record this is 127. He's referring to now Government's Exhibit 127.

THE COURT: Thank you.

BY MR. OSGOOD:

Q This is 8th Street?

A Yes.

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Q This is Spruce?

A Yes.

Q All right. This is 9th Street?

A Yes.

Q Along here, right?

A Right.

Q You're going east on 8th Street. You're approaching the Spruce intersection. Okay?

A Okay.

Q At what point do you see Mr. McCay?

A When Steven turns the car to go right because he was initially going to turn right on that street.

Q All right. So he comes up here and starts to turn here?

A I don't really understand this diagram, honestly, I mean, but -Q

This is 8th Street going east and west and this is 9th Street going east and west. This is Spruce, north and south.

A Okay.

Q At what point do you see Mr. McCay?

A As Steven begins to take a right on Spruce.

Q He's going to turn right on Spruce?

A Yes.

Q Did someone say something at that point?

A Gary tells him to hit the alley.

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Q What does Steven do with the car?

A Instead of taking the right, he straightens it out, goes

to the alley.

Q Where was Mr. McCay?

A He was on the corner, the sidewalk, crossing over.

Q Walking along here?

A Yes.

Q So he must have been almost in the intersection at the

time, is that right?

A He was across the intersection.

Q Okay. Then this is the alley, right?

A Yes.

Q And you turn down the alley?

A That's correct.

Q Now, at one point in your testimony you say that you

stopped in the alley and smoked some meth and that's when
Mr. Eye got the gun?

A I never said smoked meth.

THE COURT: What's your objection?

MR. GIBSON: May we approach?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. GIBSON: In the first place, that's not what she
said. And the second place, Your Honor, if he has a prior

inconsistent statement he wants to question her about, then I

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would ask he be specific. He identify the statement page and record and allow her to see it and explain it, if that's what he has. But to come up with questions out of a vacuum and I don't understand from the question whether he's referring to previous grand jury testimony or referring to what she said today. If he's referring to today, she didn't say that.

THE COURT: She didn't say that today.

MR. OSGOOD: She made it previously. I'll just ask her did you previously say that.

THE COURT: Okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q Ma'am, did you previously tell somebody that you stopped in the alley and smoked some meth?

A No, I didn't say we smoked meth.

Q Did you say you stopped in the alley?

A Yes, I did.

Q What happened when you stopped in the alley?

A We didn't stop actually. But what I told them was that we stopped and they exchanged the gun.

Q So that wasn't true when you told that?

A That's right.

Q That was a lie?

A That was a lie.

Q So then you go on down to the end of the alley. Is that

where you stopped?

A At the end of the alley.

Q And what happened there?

A That's where Mr. McCay was standing as we approached the end of the alley, he was at the sidewalk.

Q Pardon?

A As we got to the end of the alley, he was right there.

On the picture of the alley has the little square where the sidewalk is at, that's where he was standing.

Q What happened?

A Gary stuck his arm out the window and shot him.

Q Okay. Was there some conversation about whether Mr. McCay was hit?

A Afterward.

Q Where did that conversation take place?

A After we went around the block, he wasn't there.

Q Which way did you go around the block?

A We went around through Kensington. We came back out on Spruce. So we went -

Q So you came around this way and went straight around the block?

A And back down.

Q Back down again. Then you went straight down 9th Street?

A That's correct.

Q All right. Now, you didn't stop on the way or do

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anything, did you?

A No.

Q You were in a hurry trying to find Mr. McCay, weren't you?

A Yes.

Q And you drove straight down 9th Street at 6:00 in the morning, right?

A That's correct.

Q You get to Van Brunt, according to your testimony?

A Yes.

Q You take a left on Van Brunt?

A Yes.

Q You go back up to 8th Street again, is that correct?

A Yes.

Q You then go down to?

A Brighton.

Q Brighton. Now, you said when Mr. McCay stepped in the alley you had a clear view of him, is that right?

A At the end of the alley, yes.

Q You saw his face?

A That's right.

Q All right. Then so when you get down to 9th and Brighton, you go around the corner and go down to the building on the corner of 9th and Brighton, is that right?

A That's right.

Q There is actually a pillar on the corner. You can kind of

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see through the building pillar?

A Yes.

Q And where did you see Mr. McCay?

A On the other side of 9th Street.

Q Did you recognize him?

A No. I didn't know him.

MR. GIBSON: This diagram is not reflective of 9th and Brighton.

MR. OSGOOD: I understand that. Is that an objection?

MR. GIBSON: It was.

THE COURT: If there was an objection, it's

overruled. It is not reflective of that intersection.

BY MR. OSGOOD:

Q So you're at 9th and Brighton now and you see Mr. McCay?

A That's correct.

Q Is he walking or running?

A He wasn't running, no. He was walking.

Q So he would be walking down the street?

A That's correct.

Q Now, do you know how far it is from 8th and Spruce?

A It's a distance.

Q It's a half mile, isn't it?

A About.

Q So --and you didn't make any intervening stops between?

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A No, we didn't.

Q You go straight down there as fast as you could?

A We went around the block. They had their little discussion about Gary taking it too far and Gary freaking over him not being there.

Q That wasn't my question. Did you make any stops?

A No.

Q And then you say some man is at the corner, walking down the street, 9th and Brighton?

A I assume it's the same man.

Q Okay. Now, let me ask you this. You stopped down there at this corner by the pillar, did you --not on the map.

If we could get the map of the other location, ma'am.

MR. GIBSON: This is 129.

BY MR. OSGOOD:

Q You're at the corner of 9th and Brighton. This area here is a building with a little pillar down on the corner, isn't it?

A That's correct.

Q Now, where do you see, precisely, Mr. McCay at this point?

A He was on the right-hand side of 9th Street.

Q Over here?

A He was like about right there. That's right.

Q Mr. Eye is out of the car?

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A He gets out.

Q Does he urinate?

A No.

Q Did you previously tell anybody ever, any point in time, that he had to urinate? He got out of the car to urinate?

A No.

Q He sees Mr. McCay and Mr. McCay sees him?

A Yes.

Q And they meet where? In the intersection?

A In the intersection.

Q In the middle?

A That's correct.

Q And that's when you say that Mr. Eye got him in a headlock?

A He threw his arm around him.

Q And put the gun up next to him and pulled the trigger?

A I didn't see the gun but I heard the shots.

Q Did he shoot at him prior to that time?

A As far as I knew, it was the same man.

Q No. No. When he's walking across the street, did he shoot at him?

A No.

Q Did --he fires no shots prior to contact with Mr. McCay?

A Not until they met in the middle of the street.

Q And then Mr. McCay falls?

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A He didn't fall.

Q He didn't fall. He staggered?

A That's right.

Q By that time it's your testimony you pulled around the corner and picked him up?

A Picked Gary up, yes.

Q You picked Gary up and sped away?

A Yes.

Q All this occurred then from the initial incident back up at the 9th and Spruce location, just a matter of less than a couple minutes, didn't it?

A That's correct.

Q All right. And you stayed with them continuously thereafter, is that right?

A Yes, I did.

Q At what point did somebody reload the gun?

A I don't remember the gun getting reloaded.

Q Any ammunition with you?

A I don't remember.

Q How many shots do you say were fired at the first location?

A No more than two.

Q Okay. And the second location?

A Two or more.

Q What is more? Seven?

A No. Like two or three.

Q Two or three. And so nobody fired a shot at him to finish him off or anything?

A I'm sorry?

Q Nobody fired a shot at him while he's hanging on the fence to finish him off?

A No.

Q Okay. Now, again, you told the police at some point in time that Mr. Eye said he's a witness, we've got to find him and finish him off, something to that effect?

A I'm the one that said he's a witness.

Q Did you say to the police at a previous point in time that Steve said that?

A Yes, I did.

Q That was a lie, wasn't it?

A Yes.

Q You're the one that said that?

A Yes.

Q At least that's what you say today?

A Yes.

Q And where did you go after Mr. McCay was left in the street there?

A We went to the Ewing --Sandstrom residence on Ewing.

Q When is it you say that Mr. Sandstrom re-took possession of the gun?

A I don't remember it happened. I don't recall seeing it happen.

Q Again, you were strung out on meth at this time, weren't you?

A Yes, I was.

Q But you admit caused you to have hallucinations and bad memory and everything?

A It can, yes.

Q Okay. Is it possible, ma'am, this entire incident back up the street was just a total figment of your imagination?

A No. That's not possible.

Q Can you explain to me how Mr. McCay can get down there in less than two minutes?

A No, I can't.

Q Ever run track in high school?

A No, I didn't.

Q Okay. Now, you say a lot of this was prompted by some incident that occurred at a 7-Eleven?

A Yes.

Q And what is it you say happened there?

A Stevie said that he shot at some nigger at 7-Eleven.

Q Have you heard Stevie, and or Gary for that matter, make similar kinds of outrageous statements that you later found out weren't true?

A No.

Q Did you hear anything on the news about anybody being shot at 7-Eleven?

A No, I didn't.

Q Okay. Now, you said at one point one of the reasons that you gave false information was, one, you didn't know, didn't want --I think you used the word feds --to know of your involvement?

A That's correct.

Q In the planning of this. Is that true?

A That's correct.

Q And then at one point you also said you didn't want, that you were embarrassed about some of the things that you said?

A That's right.

Q What was it you were embarrassed about what you said?

A I was embarrassed about the comment in the basement. How I told Stevie that if he had better aim there would be two dead niggers instead of one. I mean, everything I said, all of it.

Q Were you embarrassed about the fact that according to your own testimony you planned a premeditated homicide and took part in it?

A I didn't plan a premeditated homicide. I didn't plan anything and I am ashamed that I was part of anything, yes.

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Q

You didn't plan anything?

A

No, I didn't.

Q

By the way you said that you ducked down at some point because you had been around other shootings?

A

That's correct.

Q

What previous shooting had you been around?

A Been around -MR.

GIBSON: Objection. May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: This goes to the uncharged acts discussion that we have had previously, Judge. And the government had indicated that the government's position was that uncharged acts are irrelevant to this case unless they go to her credibility and they clearly do not. And I'm not sure what specifically Mr. Osgood is about to inquire about. But, for example, the suicide is clearly irrelevant.

THE COURT: The what?

MR. GIBSON: The Stanley suicide, we discussed earlier. I suspect that's what he wants to talk about.

MR. OSGOOD: She ducked down. Credibility issue. She didn't watch it because she had been at a previous shooting and the shooting was at --she was present in the house. And I don't know that I have a sufficient good faith basis to ask it

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but it's my understanding that she was performing oral sex on the decedent when he was shot but it was ruled a suicide. So I will just --I will just.

THE COURT: Keep your voice down.

MR. OSGOOD: I will just go with the questions, were you present when a former boyfriend of yours, Jason Stanley, committed suicide in your and Vincent Deleon's presence, to see if that's true. And -

THE COURT: If it is, what does it add? What does it prove?

MR. OSGOOD: About her being around gun fire and gunshots and whether or not this statement about her ducking down is true and why she ducked down.

MR. GIBSON: It's completely irrelevant, Your Honor. I don't know where the suggestion came from about the behavior that was just ascribed to her. But nothing Mr. Osgood has proffered so far would make this relevant.

MR. ROGERS: I do think this was opened up on direct examination when she testified she had been present at shootings before and I think that, I guess, was relevant to explain her behavior. So now I think -

THE COURT: The behavior is so dissimilar. I'm not

sure that it adds much. I'll let ask you if she was present when Jason committed suicide. Are you aware of any other shooting she was present at?

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MR. OSGOOD: Black Raymond's shooting. I'm not going to get into that. Charlie can argue that.

MR. GIBSON: Neither one can get into that. That's

completely irrelevant.

MR. OSGOOD: I'll lead her.

THE COURT: You can ask her if she was present when

Jason committed suicide but stop. Don't go beyond that.

MR. OSGOOD: I will.

THE COURT: Before we leave, you're going to get into

Black Raymond? Why?

MR. ROGERS: I wasn't.

THE COURT: Well, then don't.

MR. ROGERS: If something happens I think I will,

I'll come tell you first.

MR. OSGOOD: I'll keep her away from that.

THE COURT: All right.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q Ma'am, did you know Jason Stanley?

A Yes, I did.

Q You said that you had been present when firearms had been

discharged before?

A Yes, that's right.

Q That's why you ducked down?

A Yes.

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Q Were you, in fact, present --I'm just going to ask you about this one incident. Were you present when Jason Stanley committed suicide?

A Yes, I was.

Q Was Vincent Deleon there in the room with you?

A No, he wasn't.

Q Okay. Where was he?

A I don't know.

Q I thought he was present also?

A No, he wasn't.

Q Okay. Is that why you say you ducked down?

A That has nothing to do with it.

Q It didn't?

A No.

Q Why did you duck down?

A Like I said, I have had previous experience with firing guns and I've been around them all my life.

Q Okay. Are you frightened of guns?

A Not particularly, no.

Q Have you fired guns before?

A No.

Q Now, you've kind of, over the course of this investigation, picked and chosen who you want to protect and who you want to talk about, haven't you?

A I guess you could say that but not really.

Q Well, you wanted to protect Jonnie Renee, didn't you?

A She didn't have anything to do with it. Yes, I did.

Q You wanted to keep her out of it?

A Yes.

Q Did you want to protect Carolyn Galyean?

A I brought her into this so I guess I didn't do too good at that.

Q Pardon?

A I said, no, because I brought her into it.

Q I see. Did you want to protect any of the Stanleys?

A They didn't have anything to do with this.

Q What about the Chirinos?

A Little Jonathan.

Q Little Jonathan was down in the basement with you the day that you were doing meth. Is that the reason you want to protect him?

A That's correct.

Q And what about his sister?

A She, no.

Q Okay. Now, I want to go back to the first statement you made to the police department. What did you tell the police in that first interview?

A That Gary and Steven picked me up.

MR. GIBSON: May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: Your Honor, again, I would ask that Mr. Osgood be directed to use the appropriate foundation. Give her an opportunity to examine the statement. If he's got some specific inconsistency he wishes to cross her about, he identify that and confront her with it and ask her to explain or deny. This is an improper cross-examination format.

MR. OSGOOD: I'm certainly allowed to ask the witness what did you tell somebody.

THE COURT: He can ask what she told them. If she says she told something contradicted by the statement then show her the statement.

MR. GIBSON: At that time he's going to identify it, give us page number and line number he's talking about?

THE COURT: I would hope so.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q I'm talking about your interview with Detective Matthew Williams on April first of 2005?

A Okay.

Q You have examined that statement previously, haven't you?

A That's right.

Q What did you tell Detective Matthews at that time during that interview?

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A That I wasn't there when it happened. That I was in Gladstone and that Steven and Gary picked me up after the fact. That's when they told me what happened.

Q You also told them you had been somewhere else, didn't you?

A That I was at Carolyn's.

Q So you got her involved that way?

A Yes.

Q Then shortly after that you called her up, tried to set up an alibi, didn't you?

A Yes.

Q Did you tell the detective, quote, I'm not going to catch a case for those niggers?

A No, I did not.

Q Niggas?

A I don't remember saying that.

Q Would it help you if you saw your statement?

A Sure.

Q Last line-MR.

GIBSON: Where are you?

MR. OSGOOD: Statement to Detective Williams, last

line.

THE WITNESS: I guess I said that but --if it's there.

BY MR. OSGOOD:

Q Pardon?

A I don't remember it but if it's there then I said it.

Q Then shortly after that you went in for a recorded videotape, is that right?

A That's right.

Q You were advised of your rights?

A That's correct.

Q And asked what happened, weren't you?

A Yes.

Q Did you at that point also, again, claim that you were not there?

A That's right.

Q Did they put you under oath on that or -A
I don't think so.

Q --just give a statement.

Would it have made any difference if you were under oath?

A I guess not.

Q Pardon?

A At that point, no.

Q Well, it didn't in the grand jury, did it?

A Exactly.

Q So, again, you tell them that you're at Carolyn's house?

A Yes.

Q So they showed up out there?

A They went to Carolyn's, yes.

Q Was that true?

A That I was there?

Q No. No. That they showed up there while you were at Carolyn's?

A No.

Q So that was a lie, too?

A I'm sorry. You're confusing me. Gary and Steven showed up there?

Q Yes?

A Yes.

Q They did?

A No, they didn't but that's what I said.

Q And that was another falsehood?

A That's correct.

Q Okay. Had you thought about how you were going to set this up and what you were going to say when you were interviewed?

A No, I didn't.

Q So it was spontaneous?

A Yes.

Q Again, were you on meth when you were doing this?

A That specific day, I hadn't done any, no.

Q So you were lucid at that point and methodical in your thinking when you set up your alibi?

A I guess you could say.

Q And you were pretty methodical in your thinking when you then called Carolyn immediately to alert her, weren't you?

A Yes.

Q Because you knew that, you're a smart young lady it sounds like. You knew they were going to call and check, didn't you? Or figured they would?

A Yes.

Q You were trying to stay a step ahead of them, weren't you?

A Yes.

Q Throughout this investigation you tried to stay a step ahead of them, didn't you?

A Yeah.

Q Trying to do everything you could to dovetail the information into what you thought their case was, at the same time keeping yourself out of it, weren't you?

A Correct.

Q So if they were focused on thinking they had a hate crime, you're going to feed them what they want to hear but try to extricate yourself at the same time?

A I told them what happened and excluded myself, as much as possible.

Q You described the gun for the detective at that point. How did you describe the gun?

A Chrome with a wood handle, revolver.

Q Is that still your recollection of what the gun was?

A Yes.

MR. OSGOOD: Could we see the exhibit, please?

BY MR. OSGOOD:

Q Ma'am, this is Government's Exhibit 47B. What color are the grips on this?

A Black.

Q Does the gun appear to be chrome?

A Not any more.

Q Do you think, can you from looking at it, does it look like the gun involved in this?

A Looks similar to it.

Q Looks similar? Okay. The grips are obviously not chrome, are they?

A I don't know.

Q I don't mean chrome. I mean ivory?

A Yeah, they're not.

Q Did you get a good look at it, telling the police about it, prior to telling the police?

A I thought it had a wooden handle. I guess I didn't pay attention.

Q Okay. When did you find out that his sister had thrown it in the river?

A I talked to Kristina Chirino at one point and some how it came up. I don't know if I asked her or what. But she

said that it was afloat, which I took it to mean in a river somewhere.

Q How long after the homicide did that conversation occur?

A After they had both been arrested, I think.

Q Were you still trying to figure out how you were going to keep yourself out of it?

A Yes.

Q So you wanted to know also what happened to the gun?

A Yeah.

Q That would be a detail that would be helpful to you, wouldn't it?

A I mean, I guess. I never touched it or anything.

Q Had you met with the FBI at that point before you had this conversation any time?

A Well, I met with them on my first arrest.

Q Okay. They asked you about the gun?

A They have, yes.

Q Pardon?

A They have, yes.

Q Okay. Well, we'll get to that in a minute.

Now, what is it you told Mr. Gibson that you left out then of this videotaped statement?

A I'm sorry?

Q Pardon?

A What was your question?

Q He asked you if you left some things out of this videotaped statement. What was it you left out?

A That I was there.

Q What else? Well, basically, it was denial of the whole incident, wasn't it?

A Yeah, basically.

Q Now, when you met with the FBI on May 5 and they did a report, did you tell them that Sandstrom had told you that he burned the vehicle?

A Yes.

Q Was that true?

A That's a lie because I was there. I seen it.

Q Well, who actually set the vehicle on fire?

A Steven.

Q That's your testimony today?

A That's correct.

Q How long did that interview take on May 5, do you remember?

A No, I don't.

Q I realize probably all these kind of run together at some point?

A Yes.

Q Were there any of those interviews that were very brief or short or did most of them require some time?

A Most of them required time.

Q Did they accuse you of not telling the truth at those interviews?

A Well, they knew I wasn't.

Q Pardon?

A Well, yeah, they knew I wasn't.

Q How would they approach that? Would they tell you, we know ABC?

A No.

Q They would ask you a question and tell you that your answer wasn't correct?

A I don't remember specifically. I mean -Q

Well, at any rate then apparently on this May 5th you admit that you gave false information and also omitted information?

A That's correct.

Q From that interview. Now, again, you weren't under oath at that interview, were you?

A That's right.

Q And you didn't have a lawyer, did you?

A I don't think so, no.

Q No. Because you got your first letter from them about your lawyer on May 19th. Do you remember that letter?

A No.

Q Let me show it to you.

Do you recognize that letter?

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A Yeah.

Q Okay. What did you understand that the government was willing to do for you at that time?

A There wasn't anything that they said about being willing to do anything. They just wanted me to cooperate.

Q Okay. So they just wanted to talk to you?

A That's correct.

Q And so you went down, got a lawyer and went down for another interview with the FBI again?

A Yes.

Q And what happened during that interview? Were you truthful?

A Not all the way, no.

Q Is that the first time that you say that Mr. Sandstrom said that he shot somebody at the 7-Eleven?

A I don't recall.

Q Okay. When is the first time you told them about Inner City Oil?

A I don't know specific dates. I mean, I talked to them a lot.

Q Well, in the sequence of events, do you remember?

A Before the first grand jury but I told them we were picking up Vincent.

Q Pardon?

A Before the first grand jury. But at that time I told them

we were picking up Vincent.

Q And that interview took quite awhile as I recall?

A Yes.

Q Then at some point do you actually, are you actually granted immunity from prosecution?

A From the federal government, yes.

Q Yes?

A Yes.

Q And do you remember the date of that?

A No.

Q All right. Would July 18th sound right to you? I can show you the document.

A It sounds right.

Q What was your understanding of that agreement with the government?

A That I wouldn't be prosecuted for the homicide or the arson for cooperating, I guess, basically.

Q What did you think your situation was over in Jackson County?

A I didn't know that there was a situation in Jackson County until yesterday.

Q Well, you knew, didn't you, that Mr. Eye and Mr. Sandstrom, certainly Mr. Eye at least -MR.

GIBSON: May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: Your Honor, it's the government's belief that Mr. Osgood is attempting to set up some sort of nullification where he argues the jury should disregard the evidence here because the state can come in on the tailend and take care of this. Whether or not Mr. Sandstrom and Mr. Eye have any exposure to state level wouldn't have anything to do with the examination of this witness.

MR. OSGOOD: Ask her if she knows they were charged with murder over there.

MR. GIBSON: It's irrelevant.

MR. OSGOOD: Not irrelevant.

MR. GIBSON: Completely and totally irrelevant. Nor are they facing any charges now in the state.

THE COURT: Yes, it's irrelevant, John.

MR. OSGOOD: It all fits into the picture of tailoring her testimony for the federal case because she suddenly realizes that it's a hate crime and that all of this information about the race issue becomes the focus of the investigation. There was just a regular old cookbook murder case in state court. It gets over here and they start asking

her about all this race stuff. That's when she starts, each successive meeting with them, saying more things that fit into the race elements.

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THE COURT: I don't see the relevance of their being charged in state court. If she was charged in state court, I assume that would be relevant. And if she received some promises from the state court prosecutor, that's relevant. But whether these guys were charged in state court, I don't think is probative of anything, John.

MR. ROGERS: Your Honor, I realize it's not my question. I get to ask my own when it's my turn. My understanding of the question is, did you realize there might be state court implications and she said not before yesterday.

THE COURT: For her.

MR. ROGERS: Now, the question is, well, didn't you know that these other guys were charged in state court?

THE COURT: No. I don't think it's relevant.

Sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q Under the immunity agreement you were told you would not, anything you said in this federal case, would not be used against you in any federal prosecution, weren't you?

A That's correct.

Q And have you since determined that also that Jackson County, Missouri will not file murder charges against you?

A No.

Q No, what?

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A

No, that's not an agreed, agreement. It's still possible, I guess.

Q

Down the road at some point that Jackson County could charge you with murder?

A

It's out there, I guess.

Q

Do you expect that to happen?

A

I would hope not.

Q All right. Would how this goes today have some bearing on that in your mind?

MR. GIBSON: Objection.

THE COURT: Overruled.

THE WITNESS: I don't know really. I don't know how

it all works.

BY MR. OSGOOD:

Q

Didn't you meet with the prosecutor this morning as a

matter of fact and discuss that a little bit?

A

Yes. And he told me that it was still a possibility it could happen. But as far as the whole federal government things, everything was still set the way that it was.

Q

Okay. So you're immunized here in federal court. Was there also a Jackson County prosecutor over here this morning? Did you talk to him?

A

I didn't. No.

Q

Okay. Did your lawyer?

A

I think she may have.

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Q So you're comfortable with your situation, now?

A I'm all right.

Q Okay. All right. Now, after the immunity was granted, you come in on the 19th of July 2005 for another FBI interview, don't you?

A Sounds right.

Q In preparation for going to the grand jury?

A Yes.

Q The pattern was that each time you would go to the grand jury, they would bring you in and kind of prepare you in a session, wouldn't they?

A Yes.

Q And you'd sit down and you'd talk about what you were going to be asked in the grand jury, right?

A Right.

Q You try to iron out any potential, what do I want to say, conflicts at that point? Try to get the testimony focused in the grand jury?

A They just wanted me to be honest.

Q Were you honest in that 19 July 05 meeting?

A No, I wasn't.

Q All right. You went ahead and went into the grand jury that day though, didn't you?

A Yes, I did.

Q You raised your hand, swore to tell the truth. Took an

oath, didn't you?

A Yes, I did.

Q Something along the line, I swear to tell the truth so help me God?

A That's correct.

Q You raised your right hand and took that oath?

A Yes.

Q Knew you were under oath?

A Yes.

Q Knew that you were a witness in a federal death penalty investigation, didn't you?

A That's correct.

Q Knew that what you said would be considered by the grand jury as truthful information and used by them to decide to bring charges or not bring charges at least in part?

A Yes.

Q And you lied to them, didn't you?

A Yes, I did.

Q Under oath?

A That's correct.

Q Numerous times?

A Yes. I left out some things.

Q And you walked out. And did the prosecutor at that point accuse you of lying to the grand jury?

A No, he didn't.

Q He was happy with your testimony?

A Everything was okay.

Q Okay. And then they did some more investigation, didn't they?

A Yes, they did.

Q And, again, why did you lie to that grand jury?

A Because I didn't want to admit to some of the things that I had said.

Q What? You got immunity. You're not going to be prosecuted?

A I was still ashamed of it.

Q So shame took precedence over the importance of telling the truth in a death penalty case, ma'am?

MR. GIBSON: Objection. May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: Your Honor, the case was not death certified at the time she appeared in front of the grand jury. She would have no concept of whether it was going to be a capital case or become a capital case. For Mr. Osgood to suggest she was involved in some conspiracy to strengthen the death penalty prosecution is not correct.

THE COURT: She testified she did know it was a death penalty case when she went before the grand jury.

MR. GIBSON: She answered his question which he mischaracterized as a death penalty case. Your Honor, it's clear from the record, the case was not capital certified until a year after the original indictment.

THE COURT: Well, just so you know the ground rules, I'm going to allow vigorous cross-examination of Ms. Rios. She has, I have said earlier, she is an important witness. Put her on the stand, she's told us very damaging testimony to the defendants and I'm going to give defense counsel a lot of leeway in cross-examining her. She has said that she knew it was a death penalty case when she went in there. If you want to rehabilitate her on direct, you can try to do that. But I'm going to give them full latitude to cross-examine.

MR. GIBSON: He should have full latitude but Mr. Osgood knows it was not death certified at that time and putting the question to her in the first place was inappropriate.

MR. OSGOOD: I didn't think about it. In fact, you people stood up in front of the magistrate and said -

THE COURT: Okay. Everybody, back away.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q My question to you was, your shame, you're telling this

jury here, was more important than providing truthful

testimony under oath in a federal murder case?

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A That's why I did it, because of the shame. So, yes, I guess.

Q You didn't care, did you?

A I was ashamed. That's all. It's not that I didn't care. I just didn't want people to know that I was that person.

Q And you're doing 5 years now, aren't you?

A That's correct.

Q And were you charged with perjury at any point in time?

A No, I was not.

Q You perjured yourself in the grand jury, didn't you?

A Yes, I did.

Q They didn't charge you with perjury, did they?

A No, they didn't.

Q They told you, originally, you could be charged with perjury if you lied to the grand jury, didn't they?

A Yes, they did.

Q But they didn't charge you, did they?

A No, they didn't.

Q They kept giving you chance after chance after chance to tell the truth, didn't they, ma'am?

A Yes, they did.

Q And they kept coming back again and again and again, and saying, all is forgiven. Tell us some more. Tell us some more.

A Basically.

Q And you kept telling them more and telling them more and telling them what they wanted to hear, didn't you?

A I told them the truth.

Q Oh, you did? What you say is the truth today?

A That's correct.

Q Now, did you have occasion then again on the 7th day of September of 2005 to meet with Agent Janke and Agent Gothard?

A Yes.

Q Where did that meeting take place?

A Federal building, here, I think. Or, no, we met once, I don't know if it's their place or.

Q Over at the FBI?

A Yes.

Q Over on the hill?

A Yes.

Q All right. And who was present?

A Me.

Q I don't know whether this meeting occurred there or not. Let me take a minute.

A There was one there. I don't know which one it was.

Q Was the prosecutor present at that meeting?

A I don't know. Not at the one on the hill, no.

Q Was your lawyer there?

A No.

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Q

Okay. Well, let's talk about this one on the 7th, two days over to the 9th. Or 7 September and 9 September, they interviewed you?

A

Okay.

Q You might want to take a look at this because I'm going to ask you something about it.
Recognize that statement?

A

Yeah.

Q

Have you reviewed that before coming to court here?

A

I don't know if I've seen this one specifically but I've

seen some of them.

THE COURT: Ms. Rios, we're having trouble hearing you. Try to speak into the microphone. It will help.

THE WITNESS: I'm not sure that I've seen this one

but I've seen several of them.

BY MR. OSGOOD:

Q

Take a look at this. Want to make sure we're talking about the same thing. Avoid some objections.

A

Okay.

Q

All right. Do you recognize it?

A

Yes.

Q

Would you agree with me that it also still contained some omissions?

A

I didn't read the whole thing so I don't know that it does or not.

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Q Well, were you still omitting things up until the 28th day of September, the last time you testified in front of the grand jury?

A The last time I was questioned, the basement scene, yes.

Q So, again, why did you leave out the basement scene?

A Because I didn't want to mention what I said about Stevie having better aim that there would be two dead niggers instead of one.

Q Why? Because you were embarrassed about the use of word nigger?

A Because I was embarrassed about the whole situation, the whole comment.

Q Why?

A Because I didn't mean it. The only reason I said it was to get under Stevie's skin, not that I think black people should be dead.

Q Oh. You knew that was the focus of the investigation, didn't you?

A That it was racial?

Q Yes.

A At that time, yes.

Q And so over the course of time you kept adding what you say were comments made by the defendants that were clearly racially inflammatory, didn't you?

A They were true, yes.

Q Pardon?

A That's what was said, yes.

Q That's what you say was said, as time goes on. You add a new one each time you meet with them?

A Correct.

Q You never told the police department back, way back when, any racial comments by any of them, did you?

A No.

Q Now, isn't it a fact that in your neighborhood and among the people that you run with that you commonly use the term nigga all the time?

A Yes.

Q And now, again, you're sober today and you're very well spoken here on the witness stand but we heard an excerpt of you on the tape there, didn't we?

A Yeah.

Q And it sounded like hip-hop street talk, didn't it?

A Yeah.

Q And you talked that way routinely when you were on the street, didn't you?

A Yeah.

Q How you doing, nigga? What's up, cuz? Hi, bro?

A Yeah.

Q You're a ho bitch, that kind of stuff?

A Yes.

Q That's common language?

A Yes.

Q That's common language by, unfortunately, my client, too, isn't it?

A Yes.

Q That's common language on the street, isn't it?

A Yes.

Q You listen to rap music, don't you?

A Yes, I do.

Q And people you run with listen to rap music?

A Yes.

Q It's part of the drug culture, isn't it?

A Yeah.

Q And there's some pretty foul gutter-type stuff on that music?

A On some, yes.

Q And kids your age emulate that and talk that way, don't they?

A Yes.

Q Even dress that way some times. I don't know if girls do but have you seen Mr. Eye wearing the traditional hip-hop baggie pants?

A Yes.

Q And the pockets are almost down around your knees?

A That's correct.

Q Where did that come from?

A The whole hip-hop era, I guess.

Q Okay. Predominantly an influence of the black American culture, wasn't it?

A I guess you could say that.

Q Would you agree with me that's true? I don't want to put words in your mouth.

A Yeah.

Q You see these people on M T.V., don't you?

A Yeah.

Q They're dressed that way in music videos?

A Yeah.

Q They're talking that way?

A Yeah.

Q That's common language on the street, isn't it?

A Correct.

Q So you knew this was a death penalty case or --strike that. You knew this was an investigation, it ultimately became a death penalty case, but it was an investigation of a hate crime, didn't you?

A Correct.

Q And so you're familiar with all those terms, aren't you?

A Yes.

Q So it's pretty easy to fill those terms in as you went along with these interviews, wasn't it?

A I'm sorry. What do you mean?

Q I mean, when they asked you if you ever heard them use the word nigger, you were pretty quick to say sure.

A Yeah, but nigga and nigger are two totally different words.

Q Who told you that?

A That's my belief.

Q You have not heard those terms used interchangeably on the rap CD?

A They don't use the word nigger on the rap CDs that I listen to.

Q Okay. Nigga?

A Nigga, yes.

Q Okay. You have not heard those terms used interchangeably?

A I have never heard them interchanged.

Q Okay. You drew some big significance to that, is what your testimony is?

A Yes.

Q All right. Now, the other reason you said you lied about the conversation in the basement was to protect Jonathan Chirino?

A Correct.

Q And Jonathan Chirino was Stevie Sandstrom's -A Girlfriend's brother.

Q Sister? That's what I'm trying to get at. He was dating Kristina Chirino?

A Correct.

Q And Jonathan was the sister?

A The brother.

Q The brother of the sister?

A Yes.

Q So you wanted to carve him out of this, too?

A Yes.

Q Now, talk a little bit about the letter they asked you about to Carolyn, is it Galyean?

A Galyean.

Q In that letter, the prosecutor asked you to identify a statement. I've got a typed version of it.

Do you recognize that from the letter?

A Yeah.

Q What did he write to her?

A She knows as much as you do that I'm a killer, my family is. You don't try -THE

COURT: Ms. Rios, speak into the microphone.

THE WITNESS: She knows as much as you do I'm a

killer, my whole family is. You don't try to fight a nigga that gets off on laying niggas down.

Q Okay. He said that in his letter?

A Yes.

Q This is not from Mr. Eye?

A No. That's from Steven.

Q Did he say he was trying to do something for you in this letter?

A I tried to cover her ass and take the case for her and that's how she repays me.

Q Referring to you?

A Correct.

Q What does he say to her there?

A I was pissed but then she told the FBI and police that I'm a killer and all kinds of other shit. Bitch must think I'm a pussy.

Q Okay. So he's upset with you because he thinks you're telling on him?

A That's correct.

Q And he wants you to know that he's a killer, doesn't he?

A Yeah.

Q Other than this case, are you aware of him being charged with killing anybody else?

A No.

MR. GIBSON: Objection.

THE COURT: Sustained.

MR. ROGERS: Your Honor, asked and answered before the objection.

THE COURT: The jury will disregard the question and

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the answer.

MR. ROGERS: May we approach?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. ROGERS: Certainly not a question I would have asked but I don't want the answer disregarded. How does that in any way mitigate the credibility, prejudice, the question having been asked.

THE COURT: I thought you were asking me to instruct them.

MR. ROGERS: No. No. I'm saying his objection is too late. Should not have been sustained. I want that answer in evidence. The answer is no.

MR. OSGOOD: This goes back to the problem --I'm certainly not trying to create a mistrial situation. I've got to defend my client. My contention is this other guy shot this person. And my other defense is this incident did not happen back up at the corner. It was impossible. It was a random shooting and a chance encounter at 9th and Brighton. And this dovetails into it. It's an admission by Mr. Sandstrom. That's another reason we needed a severance. It's an admission by Sandstrom as far as I'm concerned, the shooter in this case, the killer.

THE COURT: What do you want to do? Tell them to disregard the admonishment to disregard it?

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MR. ROGERS: Gets a little convoluted but -THE

COURT: As does many things with this case.

MR. ROGERS: Yes, Judge, we asked for a severance-

Having said all that, I think the jury has heard the answer. I don't think they --I would say, ladies and gentlemen of the jury, the question was answered before the objection was posed. The answer is evidence. You can consider it like any other evidence.

MR. GIBSON: Your Honor, the government's objection was merely to protect the record on behalf of Mr. Sandstrom. We didn't ask that question and, frankly, we're surprised that Mr. Osgood did. The answer was no. And I see no reason to have stricken as prejudice to anyone. I would caution Mr. Osgood, again, because if he doesn't know the answer to the question, then he's treading dangerous ground by asking.

THE COURT: All right.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Ladies and gentlemen, the question was, other than this case, are you aware of him being charged with killing anybody else? The answer was no. The objection came after the question and answer. The objection came too late so you are permitted to consider both the question and the answer.

BY MR. OSGOOD:

Q Now, this comment, on site, let's talk about it.

A Okay.

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Q When did you first mention that to anybody?

A I'm not sure.

Q Did you tell Mr. Gibson in direct that you were under oath

and that you did not say, quote, on site, close quote, because you, basically, were wanting to cover up the fact that you knew this was all going to happen ahead of time?

A That's correct.

Q Well, is it or --is it a fact or not a fact that you're telling this jury you planned a murder then ahead of time?

A I didn't plan a murder. It's not a fact. I did not plan a murder.

Q You didn't go along with the murder?

A I didn't -Q

Know it was going to happen?

A I didn't get out of the car but I didn't plan any murder.

MR. ROGERS: I'm sorry. I didn't hear the answer.

THE WITNESS: I never got out of the car which I

should have on several, several different occasions but I

didn't plan anybody's murder.

BY MR. OSGOOD:

Q

So it's your testimony you heard the planning of a murder

and just went along?

A

There were comments made indicating there could be one and I didn't get out of the car.

Q

That's when you say this on site remark occurred?

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A That's right.

Q You did not tell the grand jury about it though, did you?

A The first time, no.

Q So we won't call it a lie but it was an omission the way you characterize it?

A That's right.

Q Then you say you went to the Inner City Oil and at some point you were going down to a car lot to steal some stereo equipment?

A That's correct.

Q Which was it?

A We went to Inner City Oil then we were going to the car lot.

Q Did you go to the car lot?

A No. We never made it there.

Q What did you do?

A The shooting happened.

Q Well, did you think you were going to the car lot to steal stereo stuff?

A That was the original thought, yes.

Q Well, did you or did you not hear this comment, on site, then?

A Yes, I did.

Q In what context?

A Meaning the first black person he saw, there was going to

be an issue. I mean, that's what it means.

Q That's a mixed neighborhood, isn't it?

A That's correct.

Q There are blacks and whites and Hispanics all over the place, aren't there?

A Yes, there is.

Q And it's kind of a semi urban area. I don't mean urban. I mean commercial?

A Yeah.

Q Stores?

A Yeah.

Q Restaurants and car repair places, that kind of thing?

A Yes.

Q Would you agree with me that there are pedestrians out walking around all the time?

A That's right.

Q There were black people right there?

A Yes, there was.

Q So if Mr. Eye said on site, he obviously didn't mean it, did he?

A I guess not.

Q Because on site would mean on site, wouldn't it?

A That's correct.

Q Now, on site actually is a term that he used and you kids used about to describe spontaneous actions some times?

A I don't understand what you're saying.

Q Pardon?

A I don't understand what you're saying.

Q Well, I seen him. I haven't seen him in awhile and I see him, I've got a disagreement with him. It's on site. I'm going to take it up with him?

A That's correct.

Q Okay. So you told the FBI that this comment, you interpreted it to mean they were going to shoot somebody on site?

A That's correct.

Q Didn't happen, did it?

A No, it didn't.

Q Opportunity was there, wasn't it?

A At Inner City Oil there were several but, no.

Q You were in a stolen car?

A Correct.

Q Tags didn't come back to that car?

A Probably not.

Q It's 6:00 in the morning. Not even light yet, is it?

A Roughly, yeah.

Q It's dark?

A Kind of.

Q And so you could have very easily, if all this were true, stuck a gun out the window and shot somebody on site and

sped away, couldn't you?

A I guess so.

Q Didn't happen, did it?

A Not at that time.

Q Then supposedly when you go down to 8th Street and you have this incident in the alley?

A That's right.

Q Now, were you embarrassed that you were the one who said we need to go around the block and find him and kill him because we're going to catch a case?

A I was embarrassed that I said that was a case, yes.

Q You originally tried to say somebody else said it, didn't you?

A I said Gary said it.

Q Didn't say it, did he?

A No, he didn't.

Q And then you were so embarrassed about all of this that you continued to hang around with them after March the 9th, after the homicide for two weeks, didn't you?

A Yes, I did.

Q And when you were questioned about the last time you saw them, initially, you said something different, didn't you?

A That's correct.

Q What did you tell the authorities at that point?

A I told them that we split up and I went to my friend

Carolyn's.

Q That was one more lie in this convoluted story, wasn't it?

A Correct.

Q Is it a fair statement, ma'am, to say that you don't have any qualms whatsoever about telling untruthful information and making stuff up if it benefits you, personally, Regennia Rios, and helps you?

A In the past, yes.

Q In the past. When did you have this come to Jesus, ma'am?

THE COURT: Sustained.

BY MR. OSGOOD:

Q

When did you decide that you were going to be a good citizen and tell the truth?

A

When I knew that I wasn't going to get charged.

Q

So not getting charged was a major event in your life?

A

Yeah.

Q

I believe you had the immunity letter and went ahead and

still lied, didn't you?

A

I was ashamed. It was stupid.

Q

So you're no longer ashamed today?

A

What's the point?

Q

The point is, I guess the point is you're only going to do

five years, aren't you?

A

That's correct.

Q

And you get good time on that, don't you?

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A Yes, I do.

Q Are you in the drug treatment program?

A No, I'm not.

Q Did they recommend it?

A They did but I'm here.

Q They'll knock another year off for the drug treatment program if you get in?

A If I get it.

Q So you're going to do about twelve months of good time knocked off your five years, right?

A Roughly.

Q And another twelve months knocked off for your good time, I guess?

A I get ten months.

Q Ten months good time and 12 months knocked off for completing this drug program?

A If I get it, yes.

Q It's been recommended by the Court?

A Correct.

Q So we're down from 60, down to around 40, aren't we?

A Yes.

Q And change?

A That's right.

Q And then you walk out the door?

A Yes.

Q And all you got to do to preserve that deal is convince everybody that you're not perjuring yourself in here today, aren't you?

A All I have to do is be honest.

Q I see. Which you have not been over numerous occasions in the past?

A That's correct.

Q But you want this jury to believe now this all happened the way you say it did here today?

A I'm telling the truth.

Q Well, I guess I'm going to sit down now. But the last question I will ask you is how could Mr. McCay get from 9th and Spruce to 9th and Brighton in under two minutes at his age when that's -A

I don't know the answer to that question.

Q I don't either.

I believe that's all I have. I have to ask my colleague, if I could have just a minute, Your Honor. That's all.

THE COURT: How you folks doing? You want to

continue awhile longer?

Okay. Mr. Rogers? Till about 12:30.

CROSS-EXAMINATION

BY MR. ROGERS:

Q Ms. Rios, as I understand it from listening to your

conversation with Mr. Gibson first and Mr. Osgood now, more recently, you have told on direct examination this morning what you are now claiming is the truthful account of what happened on 9th Street on the early hours of?

A March 9th.

Q March 9, 2005, correct?

A Correct.

Q And before this time you have changed your story to suit your convenience, to save your embarrassment, to protect your interest as you saw them at the expense of other people. Is that a fair statement?

A Yes.

Q And the other people at whose expense you've been serving your own interest are my client Mr. Sandstrom and Gary Eye?

A Right.

Q Now, let's see what your present story is for now. Okay?

And you say that you are hanging out with Steve Sandstrom and Gary Eye for several weeks?

A Correct.

Q And you're with them mostly 24/7?

A That's right.

Q And you don't have a place that you're living at the time. You're just hanging out at friend's houses and Mr. Sandstrom's or Mr. Eye's or both of them?

A That's correct.

Q And you have been in an off-again, on-again relationship, romantic or sexual, or however you want to characterize it, with Vincent DeLeon for years?

A Correct.

Q And he is also hanging out with you and Mr. Eye and Mr. Sandstrom much of the time during these couple three weeks, however long it is?

A Some times, yes.

Q And you are still on-again, off-again with him?

A Me and Vincent were not, what's the term? We weren't messing with each other at that time, no.

Q Messing is a good term. And you weren't messing with Mr. Sandstrom then either?

A At that time, no.

Q And had not for over a year?

A No. I had prior to but not like, a few months before so I'm not sure how long ago it was but I had messed with him. But not during this time.

Q And you and Mr. Eye were having sexual relations but you were not an item?

A Correct.

Q And did you have another boyfriend at the time that you were -A

Not, no.

Q --really involved with? Okay.

Now with regard to March 9, 2005. Let's talk about March 8th first of all. At some point you and Mr. Eye and Mr. Sandstrom go to Platte City. Is that your testimony?

A Out north. I'm not sure where. Just north of the river.

Q Have you said Platte City in the past?

A I don't think so, no.

Q Okay. And that's where a Jeep is stolen?

A Correct.

Q And the Jeep is stolen by Mr. Eye?

A And Sandstrom, yes.

Q And Sandstrom. But Eye is the one who actually drives it out?

A That's correct.

Q And you are still in this -A Intrepid.

Q What color was the Intrepid?

A Burgundy.

Q Not a bright red?

A Not really. It was burgundy-ish.

Q And at that point you're still in the Intrepid and Mr. Sandstrom's driving the Intrepid?

A Correct.

Q And Mr. Eye is driving the recently stolen Jeep?

A Yes.

Q Where do you switch cars?

A Like, I think maybe a couple blocks up, I told Stevie to stop so I could switch out.

Q Okay. And he did that?

A Uh-huh.

Q He was not reluctant to?

A Not really, no.

Q And then going back across the river to the northeast area, is that a fair statement?

A Yes.

Q And you and Mr. Eye decide you're going to stop off at an apartment complex on Parvin Road and have sex?

A Correct.

Q And you did that?

A Correct.

Q And you didn't tell Mr. Sandstrom we'll hook up with you later, we've got some other business to take care of?

A No.

Q And he called to see where you were and you didn't answer the phone?

A Correct.

Q And that happened twice?

A Couple times, yeah.

Q And then you went back to the northeast area and you met

at Jonnie Renee's house?

A Correct.

Q And Jonnie Renee is your cousin?

A Yes, she is.

Q She's your cousin. Jonnie Renee Chrisp is her name.

A That's correct.

Q And she's been your cousin forever, right?

A That's right.

Q And she was your cousin for all those years that you were dating Vincent Deleon?

A Yes.

Q In fact, you and Vincent lived together when you were -A
12, 13, 14, 16.

Q In an intimate relationship?

A Yes.

Q And Jonnie Renee knew that?

A Yes.

Q And Vincent knew her?

A Yes.

Q So Vincent would know her name?

A Yes.

Q And you and she are apparently on the outs for something?

A At that time we were, yes.

Q And so you're still, and Mr. Sandstrom knows that you and Jonnie Renee were on the outs?

A Yes, he did.

Q And did Mr. Eye know that you and Jonnie Renee were on the outs?

A Yes.

Q Notwithstanding that, he said, meet me at Jonnie Renee's?

A Correct.

Q Did you go inside Jonnie Renee's?

A No, we did not.

Q Just met on the street?

A Yes.

Q And then you go to Mr. Sandstrom's house?

A Yes.

Q And his parents are there?

A Correct.

Q And you know his parents?

A Yes, I do.

Q By the way, you said that Mr. Sandstrom lived on Drury most of the time you knew him?

A That's correct.

Q That's where his grandmother Francis Tresenriter lives, is that correct?

A Yes.

Q With her husband who is, I guess, step-grandfather or something?

A Yes.

Q That's where Mr. Sandstrom spent a lot of time growing up, correct?

A That's right.

Q But that's not where his parents lived on Ewing?

A No.

Q That's a place you have been to more recently, is that correct?

A That's correct.

Q And you lived as a child in the northeast, growing up, you lived over near Drury, didn't you?

A That's right.

Q Or on Drury?

A My best friend was on Drury.

Q Who is that?

A Christine Taylor.

Q Christine Taylor?

A Yes.

Q And she lived not far from the Tresenriters?

A Four blocks.

Q Four blocks. Okay. Ewing is quite a ways away?

A That's right.

Q And they're all, I guess, part of the northeast neighborhood, aren't they?

A Yes.

Q But there's also different neighborhoods within them,

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aren't there?

A

They're, basically, all the northeast, that area.

Q

But northeast is comprised of different neighborhoods, isn't it?

A

There's different --Kansas City's comprised of different neighborhoods.

Q

Right. But there's a large part of Kansas City that's called the northeast, right?

A

That's right.

Q

And then within the northeast there's the Lykins Park neighborhood?

A

Right.

Q

And Lykins Park Neighborhood Association?

A

That's right.

Q

And then there is also the Sheffield neighborhood, isn't there?

A

Yes.

Q

And the house on Ewing is part of the Sheffield

neighborhood?

A

I guess so.

Q

Right by Sheffield Park, isn't it?

A

Yes. Across the street.

Q

Across the street from Sheffield Park.
what is called the Budd Park?

A

Yes.

And then there is

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Q And so, and that's a different neighborhood, that's also part of the northeast, correct?

A I guess you could say that, yes.

Q And probably the closest part of northeast to downtown Kansas City is what is called the Columbus Park neighborhood?

A Yes.

Q That's just -A

A block away.

Q Three or four blocks from here?

A Yes.

Q So where did Mr. Eye live during March of 2005?

A On White.

Q On White? Where on White?

A At his grandmother's, White and St. John.

Q Okay. Now, St. John is, even though it doesn't have a number, it's got a name, it's still an east-west street, isn't it?

A Yes.

Q If it had a number, it would be First Street, wouldn't it?

A Yes.

Q And St. John is kind of at the north end of the north edge of the northeast neighborhood, correct?

A Yes.

Q And the south edge is probably, what, Truman Road or 12th

Street?

A I'm not, I guess. I don't know. I'm not sure.

Q Depends on where you are?

A Depend on where you're at.

Q Then there is another major thoroughfare that goes east and west across the northeast neighborhood and that's called Independence Avenue?

A Yes.

Q And that's like 5th Street?

A Yes.

Q In fact, the letter that both the prosecutor and Mr. Osgood showed you from Steve Sandstrom to your friend Carolyn Galyean was signed not only with Mr. Sandstrom's name and his nickname, High-speed, but also with NES, which stands for Northeast Side, right?

A And the Roman numeral 5.

Q And that's the part they didn't ask. What is the Roman numeral 5?

A 5th Street.

Q And with regard to 5th Street, that would be the part of the neighborhood that Mr. Sandstrom sort of grew up in around his grandmother's house, right?

A That's right.

Q And that's also kind of the part where you grew up, right?

A Well, I stayed around Independence Avenue.

Q Which is 5th Street?

A That's right.

Q And 9th Street is a different street?

A That's right.

Q And there are neighborhoods in between the 5th Street part of the northeast and the 9th Street part of the northeast?

A Yeah.

Q Now, let's go back to the early morning of March 9th. And as I understand your current version of events, you say that as Mr. Sandstrom is beginning to turn the car to go south on Spruce from 8th Street to 9th Street, Gary Eye tells him, hit the alley?

A That's correct.

Q And it's at that time that you personally see somebody walking a block away down on 9th Street crossing Spruce?

A That's correct.

Q And you are familiar with those streets there, aren't you?

A Yes, I am.

Q Spent a lot of time running those streets?

A Yes, I did.

Q And so you knew there was an alley that went between 8th Street and 9th Street between Spruce and Kensington?

A Yes.

Q And, in fact, that alley comes out right across from a liquor store called Nelson's Island?

A Yes.

Q Your story now is that Mr. Sandstrom goes, driving fast, high-speed, right?

A We weren't at that time, no.

Q When Gary says, hit the alley, he doesn't drive fast to the alley?

A Huh-uh. We just go to the alley.

Q And don't stop anywhere?

A No.

Q And there's no exchange of gun in the alley?

A There's an exchange.

Q Even though while driving?

A Yes.

Q While driving down the alley?

A He reaches in his pouch.

Q Without stopping?

A That's right.

Q Is there conversation at that time according to you?

A Just he wanted the strap, Gary said, give me the strap. Stevie said, he didn't have the heart.

Q That conversation takes place?

A In the alley.

Q Driving. That's a narrow alley, isn't it?

A Yes.

Q And driving down, not stopping, right?

A Right.

Q And your testimony is that the strap, the gun was carried inside a back brace, right?

A Yes.

Q One of these big black elastic back braces that people use -A

It wasn't inside. The pistol grip was accessible without, it was just right there.

Q But it was also under a shirt?

A That's right.

Q So while driving down this narrow alley without stopping, Mr. Sandstrom lifts the shirt, takes out the gun, hands it to Mr. Eye saying, you don't have the heart?

A That's correct.

Q And Mr. Eye rolls down the window?

A His window is already down.

Q Has it been down -A

They were always down because Stevie didn't smoke.

Q Windows are always down because Stevie didn't smoke?

A No.

Q Doesn't matter it's 20 degrees out?

A No.

Q It was cold that night?

A It was.

Q Without ever stopping, a man comes across the alley,

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stepping off of the curb into the alley and Gary shoots him?

A

Yeah. I'm sorry. He almost stepped into the alley. He would have, had we not pulled up right there.

Q

And you didn't pull up. You were still going right. You didn't stop, is that right?

A

We stopped. Gary shot. We left.

Q

So you did stop?

A

Yes, at the end of the alley we did.

Q

End of the alley you stopped. Because the gun had already been passed while driving down the alley?

A

That's correct.

Q

You, of course, didn't look at that man because you're

hiding your face?

A

I seen him before I bent down. Yes.

Q

Did you get a good look at him?

A

I had a frontal view.
seen him.

Q

You wouldn't -

A

I wouldn't know him.
or anything, no.

You know, I didn't like --but I

I couldn't pick him out of a picture

Q

Okay. And you don't know what he was wearing because you weren't looking.

A

A coat. He had a coat on.

Q

Everybody had a coat on. It was cold?

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A Basically.

Q And you don't know what happens to him after the shots were fired?

A Not the first time.

Q Okay. You're going down the alley and car lights are still on?

A I'm sorry. The car lights?

Q Yeah.

A I would think so. It's barely day break.

Q You don't remember anybody turning off the headlights?

A No.

Q So your story is here's this car coming down the alley, not stopping and the guy steps -A

I know he was crossing the street. He was trying to walk down the street.

Q Down the street, across the alley, in front of a car that is coming down and not stopping?

A He didn't step in front of the car.

Q He didn't?

A Did not.

Q Then the car comes out and turns to the left?

A That's correct.

Q To go east on 9th Street?

A We went around the block, Kensington and Spruce.

Q First, you're going east on 9th Street?

A That's right.

Q Go east on 9th Street. That's when Gary said hit the block, is that right?

A Right.

Q And according to you, does Mr. Sandstrom hesitate at that point?

A No.

Q He turns around the block?

A Uh-huh.

Q And going then north on Kensington?

A Yes.

Q At some point there is a conversation about we have to go back and see what happened, correct?

A Well, it's not discussed. Gary says to go back or hit the block so we went around the block.

Q Okay. This is a later conversation?

A Yeah.

Q Okay.

A We had to find him.

Q So then hit the block which means go around the block?

A That's correct.

Q And to do that we're talking north on Kensington to 8th Street?

A Uh-huh.

Q West on 8th Street.

A To Spruce.

Q South on Spruce. So you go past the same alley you went down before?

A That's correct.

Q On both ends?

A Yes.

Q Because you go back east on 9th Street?

A That's correct.

Q Also going past Leon's, where the car was?

A That's right.

Q And at that point did you see anybody on the street?

A I'm sure. I don't remember specifically but it was morning commute. There had to have been people somewhere.

Q Did you see anybody?

A No.

Q And so it's not a matter of, oh, I see people but I don't see the person I shot. There's nobody there?

A I don't remember seeing anybody, no.

Q And is that when the conversation takes place?

A Yes.

Q Where, you, Regennia Rios, saying, we've got to go find him?

A We could catch a case.

Q We could catch a case?

A That's right.

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Q

And when you said that, in your mind what you were saying was, Gary, you shot at this guy. You have to finish him off or we're going to be in trouble. Right?

A Right.

Q Now, when you said, catch a case, you meant a case for

assault?

A Assault, yeah.

Q You didn't think it was any kind of federal civil rights

violation, did you?

A No.

THE COURT: Let's go ahead and take our lunch break at this time, Mr. Rogers.

Don't talk about the case. Don't make up your mind.

We'll see you back here at 1:30. We'll be in recess.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: We'll be in recess until 1:30.

(Witness temporarily excused.)

(Noon recess)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Is everyone ready? Let's see if the jury is ready to come in.

(The following proceedings were had IN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Rogers, you may inquire.

MR. ROGERS: Thank you, Your Honor.
REGENNIA RIOS, RESUMED
CONTINUED CROSS-EXAMINATION
BY MR. ROGERS:

Q Ms. Rios, before lunch we were talking about your current version of the events of the early morning of March 9, 2005, is that correct?

A That's correct.

Q And to sort of put things back in context, I want go back to the point where the --that you say maroon or burgundy Intrepid leaves the alley between Spruce and Kensington, turning on 9th Street right after you say Gary Eye has fired two shots out the window at a guy who's getting ready to cross the alley on the sidewalk?

A That's correct.

Q Okay. Now, you said earlier, I think, that Mr. Eye said something like hit the block which meant go around the block?

A Correct.

Q And he was talking to Mr. Sandstrom who is the --who is driving the car?

A That's right.

Q Now, at that point what does Mr. Sandstrom say?

A He, well, right after it happened, Stevie said Gary took it too far. He was tripping.

Q Stevie said to Gary, you took it too far? You're tripping?

A Correct.

Q Does he say, dude, you're crazy? You know, what I'm saying?

A Something along those lines, yeah.

Q Did he say, you're doing too much? You're taking it to a whole new level?

A That's correct.

Q And that Gary was acting stupid?

A Basically.

Q Okay. And that's not only what you said some time in the past, it's your current testimony, too, this is what Mr. Sandstrom said right after Gary, according to your story, proves him wrong about not having the heart to shoot somebody?

A That's correct.

Q And then is it your testimony that Mr. Sandstrom at Mr. Eye's direction does, in fact, drive around the block?

A That's correct.

Q And he drives, I believe we said right before lunch, north on Kensington, west on 8th, south on Spruce and back east on 9th Street?

A Yes.

Q And at that point there is nobody there on the street, is there?

A Not that I recall, no.

Q And at that point, according to your today's testimony, you're the one who says we've got to go find him, right?

A I agree, yes.

Q And when you said that, you meant that you thought that Gary had shot this person and now you had to find him and Gary had to shoot him and finish the job?

A Yes.

Q That's what you had in mind when you said that?

A Yes.

Q And Mr. Sandstrom did not agree, did he?

A He didn't --he didn't not do it.

Q But he told you, no, let's don't, right?

A He never said let's don't.

Q What did he say?

A He looked at me and when I told him that and that's what he did.

Q He looked at you as if, no?

A What am I suppose to do, basically, yeah.

Q So he's looking at you for direction?

A Yes.

Q He doesn't want to go find Mr. McCay or whoever this

person was that Gary shot at?

A That's correct.

Q By the way when you're driving down the street there past the alley, there's no body there. There's no blood there.

There's no anything there, is there?

A No, there's not.

Q And you don't hear sirens and police cars coming and stuff like that?

A No.

Q Only sign of life is the little cafe across the street, right?

A I guess.

Q But based upon what you said and, by the way, you said, we might catch a case, right?

A That's right.

Q And you also said he saw our faces?

A That's correct.

Q Looking at it now, you're in the back seat of the car?

A That's right.

Q No lights on inside the car?

A No.

Q No way anybody could have seen your face, right?

A That's right.

Q And really be hard to see anybody's face, wouldn't it?

A Well, as close as he was to the car, I'm sure he seen at

least Gary's face.

Q Now, that's not what you said at the time. You said, he saw our faces?

A That's right.

Q And your story is that the car was moving, never stopped?

A It stopped when he shot.

Q Stopped at the time the shot was fired?

A Yes.

Q When shots were fired?

A Yes.

Q You said two shots?

A At least.

Q And at least two shots?

A As far as I know about two. It was more than one, around two. I'm not positive how many it was.

Q This morning you said two?

A Two is what I think.

Q Okay. Could it have been as many as three or four or five?

A It wasn't. I don't think so, no.

Q Okay. So it's more than one?

A Uh-huh.

Q You don't know whether it's two or three?

A Two or three, possible.

Q Could it possibly have been four?

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A

No, it couldn't have been four.

Q

Okay. Now, according to your present testimony, after Mr. Sandstrom gives you this look like, what should I do, you tell him, go find him?

A I do.

Q And said what we just said, about he saw our faces, we

could catch a case?

A That's correct.

Q Now, when you said catch a case, you didn't mean a federal

civil rights case, did you?

A No, I did not.

Q You meant an assault case?

A Yes.

MR. GIBSON: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. GIBSON: There's no requirement that they know there is a federal rights violation. To suggest otherwise is inappropriate.

THE COURT: That's true.

MR. ROGERS: Cross-examination.

THE COURT: I'm not sure what the point is, Eric. I

mean there is no such requirement but what difference does it
make?

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MR. GIBSON: Well, the difference is Mr. Rogers in his question is suggesting there is such a requirement and there is not.

THE COURT: Well, I took it as a question without that intent. I mean-

MR. GIBSON: Then what else would be the point of the question, Judge, except to argue that in closing? And since there's no requirement then that would not be an appropriate question.

THE COURT: What did you mean when you asked the question?

MR. ROGERS: I was asking about her intent when she said that, what kind of case was she talking about?

THE COURT: Ask her what kind of case she was talking

about.

MR. ROGERS: I'll do that.

THE COURT: Objection sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. ROGERS:

Q What kind of case were you talking about?

A I don't really know, honestly.

Q Okay.

A I mean, I don't know.

Q And after that, Mr. Sandstrom at the direction of Mr. Eye,

as seconded by you, I guess, drove east on 9th Street?

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A That's correct.

Q And when he got to Van Brunt, you didn't see anybody, did you?

A No, I did not.

Q But there, Mr. Eye told him to turn left on Van Brunt?

A That's correct.

Q Did he say left or north? What did he say?

A He said, go left.

Q And then when he got to 8th Street?

A Take a right on 8th Street and right on Brighton.

Q Go step by step here. Got to 8th Street. What caused Mr. Sandstrom to turn right?

A Gary told him to.

Q And when he got to Brighton, which way did he turn?

A Right.

Q That way he would have been going east on 8th Street. Turns south on Brighton?

A That's right.

Q And at the time that --had you seen anybody on the street between Spruce and Van Brunt?

A There was people commuting. There was cars and stuff out.

Q I mean, pedestrians, walking?

A I don't remember specifically, no.

Q And had you at the time you go north on Van Brunt to 8th Street and east, again, on 8th Street to Brighton, did you

see any pedestrians?

A No.

Q And after turning south on Brighton, driving down towards 9th Street, did you see any pedestrians to start with?

A To start with, no.

Q Okay. At some point did somebody tell Mr. Sandstrom to pull over?

A Gary.

Q When was that?

A Couple of feet before the crime.

Q Before the corner of 9th and Brighton?

A Yes.

Q Did Mr. Sandstrom obey Gary at that time?

A Yes.

Q Okay. Now, the last time we talked about the gun was when Gary had it out the window shooting from the alley between Kensington and Spruce, is that right?

A That's correct.

Q Gary did not give the gun back to Stevie -A
Not to my knowledge, no.

Q --during that time? You didn't see the gun?

A No.

Q You don't know where it was?

A I just assumed Gary had it.

Q Okay. And in between you and Gary was the seat?

A That's right.

Q And Gary's back?

A That's right.

Q And so for all you know he has the gun pointed right at Stevie? For all you know?

A For all I know.

Q So when Mr. Gibson asked you earlier did he point the gun at Stevie and you said, no, you don't know that, do you?

A I don't remember that question but I mean, no, I don't know that.

Q Okay. So when you pulled over on Brighton, is that when you first see somebody?

A Yes.

Q And that's the person that you later learned was Mr. McCay?

A That's right.

Q You don't know whether or not that's the same person that was trying to cross the alley there on Spruce, do you?

A Honestly, I don't.

Q And your testimony today is that Mr. Eye got out of the car?

A Yes.

Q And went to the middle of the intersection, at least the middle of 9th Street?

A That's correct.

Q Now, you pull over on the right-hand side of Brighton, is that correct?

A That's correct.

Q That would be on the west side of Brighton, correct?

A Yes.

Q And when you first see the man that you later learned was Mr. McCay, you see him through the corner of a building there, correct?

A Yes.

Q It's a building that has kind of a cut out corner with a pillar that supports it?

A Yes.

Q And it's between the door and the pillar that you see the man walking on 9th Street?

A That's right.

Q This man is on the other side of 9th Street, south side of 9th Street?

A Yes.

Q Walking past a vacant lot with a bunch of big concrete slabs and stuff?

A Yes.

Q And did that person also get across Brighton before the actual altercation took place?

A No.

Q So Gary goes straight south across 9th Street, is that

accurate?

A That's accurate.

Q And Mr. McCay sees or hears him?

A Uh-huh. Yes.

Q And comes to meet him in the middle of the street?

A Yes, he does.

Q Mr. McCay does not act frightened, does he?

A Well, not from where I'm sitting it didn't look that way, no.

Q Okay. And by the way, is it right before this that you take Gary's hat?

A Yes.

Q And that hat is a white Kansas City Royals kind of hat?

A It's 5950. It's a brand.

Q And it's got --white hat, cap like a baseball cap?

A Yes.

Q With the KC and blue on the front?

A That's right.

Q Okay. And you took that hat from Gary Eye and put it on your own head and pulled your hoodie up to cover it?

A That's right.

Q And Gary Eye is also wearing a hoodie?

A Yes.

Q When we say a hoodie, we mean a hooded sweatshirt?

A Yes.

Q And these hooded sweatshirts have kind of pouch pockets in the front?

A Yes, they do.

Q Where you can put both your hands in and touch them?

A Yes.

Q Okay. And when Gary Eye got out of the car, he didn't have the gun visible in his hand, did he?

A No.

Q And you didn't see the gun visible in the hand?

A No, I did not.

Q As he went across the street?

A No.

Q But you did see him come up and make physical contact with Mr. McCay, correct?

A Yes.

Q And there was no shot fired before the contact was made, was there?

A No.

Q And according to your story today Mr. Eye got Mr. McCay in a headlock?

A Something similar to that, yes.

Q And held Mr. McCay by one arm. Which arm was it Eye was using?

A His left arm, I believe.

Q His left arm. And then put his right hand against McCay

as if to stick the gun in his torso, is that right?

A That's right.

Q And your story is then that you heard some shots?

A That's right.

Q And this morning you said you heard two shots?

A Couple.

Q Couple. But as a matter of fact you told the grand jury back in September of 2005 you heard five shots?

A I don't know specifically how many shots there were. I don't remember.

Q In 2005, September 28, when you went to the grand jury, was that event fresher in your mind than it is now, three years later?

A I'm sure. Yeah.

Q And do I correctly understand that you are saying that by the time you went to the grand jury the second time you were through lying and telling what you said all along is the truth?

A That's correct.

Q Okay. Calling your attention to page 35, beginning at line 5, "QUESTION: And you have said you heard five shots?

"ANSWER: Yes.

"QUESTION: Now, were you counting?

"ANSWER: No, I was not.

"QUESTION: Is that an estimate?

"ANSWER: That's a guess. I mean, I'm not positively sure. It was more than two but I'm not positively sure it was five.

"QUESTION: It was more than two?

"ANSWER: Yes."

Remember those questions and those answers?

A That's correct.

Q Okay. So when you say a couple today, actually it was more than two. You're certain of that?

A I don't know how many shots there were.

Q But they were all fired right together in rapid succession in the middle of the road?

A They were fired right there.

Q Fired in rapid succession?

A Yes.

Q It wasn't bang?

A No.

Q Bang bang?

A No.

Q And then you, at this time the shots were fired, said something to Mr. Sandstrom, correct?

A I told him to go pick Gary up.

Q You told him to go pick Gary up. Those are not your exact words, are they?

A To go get him.

Q What were your exact words?

A To go get him, I think.

Q You didn't say, what the fuck are you doing? Go get him?

A Yeah. I'm sorry. Yeah, I did.

Q In other words, Stevie is sitting there?

A Stunned.

Q Stunned. And you're in charge. Telling him what to do in a very emphatic way, right?

A I guess you could say that, yes.

Q And when you tell him that, he obeys?

A Yeah.

Q And he goes and pulls into the middle of the road and opens the door and Gary jumps in and off you go east on 9th Street?

A That's correct.

Q Now, you told Mr. Osgood, earlier, that you didn't plan any murder, is that correct?

A That's correct.

Q And when you told Mr. Sandstrom to go back and find McCay because you didn't want to catch a case?

A That's true.

Q Were you planning that you would find him and Gary would kill him?

A At that time I guess I was, yeah.

Q So were you, in fact, planning a murder at that point?

A I guess so.

Q Were you pre-meditating, thinking it over, weighing it and etc. or was it just a spur of the moment?

A I just reacted.

Q Okay. And Mr. Sandstrom didn't want to do it but?

A He did it.

Q Caved in and did it when you told him to?

A Yeah.

Q Let me go back now and talk about some other matters. You testified earlier today that you and Mr. Sandstrom and Mr. Eye started running around together about 24/7 some time around Valentine's Day, is that right?

A That's right.

Q Isn't it true that you didn't really start running around with them full-time until the end of February of 2005?

A I'm not exactly sure when it was.

Q Okay. Back when you testified before the grand jury on July 19, you were still lying about some things, right?

A That's correct.

Q But you weren't lying about background and you certainly weren't lying to protect Steven Sandstrom or Gary Eye, were you?

A No, I wasn't.

Q Okay. And you do you recall telling them, telling the

grand jury, page 15, beginning at line 13.

"QUESTION: Would you have occasion to see Gary Eye and Steven Sandstrom together?

"ANSWER: In the last year, well, about the end of February was when they started hanging out on a regular basis."

Okay?

A I don't know the exact date or anything.

Q But that's what you were talking about in the grand jury?

A Yeah.

Q That was not a lie?

A No. It was in February some time.

Q But you realize there's like two weeks difference between Valentine's Day and the end of February?

A I understand that.

Q Okay. And was your memory, once again, fresher back in July than it is today?

A I would think so, yes.

Q So is it fair to assume that the end of February is more probably accurate than Valentine's Day?

A Okay. Yeah.

Q Now, you testified on direct examination, I believe, well, no, I think it was Mr. Osgood, maybe, both, that nigger and nigga are two totally different words?

A They are, yes.

Q How long have you known Vincent Deleon?

A Since I was eleven, twelve years old.

Q And you were boyfriend and girlfriend for many of those years?

A Five or six, yes.

Q Lived together?

A Yes.

Q Talked on a regular basis with each other?

A Yes.

Q And you know the way Mr. Deleon uses language?

A That's right.

Q And you know the way that Mr. Eye and Mr. Sandstrom use language is similar to that of Mr. Deleon, correct?

A Yes.

Q And so if Mr. Deleon sees no difference between the word nigger and the word nigga, would you dispute that?

A Yes, I would.

Q You think he makes a big difference between those two?

A There is a difference and he uses it just like the rest of us.

Q And he uses it differently?

A He uses it the same way we do. I refer to my friend, to my homie, whatever, as nigga. But nigger is a derogatory term towards African-Americans. You don't just use it in casual everyday conversation.

Q You don't use it toward white people?

A No.

Q Or Hispanic people?

A No.

Q Or Asian people?

A No.

Q And Mr. Deleon doesn't either?

A No, he doesn't.

Q If he says something here in court and he says nigga, that is an intentional choice on his part and not a misspeaking or not an accent that you don't hear accurately?

A I'm sorry. I don't understand your question.

Q If you hear Vincent Deleon say nigga, you know for sure that's what he's saying and he's not saying nigger?

A That's correct.

Q Now, you and Mr. Sandstrom have known each other a long time?

A Very long time, yes.

Q And some times he gets under your skin, irritates you?

A Yes.

Q Some times you get under his skin and irritate him?

A Yes.

Q Some times you try to get under his skin and irritate him, as kind of a game?

A Yes.

Q Some times he tries to get under your skin and irritate you as kind of a game?

A Yes.

Q You saw the letter that Mr. Sandstrom sent to your friend, Carolyn Galyean?

A Yes, I did.

Q And you said that you took it as a threat?

A Yes, I did.

Q Now, there's nothing in the letter that tells Ms. Galyean to show you the letter or tell you about the letter, is there?

A Stevie knew I would get that letter.

Q Did you hear the question?

A No, there's not.

Q Okay. The question is there's nothing in the letter that tells Carolyn to show you the letter or give you the letter, is there?

A No, there's not.

Q Or tell you about the letter?

A No.

Q And so the letter is written to your friend, Carolyn?

A Yes, it is.

Q And it talks about a person named John-John?

A That's my cousin.

Q John-John is your cousin?

A Yes.

Q What's his real name?

A John Quinn.

Q And your cousin, John Quinn, John-John, is the father of Carolyn Galyean's child?

A That's correct.

Q And at the time of the letter, from the words in the letter itself, it seems that John-John was incarcerated?

A Yes, he was.

Q And the letter is to warn John-John about you being a rat, right?

A Right.

Q And that's the main purpose of the letter is so John-John, knows not to trust you when he gets out, right?

MR. GIBSON: Your Honor, may we see you?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: The main purpose of the letter is for the jury to determine.

THE COURT: It is.

MR. GIBSON: I object to that question.

THE COURT: I doubt if she knows the purpose of the letter. Sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)
BY MR. ROGERS:

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Q Would you agree with me, Ms. Rios, that a great deal of that letter is directed to Carolyn to warn John-John about you?

A Some of it, yes.

Q And there is a bunch of bad stuff about you that he says?

A Yes.

Q Calls you names?

A Uh-huh.

Q And he's called you those names to your face on the streets, hadn't he?

A Not really, no.

Q He has never called you a ho or bitch?

A Maybe one time or two but he didn't talk to me like that on the street.

Q And has he said, I'm going to kick your ass? I'm going to do something like that?

A When we were dating, the last time when we broke up he was a little upset about it and he made some comments.

Q But he never did anything, did he?

A No.

Q And, in fact, that's kind of Mr. Sandstrom's M-O. He's got kind of a big mouth, doesn't he?

A He runs his mouth.

Q Now, you know a guy named Afro?

A No.

Q African-American guy called Afro, nickname?

A Not right off the top of my head I don't.

Q Do you know an African-American guy in the northeast area who has a swastika tattooed on his chest?

A No.

Q You don't know that guy?

A I mean, I don't know. I don't think so.

Q Let me ask you this. You've talked about using methamphetamine. Do you some times go to a house to buy it?

A Yeah.

Q And some times if it's people that you don't know well, would you have to give like a code word to let them know you're okay?

A I've never had to do that myself, personally.

Q So you wouldn't know what kind of code word Mr. Afro would have?

A No, I wouldn't.

Q Do you know Ronald Cage or Reginald Cage?

A No.

Q Neither?

A No.

Q Brothers who are also African-Americans?

A I don't know the name, no.

Q Let me ask you this. You heard the phone call from Gary

Eye that involved you and involved Mr. Sandstrom and involved others, Stephanie Sandstrom?

A Yes.

Q During that phone call, who was in the house when that call was made?

A I don't really remember. I know that it was me and Stephanie and I think little Jonathan and Kristina. But I'm not sure. I don't remember specifically.

Q And Mr. Sandstrom was there because he was on the phone?

A Yeah.

Q And do you know whether one of these Cage brothers was there, too?

A Not to my--no.

Q Now, you went with Mr. Eye and Mr. Sandstrom and Vince Deleon to steal this white Jeep, is that correct?

A That's correct.

Q And do you know where you went?

A Out to Independence.

Q Okay. And you're sure about that?

A Yeah.

Q Couldn't have been Raytown?

A We got off on Blue Ridge because I remember getting back on Blue Ridge.

Q Got off of what?

A I'm not sure. It's Blue Ridge Cut-off. I'm not real

sure. The one where Denny's is at. I-70.

Q Taking I-70, get off at Blue Ridge?

A That's right.

Q All right. And that's when Vincent and Steve get out to steal the car and Gary has the gun, correct?

A That's correct.

Q And at that time Steve got back in the car, right?

A Yes.

Q And you did not see Gary give him back the gun, did you?

A No.

Q As a matter of fact you never saw Gary give him back the gun between then and the time of the shooting?

A I never saw him give it back to him. But I did see Stevie grab it when we left the house. So it had to have happened at some point.

Q As he left?

A The house on Ewing.

Q The Sandstrom house on Ewing?

A That's correct.

Q And the gun that you saw was the chrome gun with the white or wood handle?

A I thought it had a wood handle.

Q You thought it was chrome?

A Yeah.

Q And you know what chrome looks like?

A Silver, gray. Yeah.

Q Silver, shiny?

A Yeah.

Q Like on a car, chrome?

A Yeah.

Q And you will agree that even though -You'll agree that even though this may be similar in terms of size and caliber, this is not a chrome gun with white or wooden handles, correct?

A No.

Q Okay. So you're not saying this is the gun that they had that night, are you?

A I'm not saying it is or it ain't because I'm not positively sure about it.

Q But you're sure it's not a chrome gun?

A I'm positive about that.

Q With white handles?

A Right.

Q And that's what you said you saw?

A Right.

Q And you had no reason to lie about that?

A That's correct.

Q Let's talk about now the 23rd Street Bridge, 23rd and Manchester?

A Yes.

Q Your testimony today, I believe, is that Steve Sandstrom drove the -A Intrepid.

Q Intrepid under the bridge. You and Gary stayed by the SUV. And Steve came back and got in the passenger seat of the SUV, the Jeep?

A That's correct.

Q And then you all left?

A Yes.

Q So Gary never went down to where the car was and came back?

A No, he didn't.

Q And neither did you?

A No, I did not.

Q And so the only, only one person who was there from your group actually went to where the car was and came back, that's your testimony?

A That was Steven. Correct.

Q Did you see a train stopped there?

A There was a train parked on the tracks, yes.

Q You didn't see whether there was anybody in the train or not?

A No, I did not.

Q And if the man in the train said he saw one guy go to the Intrepid and come back and then saw another guy go to the

Intrepid and come back before the Intrepid left or before
the Jeep left, he would be mistaken?

MR. GIBSON: Objection.

THE COURT: Sustained. Improper to ask her to
comment on the testimony of another witness.
BY MR. ROGERS:

Q According to you, that didn't happen?

A That's correct.

Q Now, let's talk a little bit about the evolution of your
story. Started out you were arrested by the Kansas City,
Missouri Police Department on April first, 2005, correct?

A Yes.

Q And they took you to police headquarters?

A Yes.

Q And they put you, after they let you sit there for awhile
and stew, they put you in an interview room?

A Yes.

Q And two officers were there talking to you?

A There was two officers and Agent Gothard.

Q Agent Gothard was there the first time?

A Uh-huh. Yes.

Q Okay. And they told you that you had been arrested for
investigation of a homicide, didn't they?

A That's correct.

Q And you, of course, did not want to be charged with

homicide?

A Right.

Q You didn't want to be charged with anything?

A Correct.

Q And so your motive at that time was to take care of yourself?

A Yes.

Q And that's when you told them, quote, I am not going to take a case for those niggas?

A Correct.

Q And you meant that you were going to blame things on Mr. Eye and Mr. Sandstrom rather than on yourself?

A Yeah, I guess.

Q And Eye and Sandstrom were the niggas to whom you refer?

A Yes.

Q And, of course, you would never call them niggers because that would be derogatory?

A That's right.

Q And then you gave this four-page, transcript is four pages long. You gave a videotaped statement, right?

A Yes.

Q And that's where Detective Williams first asked you about the gun?

A That's right.

Q And that's where you described it as a chrome revolver

with a wooden handle and said that Mr. Sandstrom called it the duece duece?

A Correct.

Q Now, you have grown up with guns all your life you told us earlier?

A Yes.

Q So you know a .22 when you see one, don't you?

A Yeah.

Q So it doesn't have to be Steve Sandstrom said it was a duece duece, does it?

A No.

Q And not only were you interested in preserving your own, keeping yourself out of the case, how's that? Is that a fair way to put it?

A Yes.

Q You also wanted to keep the police away from your cousin, Jonnie Renee?

A Yes.

Q Because you were afraid if they got wind of your cousin, Jonnie Renee, and started asking her questions, she would tell them about the Inner City Oil Company and being picked up there and being told you're going to see something you don't want to see?

A Correct.

Q And you thought that made you look bad?

A Correct.

Q So you go on and make sure they didn't know Jonnie Renee existed, right?

A Right.

Q That was one of your big motives for lying to them during that videotaped statement?

A Yes.

Q And so you told them on page 1, the large paragraph to the end, you say March 9th I was picked up in the morning by Steven Sandstrom and Gary Eye who just showed up at my friend, Carolyn Galyean, which is where I was at. We was on our way to go pick up Vincent Deleon at Christina Stanley's on 16th. And conversations about the incident on 9th Street and Gary said he shot the nigger on 9th Street. And Steven Sandstrom informed me he burned the car under the bridge, the Intrepid underneath the bridge down on Manchester. We went and picked up Vincent at Christina's house and from there all four of us went to my cousin Jonnie Renee's house, smoked a bowl and separated?

A Right.

Q You did mention Jonnie Renee?

A Yeah.

Q First big, long story out of your mouth?

A Yep.

Q So you couldn't have been lying to cover for her, to keep

the police from asking her about it, could you?

A Well, I was stupid. I mean, I can't justify. I don't know why I did any of the things I done. But the whole thing with Jonnie Renee was so she couldn't say I knew prior to. That was the whole thing.

Q But the point is, you're not stupid now, are you?

A No.

Q I don't think so either. But the point is today you lied about why you lied about Jonnie Renee?

A No, I did not.

Q You lied. You said today you lied to keep her name out of it and you gave them the name?

A I wasn't paying attention then. I didn't want her involved this. That was basically one of the reasons why. I did not want her to go through all this. She didn't have anything to do with it.

Q But you mentioned her in the same run together paragraph that you mention Mr. Eye, Mr. Sandstrom?

A I understand.

Q Vincent Deleon, Christina Stanley. Correct?

A I understand. And I guess I did, yeah, but -Q

In fact, on page 3 they asked you and earlier you said you went to your cousin Jonnie Renee's. And you say Chrisp is their last name?

A Yes.

Q So when you got out of the police station, they let you go by the way after you gave the videotaped statement?

A Yes, they did.

Q They told you if you gave them one they would let you go and they did?

A That's correct.

Q And then you went and you called Carolyn Galyean. Hey, guess what? I told the cops I was at your house. Cover for me.

A Basically.

Q Did you call Jonnie Renee and say, oh, by the way, I gave the cops your name and whatever you do, be sure and don't tell them about Inner City Oil?

A Honestly, I didn't remember speaking about Jonnie Renee until just now when you read that statement.

Q So when you were preparing for your testimony with these prosecutors and agents and you told them, oh, the reason I lied was to cover for Jonnie Renee, they didn't bring to your attention the fact you had mentioned Jonnie Renee?

A No, they didn't. I forgot all about it.

Q And then you talked to the agents. Was the next time you talked to them on the 19th after you got your immunity letter, May 19th? I'm sorry. That would be before?

A I don't remember the exact dates but it sounds right.

Q And when you talked to them on May 19th, you were still

trying to cover up for Jonnie Renee, right?

A I was trying to cover myself and keep her out of it.

Q That's what I mean.

A Yes.

Q Keep her out of it. Cover yourself by keeping her out of it?

A Yes.

Q You were also at that time trying to--Sorry. I've lost my place. You were trying to cover yourself by keeping her out because you figured if they talked to her, they would find out, at least your current story is, if they talked to her they would find out about the Inner City Oil Company which would make it look like you had been planning things?

A Correct. Not planning but aware, yes.

Q Yet during that conversation is when you told the agents that you went to Jonnie Renee's house on the morning of March 9th and watched the T.V. news there?

A I guess that's, I don't know when I said what.

Q Okay. Page 6, bottom paragraph. Let me ask you if you remember telling this. "Upon arriving at Renee's house, all four went to Renee's basement. Rios turned on the television and the Fox 4 news helicopter was broadcasting the burning red Intrepid. Present for the news broadcast were Sandstrom, Eye, Rios, Deleon and Jonnie Renee"?

A Correct.

Q So you called their attention to Jonnie Renee the second time at least?

A I guess so, yes.

Q And then you had your immunity order, correct?

A Correct.

Q And that immunity order told you that anything that you said in preparation for or during the grand jury proceedings, could not, never ever, ever be used against you, right?

A Right.

Q And it's your understanding that it went further than that. You believe and still believe that you will never be prosecuted in federal court for the murder of William McCay or the arson of the Intrepid, right?

A In federal court, no. Yes, that's right.

Q And I said in federal court and you emphasized that. You told Mr. Osgood that you learned yesterday that that does not necessarily preclude prosecution in state court for that same murder?

A That's correct.

Q But you do understand from what you have been told by your attorney and by these prosecutors that the Jackson County Prosecutor's Office has agreed not to prosecute you for the murder of William McCay?

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A That's not in the agreement.

Q Your lawyer didn't tell you?

A She told me it was a possibility it could still happen.

Q But did she tell you that they said they're not going to

do it?

A No.

Q She didn't tell you Michael Hunt was in this court this

very morning?

A She told me he was here.

Q And said they weren't going to prosecute you?

MR. GIBSON: Your Honor, may we approach?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GIBSON: That question assumes a fact not in evidence. Mischaracterization of what happened this morning. Mr. Hunt said he was bound by the immunity order as drafted in federal court. That's what he said. And that he understood the immunity order to be binding on them in terms of what she could use or what could be used against her.

THE COURT: What was said -MR.

GIBSON: She was -THE

COURT: What was said this morning really isn't

admissible under any circumstances. You can ask her what her understanding is.

MR. ROGERS: That's what I'm trying to do.

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MR. GIBSON: Not by suggesting -MR.

ROGERS: I asked her, did her lawyer tell her?

THE COURT: Even so, I mean you can ask her what her

understanding is and let it go at that.

MR. ROGERS: I'll rephrase it.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. ROGERS:

Q Let me ask this. Is it your understanding that as a result of the immunity agreement you reached with the federal government, that not only will you not be prosecuted in federal court, you won't be prosecuted in state court either? Is that your understanding?

A My understanding of the situation is it's not likely but it still could happen.

Q It's legally possible?

A Yes, it is.

Q But you don't really expect it?

A No, I don't.

Q And after receiving that immunity agreement you went into the grand jury, correct?

A Correct.

Q Knowing --at that time you weren't worried about Jackson County?

A No, I was not.

Q You didn't understand -

A I never knew it was a possibility.

Q It was a possibility?

A Correct.

Q But notwithstanding that, having total faith in your immunity agreement, didn't you?

A Yes.

Q You nonetheless went in, raised your hand and swore to tell the truth, the whole truth and nothing but the truth?

A Correct.

Q Didn't you?

A Yes, I did.

Q And then you lied?

A Yes, I did.

Q And you lied and you lied and you lied?

A Yes.

Q And then you went back and met with the agents another time?

A Correct.

Q And what you had said at the grand jury that was different from your proffer session in May had to do with the conversation in the basement of the Chirino house?

A Correct.

Q And who all was present at the Chirino house when that conversation took place?

A Me, Gary, Steven, Kristina Chirino. And Jonathan was in

and out.

Q Jonathan is?

A Little -Q

Kristina's little brother?

A Correct.

Q And let's talk a little bit about the basement. The basement has two beds there, right?

A Right.

Q There's like a stud wall in between the two beds?

A I don't think so.

Q It's not a wall that goes all the way into two rooms?

A Correct. They're right, right across. Just opposite sides of the room.

Q And were you on one of the beds?

A Yes.

Q Who was on the bed with you?

A Gary and Kristina.

Q And were you sitting up? Laying down?

A I don't remember.

Q And who was on the other bed?

A Steven was across the room.

Q He wasn't on the same bed as Kristina?

A No.

Q He's across the room?

A Yes.

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Q And Jonathan was in and out?

A Right.

Q And do you know David Eagle?

A I'm sorry?

Q Do you know David Eagle?

A No, I don't.

Q Do you know Christina Stanley?

A Yes, I do.

Q She wasn't there?

A No.

Q And there wasn't somebody there you didn't know?

A No.

Q And Nessa Deleon wasn't there?

A No, she was not.

Q Now, is Nessa the same person as Adriana?

A Yes.

Q Okay. But neither Nessa nor Adrianna were there, because they're the same person?

A Right.

Q There was nobody else there during any of that conversation except for people you have mentioned. You, Mr. Sandstrom, Mr. Eye, Kristina Chirino and Jonathan Chirino part of the time?

A Correct.

Q And so that's the part that you left out during your July

grand jury testimony?

A Yes.

Q And you did that, you say, because you wanted to cover up for poor little Jonathan who was only 14?

A And also to not admit the statement that I said.

Q To not admit the statements that you said, even though you knew that those statements could not come back to hurt you, criminally?

A Correct.

Q You just didn't want to look at it?

A Yes.

Q So you chose to commit perjury?

A Yes.

Q So then you met, again, with the agents and wanted even to take back what you had already said about that conversation, correct?

A Correct.

Q And so you lied to them about stuff you had already testified to the grand jury about?

A That's right.

Q And that's the only lie you've been charged with, isn't it?

A Correct.

Q You haven't been charged with perjury?

A No.

Q Any of the perjury?

A No.

Q You haven't been charged with any of the other lies you said?

A That's correct.

Q And then you appeared and testified again before the grand jury?

A Yes.

Q And swore to tell the truth?

A Yes.

Q And then you came in here today?

A Yes.

Q When you first talked to the Kansas City Police Department you told them that you didn't think it was a racial deal, right?

A That's right.

Q And everything that you've changed has been guided to make it look like more of a racial deal each step along the way?

A It hasn't been guided, no. The truth has come out, yes.

Q Well, let's talk about the truth has come out. Because you told the Kansas City, Missouri Police Department you were telling the truth, didn't you?

A Yes, I did.

Q Then you told the agents you were telling the truth back

in May?

A Yes.

Q And then you told the first grand jury you were telling the truth?

A Yes.

Q And yet each time there's been a lie?

A Correct.

Q Many lies, actually, right?

A Right.

Q And so each time you get caught lying, you're confronted with that, aren't you?

A Right.

Q And each time the version that you give does not comport with the theory that it was a racially motivated killing, you get confronted with that, don't you?

A I'm sorry. Can --I don't understand what you're asking me.

Q Each time the version you give does not support the notion that this was a racially motivated killing, you get called a liar, right?

A I guess.

Q And then you change it to make it more like that?

A I told the truth.

Q Then you change it to make it more like that?

A Okay.

Q And then you get called a liar about something else, right?

A Right.

Q And then you change that to make it more like that?

A Right.

Q And, finally, in September you got the story that they are not asking you to change. Is that true?

A They never asked me to change anything. They just told me be honest. Tell the truth. Yes.

Q They confront you with something. They say this is a lie.

We know it's a lie. And change it. Then they say, okay.

Then they confront you with something else, right?

A Right.

Q Over and over and over again?

A Right.

Q And, finally, in September of 2005 they quit doing that, right?

A Right.

Q Because you settled on the version that is more or less what you told us here today?

A Yes.

MR. ROGERS: No further questions.

THE COURT: Redirect examination?

REDIRECT EXAMINATION

BY MR. GIBSON:

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Q Good afternoon, Ms. Rios.

A Good afternoon.

Q Now, let's start with the transcript of the videotaped

statement which, both, Mr. Osgood and Mr. Rogers just

asked you about. Okay?

A Okay.

Q That is marked as Government's Exhibit 59. Did either of

these gentlemen show you the statement, while they were

questioning you about it just then today?

A Mr. Osgood showed me something but -Q

Did he let you read it?

A I looked at it, yeah.

MR. ROGERS: Could we approach, Your Honor?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. ROGERS: I don't know if that's an objection or not. That's my introductory remarks. During Mr. Osgood's examination, Mr. Osgood did not refer to the page and the line of various statements and Mr. Gibson objected. And I think the Court overruled the objection. But to avoid that kind of objection, I tried to do it like that, point out the line. The witness did not deny making any of the statements. The witness will not deny making the statement. I think it is unfair to infer I was doing something improper when I was doing what he

objected to Mr. Osgood not doing.

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MR. OSGOOD: For the record I took the police

statement. She looked at it, read it. Took up the transcript he's referring to right now. She read it and looked at it and said she remembered it. And I took up the FBI reports each time. It's inaccurate to say she did not read that at least as much of it as she wanted to, when she was comfortable and said she understood. She's had that videotaped transcript in front of her. Maybe -

MR. GIBSON: Your Honor, I'm going to show it to her right now and go through it with her line by line as I can do. They have attacked her credibility. They suggested she manufactured statements to please the Court, not borne out by the statement. I'm going to go through the prior inconsistent statements.

THE COURT: If there is an objection in all of that, it's overruled.

MR. ROGERS: My objection is to his characterizing I didn't do it like that. I'm not--to do it like --I think that's casting dispersions on my practice and I resent it.

THE COURT: Guys, just go away.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. GIBSON: May I approach with Government's Exhibit 59?

THE COURT: You may.

BY MR. GIBSON:

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Q Do you recognize Government's Exhibit 59?

A Yes.

Q Is that the transcript from your videotaped statement?

A Yes.

Q And do you recall the portion that Mr. Rogers went over with you where he read very quickly to you what he described as the larger paragraph at the bottom of page 1? Do you recall that?

A Yes.

Q Now, having the statement in front of you, do you recall being asked by Detective Williams on April first of 2005, bottom of the page, page 1, "Well, in your own words, can you describe what happened on March 9th in regard to this case?" Do you recall that question?

A Yes.

Q Do you recall your answer being, "March 9th, I was picked up in the morning by Steven Sandstrom and Gary Eye who just showed up at my friend, Carolyn Galyean's, which is where I was at. We was on our way to go pick up Vincent Deleon at Christina Stanley's on 16th and conversations about the incident on 9th Street. Um, Gary said that he had shot the nigger on 9th Street. And Stevie Sandstrom informed me that he burned the car underneath the bridge, the Intrepid, underneath the bridge down on Manchester. We went and picked up Vincent at Christina's. Vincent

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Deleon at Christina Stanley and all -

THE COURT: Mr. Gibson, stop just a moment, please.

Step up.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: This is Government's Exhibit 59?

MR. GIBSON: I believe so, yes.

THE COURT: And you're reading from Government's Exhibit 59?

MR. GIBSON: Yes, as Mr. Rogers did.

MR. OSGOOD: It's not in evidence to start with.
That was all a lie.

MR. GIBSON: No, it wasn't all a lie.

THE COURT: Just a minute. One at a time.
John?

MR. OSGOOD: It was what, what he's just read is what

she has admitted didn't happen. She never made that statement.
They never made that statement to her when they picked her up
because she was with them. So they never picked her up. None
of this happened. Did not happen.

MR. ROGERS: It is what I read.

MR. OSGOOD: Judge, it simply did not happen.

THE COURT: You understand why I'm a little uneasy

reading from an exhibit not admitted?

MR. GIBSON: Move to admit it now. It's a prior

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consistent statement, Judge. In fact, in addition to that, they crossed her specifically on this case. This is redirect. I'm allowed to rehabilitate the witness.

THE COURT: Is this what they read to her?

MR. GIBSON: Yes.

MR. OSGOOD: I didn't.

MR. GIBSON: Mr. Sandstrom did, Mr. Rogers.

MR. OSGOOD: If she lied about where she was at and

whether or not she was with them.

MR. GIBSON: What Mr. Osgood did, said you gave a statement to the detectives and it was basically identical, wasn't it, and that was it. And that's a mischaracterization of what the statement is. And the jury is allowed to have the full picture of what the statement was.

MR. OSGOOD: It was a general denial. She said, I was not there.

THE COURT: John, that's your characterization.

All right. I'm going to allow you to read from the statement even though it's not admitted. Where are you going to stop?

MR. GIBSON: There are several portions on the second page as well but at the moment I'm just reading exactly what Mr. Rogers raised through his, during his cross-examination of

Ms. Rios.

THE COURT: Okay. You can cover the areas covered by

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Mr. Osgood and Mr. Rogers in cross-examination. And if it's necessary to put that in context, you can do a few questions before or after that. But don't read the full statement and make certain that we're reading only prior consistent statements. All right?

MR. OSGOOD: My trouble with this is whether this was actually ultimately said at some other time, some other location, such as the scene of the shooting, is not the issue. The issue is did she say this over at the house when they picked her up. And she clearly says that was all lies.

THE COURT: But she said it on this occasion and this statement. I mean, you can't pick out certain inconsistent statements and use that to characterize the entire statement. If there are consistent statements in there, I'm going to let the government introduce those.

MR. GIBSON: In addition to that, this statement was taken May 1 of 2005. They have suggested for most of the day that there was no racial element to this case until the federal government got involved and until this story, quote, evolved. She describes exactly the language that was used in this very first statement from the very first opportunity she had to speak to homicide detectives before the federal government adopted this case.

THE COURT: Go ahead. You know the parameters.

MR. GIBSON: Yes, sir.

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(THE PROCEEDINGS RETURNED TO OPEN COURT.)
BY MR. GIBSON:

Q "And all, man, from there all four of us went to my cousin, Jonnie Renee's house, smoked a bowl and separated. I mean, really, I mean, is there anything else I have to say?"

Was that your answer to that question?

A Yes.

Q Now, in your answer to that question, did you indicate that Gary said he had shot the nigger on 9th?

A Yes, I did.

Q And Gary, in fact, used the word nigger, is that not correct?

A Correct.

Q And in that particular conversation that excerpt that Mr. Rogers wanted to spend so much time on, is there any reference in that paragraph to Jonnie Renee being in your vehicle for the conversation from Inner City Oil to the point where you dropped off Jonnie Renee?

A No, there is not.

Q And was it that conversation that you were concerned about?

A Yes, it was.

Q Did you, in fact, spend the day with Carolyn?

A That day? No.

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Q

Was that a lie?

A

Yes, it was.

Q

Were you present when Steven Sandstrom set fire to the Intrepid?

A

Yes, I was.

Q

When you said Steven Sandstrom set fire to the Intrepid,

was that true?

A Yes.

MR. ROGERS: Object to that. It's not what she said.

THE COURT: Overruled.

MR. ROGERS: May we approach?

THE COURT: Overruled.

BY MR. GIBSON:

Q

When you said Gary said that he had shot the nigger on 9th Street, you had, in fact, heard him say that, isn't that correct?

A

Correct.

Q

Page 2. Halfway down, Williams, starting with, and from, do you see that?

A

Yeah.

Q

"Detective Williams: And from Carolyn's house you drove

to Christina's?

"Ms. Rios: 16th Street, Christina Stanley."

Do you see that?

A

Yes.

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Q Do you recall that question and that answer?

A Yes.

Q And the next question.

"Williams: And during that drive is when you had?

"Rios: The conversation about how he shot the nigger and Stevie burnt the car and the fact that the Jeep was at Stevie's house already. But when it happened they went and got the Jeep and drove it under the bridge, caught the Intrepid on fire and came out because they went through the hood. That's when they came out to Gladstone where I was at.

Were you, in fact, in Gladstone?

A No, I was not.

Q Did the Intrepid, in fact, go under the bridge?

A Yes, it did.

Q Was the Intrepid set on fire?

A Yes, it was.

Q When, before you went to 23rd and Manchester where the Intrepid was set on fire, did you, in fact, stop at Stevie's house for the Jeep?

A Yes, we did.

Q And you told that to the detectives, isn't that correct?

A Yes.

Q Now, this is on April first of 2005, correct?

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A
Right.

Q
You're speaking to two detectives from the Kansas City Police Department, is that correct?

A
Yes.

Q
Bottom of the page, "Detective Williams: Okay, period."
Do you see that?

A
Yes.

Q Do you recall this question. "Okay. And during your trip from Carolyn's house to Christina's house, while you're in the vehicle, at any time did you see a weapon?"
Do you recall being asked that question?

A
Yes.

Q Do you recall your answer below that? "Yes. Steven Sandstrom had a .22 revolver attached to his waist with an Ace back bandage like a lifting weight type bandage. When he pulled it out to adjust it to make his self

comfortable, I seen it."
Is that your answer?

A
Yes.

Q
That day, March 9th of 2005 did you see a .22 caliber

revolver in Stevie Sandstrom's possession?

A Yes, I did.

Q Page 3. Third line for Detective Williams.

starting again, "Okay". Do you see that?

A Yes.

At the top,

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Q "Okay. And could you describe that gun for me?" Do you recall that question?

A Yes.

Q Do you recall your answer being, "Chrome or metal. I'm not sure what the color is. Revolver, wooden handle, .22. Duece duece is what it was called when I asked what it was by Steven."

Do you recall that?

A Yes.

Q And did Steven Sandstrom, in fact, call his gun duece duece?

A Yes, he did.

Q And you told that to the police?

A Yes.

Q Did you also indicate to the police you weren't sure what color it was?

A Yes.

Q Then page 4 of the statement at the top by Detective Blehm. See that?

A Uh-huh.

Q Do you recall this question. "Were there any other comments made by either Stevie or Gary as to why they shot him?" Do you recall that question?

A Yes.

Q And this is Kansas City homicide detectives, April first,

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2005, is that right?

A

Correct.

Q Do you recall your answer, "Cause it was their neighborhood and it were their territory, was trying to say and that that, that that nigger didn't need to be over there, none of them do. None of the niggers need to be there.

Question by Blehm, "And who stated that?"

Do you recall that?

A

Yes.

Q

And you stated, "Gary Eye", is that correct?

A

Correct.

Q

And that was on April first, 2005 in your Kansas City homicide interview?

A

Yes.

Q For identification purposes, I'm showing the witness Government's Exhibit 30, grand jury transcript from 19 July 2005.

With the Court's permission?

THE COURT: Go ahead.

BY MR. GIBSON:

Q

Have you seen that before, Ms. Rios?

A

Yes, I have.

Q

And that's your grand jury transcript from July 19 of 2005, is that correct?

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A Yes.

Q Would you turn to page 34, please? Do you recall being asked --To set this in context, at Question 3 on page 34, do you recall the following question?

"And any particular place as far as you knew to steal a car?"

Do you recall your answer, "No. We went to Independence, right off Blue Ridge, and got a white Jeep." Do you recall that?

A Yes.

Q Is that your testimony in July 19 of 2005?

A Yes.

Q Line 7 "QUESTION: On the way to this area off of Independence, does Stevie Sandstrom talk about anything?

MR. ROGERS: Objection, Your Honor. May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. ROGERS: I don't think she's been impeached with any inconsistent statements about the subject matter of this particular statement so therefore I think it's improper bolstering.

MR. GIBSON: Your Honor, with respect to this

specific transcript, Mr. Rogers cross-examined her and then you went to the grand jury on the 19th and you lied and you lied

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and you lied and you lied and you lied. Then you -

THE COURT: One too many.

MR. GIBSON: May have been one too many, Judge. But the point is the same. He suggested that she lied throughout the entire grand jury with that statement, framed as a question.

MR. ROGERS: I --my understanding of the rules is --are that if she has been impeached with a prior inconsistent statement, she can be rehabilitated with a prior consistent statement dealing with the same subject matter. Not just because it was during the same three-hour grand jury session.

THE COURT: I don't know, Charlie. You made it sound like she didn't -

MR. ROGERS: That was based upon -

THE COURT: Beyond her name when she was there. I'm going to let him use the prior consistent statements or statements which are consistent with her testimony today.

MR. ROGERS: I don't think, I don't know that this is consistent with her testimony I think because she's been asked about it before now. That's my point.

THE COURT: Doesn't change my ruling.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GIBSON:

Q Do you have page 34 in front of you?

A Yes.

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Q And at line 7 on page 34, do you recall this question, "On the way to this area off of Independence, does Stevie Sandstrom talk about anything?"

Do you recall that question?

A Yes.

Q Do you recall your answer, "He told Vincent about how he shot --he told Vincent about how he shot at the nigger at the 7-Eleven."

Was that your answer?

A Yes.

Q Is that true?

A Yes.

Q "QUESTION:" At line 11, "What did Gary Eye say? Anything in reaction to that?"

Do you see that?

A Yes.

Q Do you recall that question?

A Yes.

Q Do you recall your answer?

A Yes.

Q "Can I see the paper"?

"QUESTION: Are you asking to look at your report?

"ANSWER: Yes, I am."

Do you recall that?

A Yes.

Q "QUESTION: Will this refresh your recollection?

"ANSWER: Yes."

Do you recall that?

A Yes.

Q And this is the May 21st, date of May 21st FBI 302 of the interview on May 19th, is that right?

A Right.

Q "Uh-huh." Is that what you said?

A Yes.

Q "QUESTION: Is that a yes?

"ANSWER: Yes."

Do you recall that?

A Yes.

Q "QUESTION: Ms. Rios, does that refresh your recollection?"

Do you recall that?

A Yes.

Q Do you recall your answer, "Gary told Stevie that if he gets to shoot a nigger, then he does, too. If Steven gets to, then Gary gets to, too."

Do you recall that?

A Yes.

Q Was that true?

A Yes.

Q Did you tell the grand jury that on the 19th of July 2005?

A Yes.

Q Turning over to page 35. Do you recall this question?

"Well, gets to do what?

"ANSWER: Shoot at a nigger."

Do you recall that question and answer?

A Yes.

Q Was that true?

A Yes.

Q Did you say that at the grand jury on July 19th?

A Yes.

Q "QUESTION: So Gary Eye said, if you can shoot a nigger then I can shoot a nigger, too?"

Do you recall that question?

A Yes.

Q Do you recall your answer?

A Yes.

Q Is your answer, yes?

A Yes.

Q "QUESTION: What did Stevie Sandstrom say in response to that?"

Do you recall that question?

A Yes.

Q Do you recall your answer?

A Yes.

Q "It's not like that, dawg." Is that correct?

A That's correct.

Q Is that what you testified to today?

A Yes.

Q Is that true?

A Yes.

Q Is that what you told the grand jury on July 19, 2005?

A Yes, it is.

Q Did you tell the grand jury in July of 2005 about the conversation involving Jonnie Renee in the car on the way from Inner City Oil to Jonnie Renee's house?

A No, I did not.

Q Turn to page 46, please. Or actually turn over to page 45 first, please, at the bottom, line 22. Do you recall this question?

A Hold on.

Q Do you have it?

A Yes.

Q Do you see line 22?

A Yes.

Q "Just for the record, what could you observe --"

MR. ROGERS: Objection, Your Honor, beyond the scope of cross.

THE COURT: Overruled.

BY MR. GIBSON:

Q "What race was Mr. McCay?

"ANSWER: He was African-American."

Do you recall that?

A Yes.

Q Was that true?

A Yes.

Q Did you tell the grand jury that?

A Yes.

Q Line 25. "QUESTION: Now, before the Intrepid or when you all turned into this alley, was Gary --was Gary Eye's passenger window up or down?"

Page 46. Do you see that? Do you recall your answer, "It was up. I mean, down. Sorry."

Do you recall that?

A Yes.

Q Did you tell us today his window was down?

A Yes.

Q Did you tell the grand jury that in July of 2005?

A Yes.

Q Is that true?

A Yes.

Q At line 11, "QUESTION: But I should back up. When you're in the alleyway and Steven Sandstrom asks for, excuse me, Gary Eye asks for the gun from Steven Sandstrom?"

Do you recall that question?

A Yes.

Q Do you recall your answer?

A Yes.

Q Answer, yes?

A Yes.

Q Is that true?

A Yes.

Q "QUESTION: What does Steve Sandstrom do?"

Do you recall that question?

A Yes.

Q Do you recall answering, "Pulls it out of his Ace bandage and hands it to him." Is that correct?

A That's correct.

Q Is that what you told us today?

A Yes.

Q Is that what happened?

A Yes.

Q Now, at line 20, do you recall this question, "This is when you had stopped about halfway up the alley?"

Do you recall that question?

A Yes.

Q Do you recall your answer?

A Yes.

Q Was that true?

A No.

Q Line 23, "Question: So when you get to the end of the alley, who has the firearm?"

Do you recall that question?

A Yes.

Q Do you recall your answer?

A Yes.

Q Was it Gary Eye?

A Yes.

Q Is that what you told the grand jury?

A Yes.

Q Was that true?

A Yes.

Q Is that what you told us today?

A Yes.

Q Do you recall being asked at Question 6 or line 6, excuse me, "When Gary stuck the gun out the window and fired twice, what do you do"?

A Yes.

Q Do you recall answering, "I kneeled down and covered my head in the seat."

Do you recall answering that?

A Yes.

Q Is that true?

A Yes.

Q That's what you told the grand jury, correct?

A Correct.

Q Is that what you told us today?

A Yes, it is.

Q Do you remember this question, "Why did you do that?"
Line 9?

A Yes.

Q "QUESTION: --" Or your answer at line 10, "Natural
reaction to gun fire and guns. I'm not exactly sure. I
just covered up."

Did you tell them that?

A Yes.

Q Do you recall this question, "How do you know Gary Eye
fired twice?"

Do you recall that?

A Yes.

Q Do you recall your answer, "Because I heard the shots"?

A Correct.

Q It's what you told the grand jury, right?

A Yes.

Q That's what you told us today, is that correct?

A Correct.

Q Now, who was it in the Intrepid that first mentioned
having to go back and find the victim, Mr. McCay?

A Gary.

Q And in response to Gary Eye saying that, what happened

next in the vehicle?

A Steven looked at me, basically, and in question of what to do and I told him to go back.

Q Do you recall on July 19, 2005, page 49, the following question at line 8, "Did Gary Eye say something to the effect of Mr. McCay being a potential witness?"

Do you recall that question? Do you see that?

A Yes.

Q Do you recall your answer?

A Yes.

Q Do you recall the following question at line 11, "What did he say?"

Do you recall that?

A Yes.

Q Do you recall answering to the grand jury, "He told Stevie to go find him because that man saw his face. That could be a case for him"?

A That's right.

Q Now, who said that could be a case?

A Me.

Q Who raised the subject of going back to find McCay first?

A Gary.

Q When you told the grand jury that it was Gary who referenced that would be a case, was that correct?

A No.

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Q Was that fact said in the car?

A Yes, it was.

Q And it was said by you?

A Correct.

MR. GIBSON: May I have a moment?

THE COURT: You may.

BY MR. GIBSON:

Q At page 49. Strike that.

At page 57, line 2. Do you recall the following question? "What did you see happen?"

Do you recall being asked that?

A Yes.

Q Do you recall your answer, "Gary put his arm over

Mr. McCay like in a headlock sort of position. Not a headlock, not a full headlock. Left arm over him and pulled his gun out with his right hand and put it to his chest, his mid-section."

Do you recall saying that?

A Yes.

Q Is that what you saw?

A I didn't see the gun but that's, yeah -

MR. ROGERS: Your Honor, may we approach on a

procedural matter?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

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PROCEEDINGS WERE HAD:)

MR. ROGERS: In the interest of record preservation, Your Honor, I would like a continuing objection to all of these prior statements I think were consistent with her trial testimony but --but about which she has been impeached with inconsistent statements. I'm objecting on the basis they are hearsay. They are improper bolstering. And she has not been impeached with them on cross-examination by either defendant. So could I have a continuing objection to all of those?

THE COURT: Yes, you may.

MR. ROGERS: Thank you.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GIBSON:

Q At line 19, do you recall the following, "What did you then, well, this is occurring, do you say anything to Stevie Sandstrom?"

Do you recall that?

A Yes.

Q "ANSWER: I told Stevie, why is he still letting Gary stand out there. Go get him and let's go."

Is that correct?

A Yes.

Q That is what you told the grand jury?

A Yes, it is.

Q Is that what happened?

A I told Stevie, What the hell are you doing? Go get Gary.

Q Did anyone from the Federal Bureau of Investigation at any time instruct you what to say during the investigation?

A No.

Q Did anyone from the prosecution team instruct you what to say?

A No.

Q Now, ma'am, you were sentenced for lying to the FBI. You've already been sentenced, correct?

A Correct.

Q In fact, you were sentenced some time ago, correct?

A Two years ago. Or almost two years ago.

Q And that sentence is not impacted by what you testify to here today. Isn't that correct?

A That's correct.

Q Whether or not you complete a drug program for any sort of time, that's up to the Bureau of Prisons, isn't it?

A Yes, it is.

Q Prior to your July 19, 2005, grand jury appearance, did you acknowledge the conversation when Jonnie Renee was present in the vehicle from Inner City Oil to Jonnie Renee's house?

A Prior to the first grand jury?

Q Yes.

A No.

Q Thank you.

THE COURT: Mr. Osgood?

RECROSS-EXAMINATION

BY MR. OSGOOD:

Q We're going to go a little slower and a little quieter. I want to go back to the statement that's been read by, both, the prosecutor and counsel for Mr. Sandstrom. First, the transcript itself. And maybe we can clarify this. Rios, this is you speaking, I was picked up in the morning by Steve Sandstrom and Gary Eye who just showed up at my friend, Carolyn Galyean's house. That's not true, is it?

A No, it's not.

Q It's where I was at. That's not true?

A That's correct.

Q We was on our way to go pick up Vincent Deleon at Christina Stanley's on 16th and the conversation about the incident on 9th Street occurred.

That's not true, is it?

A The conversation -Q

Stop me. Answer my question.

A No.

Q That's not true?

A No.

Q No such conversation occurred in any such car at any such

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location on that date, did it?

A Not at that time.

Q Answer that question. On that date at that time.

MR. GIBSON: She should be permitted to explain her answer.

MR. OSGOOD: Well, she already tried to put it on

some other -THE

COURT: Just a moment. Come up, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. OSGOOD: That conversation never took place.

THE COURT: This isn't like the World Wrestling

Championship, guys. This is Court. And I'm not going to have you talking back and forth to one another and I'm not going to have you talking over one another.

Now, I'll permit you full cross-examination but I'm not going to have this. I'm just not going to have it. And I'm not going to keep fighting with you over it. I want it to stop. I want it to stop now.

MR. OSGOOD: All right.

THE COURT: Objection overruled.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. OSGOOD:

Q Ma'am, would you just, please, answer my question and not

volunteer additional?

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A At that time, no.

Q So no such conversation occurred in a car on --after you were picked up. Never happened, did it?

A There was a conversation.

Q Later?

A Yes.

Q Never occurred here?

A No.

Q You're telling us there was a conversation later, right?

A Right.

Q But what happened was you created a set of facts in this where you said they said certain things, trying to extricate yourself, didn't you?

A They are facts, yes.

Q So you were married to that version early on, on the first day of April, weren't you? You were married to that set of facts at that point and you took it and ran with it?

A That's what happened.

Q You're saying it happened but you're saying it happened later. You're admitting that that was a lie, that that did not occur?

A At that time, that conversation did not happen.

Q Thank you.

Now, let's move on a little bit. And let's go to your FBI statement. And I'm not going to go through

all of this again. But I want to talk about, Mr. Gibson just asked you about in your FBI report did you tell the agents or did you physically demonstrate the actions taken by Mr. Eye during the FBI interview?

A At one point in time I have, yes.

Q Did you say that Mr. Eye rushed Mr. McCay and took his left arm and placed it around McCay's back to pull him close to him?

A Correct.

Q And did you say at that time, he took the gun in his right hand and put it into his chest?

A That's what I said, yes.

Q Firing into his chest?

A Yes.

Q Two times you say today?

A I don't know how many shots there was.

Q And that's when Mr. McCay was shot?

A Correct.

Q Now, in your grand jury, after all of these statements were given in your grand jury, the final grand jury that you say is the truth on 26 September of '05, 28 September, pardon me. On page 34 of that transcript, was this question asked and this answer given? "And, again, tell the grand jury what it is you saw.

"ANSWER: He got out of the car with his right

hand inside his hoodie, the hand he had the gun in, and he approached 9th Street. As Gary got to the corner of 9th and Brighton, Mr. McCay, I guess, seen him because he started walking towards Gary. And they met in the middle of the street, 9th Street. And that's when Gary puts his head in a headlock position over McCay and I heard five shots and I told Steve to pick him up."

A Yes.

Q There you say five shots?

A I don't know.

Q But, again, you say he put his left arm around his head

and pulled him toward him?

A Correct.

Q And shot him in the chest?

A I'm assuming so, yes.

Q Do you know if Mr. Eye is left-handed or right-handed?

A No, I don't.

Q You don't?

A No.

Q That's all.

THE COURT: Mr. Rogers?

RECROSS-EXAMINATION

BY MR. ROGERS:

Q

Ma'am, I think the point I was trying to make with the videotaped statement was that you had, in fact, mentioned

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Jonnie Renee's name in the very first substantive answer you gave, right?

A Right.

Q And you did, right, and nothing that anybody else has shown you changes that?

A Right.

Q And then I also, I think, mentioned that you even gave her last name, right?

A Right.

Q And as a matter of fact when you were making that videotaped statement, you had talked with the police at some length beforehand?

A Yeah.

Q So they knew what to ask and you knew what they were going to ask?

A Yes.

Q You can see several times in there in the part that Mr. Gibson read that you would finish the question for them with your answer?

A Correct.

Q Okay. And kind of a habit you have, isn't it?

A I guess so.

Q In fact, you did it to me before lunch a little bit, right?

A I'm sorry.

Q I don't resent it. I think it's appropriate some times.

Mr. Gibson called your attention to your July grand jury testimony on page 49, is that correct?

A That's correct.

Q And he read to you along that, so, please, turn to 49.

A All right.

Q And that's the part where you lie to the grand jury about Gary Eye being the person who says, go find McCay because that could be a case, right?

A Right.

Q And that's where he quit reading to you, right?

A Yeah.

Q But if you go on, starting on line 17, the question is, "And what is Stevie Sandstrom's reaction to Gary Eye telling him to go, to drive the car to find Mr. McCay?"

Is that the question?

A Yes.

Q And do you remember that question being asked?

A Yes.

Q And your answer was, "Steve was like, no, dawg, you're tripping. You're tripping. This is too much. This is too much." Right?

A Correct.

Q And that was your testimony at the grand jury?

A Correct.

Q And that was true, wasn't it?

A True.

Q And then you were asked what did Gary Eye say in response to that? And your answer was, "He was just like, go back and find him. Persistent on telling Stevie to go back.

"QUESTION: Did he persist on saying the reason why he needed to find Mr. McCay?"

It ends on line 1, page 50. Do you recall that question being asked?

A Yes.

Q And by the way, was that earlier question also asked and answered, the one about he was just like go back and find him, persistent on telling Stevie to go back?

A Right.

Q And your answer to the next question is, "Because that man seen him and it could be a case"?

A Correct.

Q Now, was it Gary that was being persistent? Was it you that was being persistent? Was it both of you being persistent in telling Steve to go back?

A Gary was persistent and I told him to go back.

Q And you said, then it goes on, starting on line 3 of page 50, "Did he use a certain terminology as best you recall?

"ANSWER: I'm sorry?

"QUESTION: Did he say, I can catch that case?

"ANSWER: Yeah. I can catch that case because of Mr. McCay seeing him. He saw my face. That could be a case.

"QUESTION: I'm sorry.

And "ANSWER: He said Mr. McCay seen his face. That that would be a case for him. You know, what I'm saying, if he seen his face."

A Correct.

Q Now, that actually is what you said, not what Gary said?

A Correct.

Q That was a lie that you told to the grand jury?

A Yes.

Q And then after some discussion of what catch a case means, on line 21, the question is, "Now, Stevie Sandstrom at this point, what does Stevie Sandstrom do?"

Do you see that?

A Yes.

Q And your answer was, "He looks back at me with that what-should-I-do look and I told him to go back."

Right?

A Right.

Q And question on line 25, "Well, what do you remember your words?

"ANSWER: I told him to go back and find him."

Right?

A Right.

Q That was, in fact, the truth when you said it even in July, wasn't it?

A Yes.

Q Then on page 51, the question, "I told him to go back and find him."

That's your answer. I'm sorry. Beginning at line 2. "And so Stevie Sandstrom looks back at you with a look on his face, correct?

"ANSWER: Yeah.

"QUESTION: And you interpret that look to mean what?

"ANSWER: What should I do."

Is that right?

A That's right.

Q That's true, too?

A Yes.

Q Line 7 "QUESTION: And you tell him?

"ANSWER: Let's go back and find him.

"QUESTION: Meaning Mr. McCay?

"ANSWER: Yes."

A Yes.

Q That's also true?

A Yes.

Q And line 11, "QUESTION: Did you realize that when you told

him that, you meant to go back and find him" --Excuse me.

"Did you realize when you told him that, that you meant to go back and find him so Gary Eye could shoot him?

"ANSWER: Yes."

A That's correct.

Q That was your testimony back in July when you were still lying about a bunch of stuff including whose idea it was about catching a case?

A Correct.

Q Now, I think Mr. Gibson also asked you what you told the July grand jury, you said to Mr. Sandstrom at 9th and Brighton, to tell him to go get Gary?

A Yes.

Q And we talked about that earlier, didn't we?

A Yes, we did.

Q What did you actually say?

A I asked him what the hell is he doing? To go get --What the fuck was he doing? Go get Gary.

Q So you don't no whether it was, what the hell or what the fuck?

A Right.

Q But you were being emphatic?

A I'm not sure. What does that mean?

Q Emphatic?

A Meaning.

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Q You're emphasizing the point.

A Right.

Q It's not, what the hell are you doing? Go get Gary. It's

what the hell are you doing? Go get Gary. Or what the

fuck are you doing? Go get Gary. Right?

A Right.

Q Emphatic?

A Yeah.

Q All right. Thank you.

THE COURT: Okay. Let's take our afternoon recess.

Don't talk about the case. Keep an open mind. We'll see you back here in 15 minutes.

MR. GIBSON: May Ms. Rios be excused?

THE COURT: Without objection, Ms. Rios is excused.

(Witness excused.)

(Recess)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Folks, we have one of the jurors who has a concern. He may know someone he's seen in the hallway. I don't know if it's a witness but I've asked Eva to bring him in and we'll inquire.

Mr. Janacaro, come on up, please.

Eva tells me you think you saw someone you know in

the building?

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JUROR NO. 6: Uncomfortable -

THE COURT: Counsel, step up, please.

JUROR NO. 6: Very uncomfortable potential.

THE COURT: All right. Who do you see and how do you know?

JUROR NO. 6: Please don't turn around and look but on the defense side there's a female in the second row, second or third row. I don't know any of the names from last October on the sheet of potential people but I just -

THE COURT: If she's in the courtroom, she's not a witness.

JUROR NO. 6: Okay. So it wouldn't be a concern.

THE COURT: How do you know her?

JUROR NO. 6: I don't know. Just through association. And I don't know if there is a potential relation to anybody that's involved or any of these witnesses that are involved. Because -

THE COURT: Do you know the person's name?

JUROR NO. 6: Here's my concern. Rios, I don't know her from Adam. But when --real good friends, best friends, his wife's mother's maiden name is Rios here in Kansas City. I don't know if there is any potential relation. It's a pretty common name.

THE COURT: All right. I think -

Does anybody want to ask questions of Mr. Janacaro?

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MR. ROGERS: Do you know what the woman you're talking about is wearing today? What color?

JUROR NO. 6: I haven't looked at clothes.

MR. ROGERS: Has she been here all day?

JUROR NO. 6: Every day? No. I would prefer we don't -MR.

ROGERS: Where do you know her from? She just looks familiar to you?

JUROR NO. 6: There are associations of people.

THE COURT: Any questions?

MR. OSGOOD: None of the spectators are witnesses.

The rule is invoked so I'm not concerned about that.

THE COURT: Tell me why you're so uncomfortable.

JUROR NO. 6: Trepidation. I don't know. My mind is still open. I have no idea. I'm not leaning any potential way. I'm just --think it's human nature to think the what-ifs.

THE COURT: But what is it about this person's presence here that -

JUROR NO. 6: I don't know. It's a weird feeling in my mind. Part of me is --in my line of work, I do a lot of marketing. 50,000 post cards a year go out of my office with

my picture on them, the T.V., radio, from a State Farm agent so it's the marketing. I don't know.

THE COURT: Okay. Well, if anything happens between

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now and the end of this trial that makes you feel uneasy, if you feel someone has tried to approach you or affect your judgment in some way, you let me know that.

JUROR NO. 6: Yes, Your Honor.

THE COURT: Thank you, sir.

JUROR NO. 6: Thank you.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Welcome back.

Mr. Green.

MR. GREEN: United States calls Joseph Wright.

JOSEPH WRIGHT, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you, please, state your name and spell your last name?

A Joseph Wright, W-R-I-G-H-T.

Q And, sir, how are you employed?

A Contract engineer at General Motors.

Q How long have you been employed doing that?

A About seven years total.

Q

And before your employment with General Motors, how were you employed?

A

For a year and a half as a designer at a custom wood shop and 14 years as Jackson County Architect.

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Q Now, I want to direct your attention back to March 9th of 2005, where were you living?

A 5225 East 8th Street, Kansas City, Missouri.

Q And do you still live there?

A No.

Q Now, as of March 9, 2005, how long had you lived at that address?

A Approximately 21 years.

Q And how far was that address --and, again, was that 5225 East 8th, is that correct?

A Correct.

Q How far would that address be from the 9th and Brighton intersection?

A About a block and a half.

Q And in time in your car getting there from your house at 9th and Brighton, about how far would it have been?

A Stopping for stop sign and lights, about 2-1/2 to 3 minutes.

Q Now, back in early March of 2005 what was your normal routine as far as leaving for work?

A Leave the house. Go down to --east off of 8th Street to Hardesty, south on Hardesty to 9th Street, west on 9th Street towards downtown and I-70 at Benton.

Q And what time would you normally leave for work?

A That morning I was actually leaving early so it was around

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6, 6:10, somewhere in there.

Q That morning, I'll direct you in --are you talking about March 9th, 2005?

A Yes.

Q Now, as you left for work, and, again, what time do you estimate you left your house?

A 6, 6:10, 6:15, somewhere in there.

Q And did the route you took to work that day, did it take you to the 9th and Brighton area?

A Yes.

Q And what street, in fact, were you on as you approached 9th and Brighton?

A I was on 9th Street heading west.

Q And as you're approaching 9th and Brighton, describe the lighting conditions?

A It was early morning. Sun wasn't up over the horizon. Streets light were still on. It was still good enough visibility but not bright sunny day yet.

Q As you approached 9th and Brighton, did something happen that caught your attention?

A I heard a shot and then saw a man running from Brighton, south across 9th Street.

Q Let me stop you right there, Mr. Wright. You said you heard a shot, is that correct?

A Yes.

Q As of March 9th, 2005, did you have familiarity with firearms?

A Yes.

Q And just give us a description of what your, where your familiarity came from?

A The Boy Scouts of America required that for Range Masters, to be certified in either shotgun or rifle. And I'm --so I'm a certified NRA shotgun instructor for the Boy Scouts of America.

Q Do you, yourself, own firearms?

A Yes.

Q And you've had experience around firearms?

A Yes.

Q Based on this familiarity, what type of caliber did the gun shots you heard, can you just sort of generally estimate the type of caliber?

A Didn't sound like a large caliber, which is not uncommon to hear gun fire on the east side. But it didn't sound like a shotgun or anything like a .44 or .357.

Q Sounded like a lower caliber than that?

A Yes.

Q Now, you said that --was it the point after you heard this gunshot that you saw the man running?

A Yes.

Q And, well, let me ask you this. Before you came to court

today, did you have occasion to produce a diagram?

A Yes, I did.

Q Was that something you did on your own?

A Yes, I did.

Q I want to display for you Plaintiff's Exhibit 56A.

Just for the witness.

Can you see that, Mr. Wright?

A Yes, I can.

Q What is 56A?

A It's an autocad generated diagram of the area of the shooting.

Q And you produced this?

A Yes, I did.

Q And is this a fair and accurate depiction of the, both the geographical location as well as the events you witnessed?

A Yes, I'd say it's a good representation.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibit 56A into evidence.

THE COURT: Without objection, 56A is admitted and may be -

MR. GROMOWSKY: Your Honor, if we could see the original copy of it for a minute.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: Testimony on the side of --cover that

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up and show it on the ELMO.

THE COURT: Is this going to be his testimony?

MR. GREEN: It is, Your Honor. I'm going to take him through it step by step.

THE COURT: If that's going to be his testimony, it would be admissible as a summary of what he says. Why don't you lead him through his testimony. And if he says what is in the margin here, I'll permit you to display this as a summary of his testimony.

MR. GROMOWSKY: Your Honor, if this is going to be displayed, it's improper bolstering if we leave the words on there is my concern. I don't mind him using the diagram of what occurred but to have the words there, re-emphasizing it to them over and over.

MR. OSGOOD: They might -

MR. GREEN: Could cross-examine him about, you know, about it.

MR. OSGOOD: Isn't any different.

THE COURT: Let's hear his testimony and if this is, in fact, his testimony, I will admit it in its original form as a summary of his testimony.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GREEN:

Q Mr. Wright, I'm just going to ask you, actually, to take

us through the events of what you saw. You say you saw a

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man running?

A Yes.

Q And did the man, describe what the man did as --describe where he ran to?

A I saw him coming off of Brighton heading south. He crossed 9th Street on to the sidewalk in front of a large, about a 2-story building.

Q Let me stop you there. When he crossed 9th Street and stopped and went in front of a building, what did he do?

A He turned around and looked over his left shoulder and I saw that he was dragging something which was the headphones to his personal stereo or something.

Q Now, after you saw this man cross 9th Street in front of the building, what else did you see?

A Saw a car coming off of Brighton at a pretty good rate of speed and it crossed 9th Street going south and it looked like it clipped the curb toward the person that was running.

Q Describe the car?

A It was a maroon color, 4-door Plymouth Chrysler type build, late model, sporty looking.

Q So, I'm sorry. Maybe I missed it. Did you describe how many doors it had?

A Four.

Q And you say it clipped the curb?

A Looked like it had clipped the curb.

Q So then what did it do?

A It paused there. Went a little bit further east, paused.

Q Let me stop you. So the car comes around and clips the curb. And does it go past the position where the man had paused in front of the building?

A Yes.

Q And what did the man who had paused in front of the building, what did he do?

A He ran across, back north across 9th Street behind the car to the sidewalk on the north side.

Q And did you see what he did then?

A He leaned up or fell up against the fence that is along the property there.

Q And what did you see the maroon car do?

A It took off east at a high rate of speed.

Q And when you say it took off east at a high rate of speed, had it paused for a moment?

A Yes.

Q And then it took off?

A Yes.

Q Did it, in fact, pass you?

A Yes, it did.

Q Because you were sitting, facing which way?

A I was facing west.

Q As it passed you, could you see into the car?

A No, I could not.

Q So do you have any idea how many occupants were in the car?

A Not a clue.

Q After that maroon car passed you, heading east on 9th Street, what did you do?

A Pulled on up towards where the man was at, called 9-1-1 and pulled over to the side of the road.

Q And the man who had, you had seen run back across 9th Street in front of you to the other side of the street to the chain link fence, what did you see him do?

A Collapse to the ground.

MR. GREEN: Your Honor, at this time I would offer

Plaintiff's Exhibit 56A as a summary of his testimony.

THE COURT: The exhibit will be admitted over the defendants' objection.

MR. GREEN: And maybe, just to blow that up, Ms. Marko.

BY MR. GREEN:

Q All right. Let's, now, that you see that on the screen

there, Mr. Wright, and let's --there is a car with a W by

it. Do you see that?

A Yes.

Q Who is that?

A That represents my truck and me.

Q Stopped facing, you were heading west, correct?

A Correct.

Q There is a V1 up at the top. What does that represent?

A That was my designation for the man running as victim one, his location at the point where I first saw him.

Q And you have a --what is a green line with an arrow that goes across 9th Street to a position that you marked as V2, is that correct?

A Yes.

Q And what does that represent?

A That's the point where I saw him run across the street to the building to pause for a moment before he crossed back to the north.

Q And when you say paused for a moment, what is your best estimate of how long he paused?

A It was like time to maybe catch a breath, look over your shoulder and take back off.

Q Now, there is a car figure on Brighton, a red car figure with a No. 1 by it. What does that represent?

A That's represents the maroon-colored car that I saw coming off of Brighton, going south across 9th Street.

Q And you have a red line with an arrow on it that goes from that car and it goes across 9th Street. Then you have it, basically, hitting the curb and coming back out. What

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does that represent?

A That represents the path of the car as I saw it.

Q And you have then in the middle of 9th Street V3 marked.

What does that represent?

A That was the man running from the south side of 9th Street to the north side behind the car.

Q And you have then V4 on, back on this side of, on my right side of the diagram, V4, what does that represent?

A That represents approximately the area where I saw the man fall against the fence or lean up against the fence.

Q And you have marked as No. 2 by the red car figure, what does that represent?

A Representing the approximate positions of the two vehicles, the red one and my own, as far as when it happened.

Q And what position is represented on 56A, did the maroon car pause?

A I would say either right where it's marked No. 2 or if not a little bit further west but not much.

Q Little bit further west would be up towards the top there?

A Towards the top of the screen within 25 to 50 feet of my vehicle.

Q Now, you stated that you called 9-1-1, is that correct?

A Yes.

Q Before you came to court today did you have occasion to

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listen to a recording of that phone call?

A Yes, I did.

Q And did you recognize your voice on that phone call?

A Yes, I did.

Q And was Exhibit 23, was that as you best remember it a

fair and accurate recording of the 9-1-1 call as you

remember it?

A Yes.

Q And, in fact, in this 9-1-1 call, did you have a little

bit of --did you hear you having a little bit of trouble
with your cell phone?

A

Yes. That area is historically bad for my cell phone and
I know it was cutting out because of the reception in that
area and low battery.

MR. GREEN: Your Honor, at this time the United

States would offer Plaintiff's Exhibit 23 into evidence.

MR. OSGOOD: No objection.

THE COURT: Without objection, Government's Exhibit

23 is admitted.

MR. GREEN: And ask it be played to the jury.

THE COURT: It may be played.

(The tape is being played.)

BY MR. GREEN:

Q All right. Mr. Wright, in this 9-1-1 call, you tell the

dispatcher that you heard about three shots, is that

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correct?

A Yes.

Q Now, after you made this 9-1-1 call, what did you do?

A Pulled over, parked my truck at the side of the road there near 9th and Brighton. Went back to the victim who was on the ground and he was kind of on his side, laying on the sidewalk and moaning. Then I could hear the emergency vehicles coming.

Q And you said that he was moaning?

A Seemed like he made a moan or a grunt. Not much else.

Q How long did you stay with the man?

A I was there until everyone showed up.

Q Then what did you do?

A As directed by the officers, I went back to my truck and waited.

Q And at some point did you give a statement to a member of the Kansas City, Missouri Police Department?

A Yes. I sat in the truck. I wrote notes in my steno book what had happened and used that to give my statement to the police.

MR. GREEN: May I have one moment, Your Honor?

Your Honor, that's all the questions I have of this

witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

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BY MR. OSGOOD:

Q Mr. Wright, by the way, I represent one of the defendants. Did you do the CAD diagram then almost immediately after you had given your statement?

A No. I done that in August.

Q Of this year?

A No. We haven't got to August yet this year.

Q You're right. It's been a long week.

A August of last year.

Q August of last year. You're --how are you employed, sir?

A By an engineering firm.

Q Okay. This was a pretty easy job for you?

A Yes.

Q All right. Let's back up a minute. You're driving on your way to work, going westbound toward downtown Kansas City?

A Correct.

Q What is the first thing that you see as you approach the intersection at 9th and Brighton?

A The man running south.

MR. OSGOOD: Can we put the original diagram of 9th

and Brighton up there, please?

BY MR. OSGOOD:

Q

So you are headed toward downtown Kansas City. Does he run across the street when you're back in this area?

A Say that again. I couldn't hear.

Q Where is he when you first see him run across the street?

Where is your car?

A My car is about where the symbol for the truck is in the center.

Q Here?

A Correct. Approaching that area. Then the man was running. I saw him coming from around the corner off of 9th and Brighton is the direction he looked like he was coming from to me.

Q So you've drawn the green arrow. Runs over to this building. Stops for a few minutes?

A Not minutes.

Q Few seconds?

A Yes.

Q Then continues in front of your vehicle. I guess you had to slow down to keep from hitting him?

A No. I came to a stop.

Q Then he goes?

A To the fence, yes.

Q Do you have a lapse time, start to finish, for that? You seem like a pretty meticulous guy.

A I would say the whole thing was less than a minute.

Q Okay. Did you ever see a second person?

A No.

Q Only one person the entire time?

A One person running for his life.

Q And from the seconds it took when you saw the person running until he collapsed on the fence, where in the path would you say you heard the shots or can you?

A The shots, actually I heard them before I saw the man running.

Q Now, apparently that's firearms training. Could you give us an indication of where your truck was when you heard the shots?

A Well, the time in between wasn't much. So it would only have been a few, maybe a hundred feet further or hundred yards further east than it is.

Q You're going 20 miles an hour, something like that?

A Yes.

Q You hear one single shot?

A I'll be honest, at that time, the recording said I said three and which I believe and my statement was one.

Q Well, one?

A I heard something.

Q All right. Did you see any fight in the middle of the street?

A No.

Q Do you see --have you ever seen the gentleman sitting over there on the far side of my co-counsel -

Stand up, Mr. Eye.

Have you ever seen that person before in your life?

A Not that I can recognize.

Q Okay. He's a big man. Did you see a big white man anywhere in the middle of the street?

A No.

Q The car that careened around the corner and almost hit the curb?

A Yes.

Q You said it bounced?

A No. Never said it bounced. I said looked like it clipped, like if your tire ran up on the curb.

Q It would be coming at you, correct?

A Yes.

Q Did you see it stop and pause and somebody open the door and somebody get in?

A No, never saw anything like that.

Q What is your degree in, sir?

A I don't have a degree. I was three hours short of it.

Q Okay. What -A

Architectural engineering specializing in illumination engineering and lighting design.

Q Lighting design and engineering. You have to be very observant in that field, don't you, sir?

A
Yes.

Q
And a good bit of your occupation probably depends upon meticulous designs and drawings and meticulous details, attention to detail?

A
We would hope.

Q
And your diagram was drawn almost within hours of the, well, you said August, I guess. Wasn't hours. It was months, couple months of the incident though?

A
Actually, it was drawn last August of 2007.

Q
2007. But did you have your statement to refer to when you did it?

A
No.

Q
Okay. You just did it from memory?

A
Yes.

Q

But this is your best recollection and memory of what happened?

A

Yes, it is.

Q Thank you, sir.

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q

Good afternoon, sir.

A

Afternoon.

Q

Now, it was a little after 6:00 in the morning when this occurred, is that correct?

A

Correct.

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Q And at that time, like you said, the sun still wasn't up, is that right?

A Right.

Q In your statement that you gave to the police, I believe you also indicated it was overcast as well, is that true?

A Yes.

Q So we didn't have any ambient light of the moon or the stars or anything like that helping out, is that right?

A Correct.

Q So you had your headlamps from your truck?

A Yes.

Q And you had whatever lamps may have been outside, street lamps or on the house or whatever?

A Yes.

Q That's about the extent of the light that was available to you. Is that true?

A Yes.

Q When you first pulled up on this and heard the gunshot, you were about a block away from what ended up being out there?

A I would say it was less than a block. Because I already crossed over Denver. And there's only one block between Denver and Brighton.

Q So you were less than one city block away from where all this was occurring. Is that true?

A Yes.

Q And when you heard the gunshot, did you slam on the brakes or did you roll forward a little bit until you figured out what was going on and then stop?

A No. I proceeded further.

Q How much further forward did you go?

A Probably just several hundred feet before I saw the man running.

Q That was the only person you saw out there that morning. Is that true?

A Yes.

Q But other people who were there that you spoke to actually saw someone else out there on the street, a young man, I believe you described as to the police?

A There were some other people said they saw some people around the car.

Q I think you specifically said a young person?

MR. GREEN: Objection, hearsay, Your Honor.

THE COURT: Sustained.

BY MR. GROMOWSKY:

Q

And in any event from less than one block away from where all this occurred, you did not see a young man out there on the street. Is that true?

A

That's true.

Q

And then as you move closer to the scene before you

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finally figured out what was going on and stop, you go these couple hundred extra feet you went, you still do not see a young man at the intersection. Is that true?

A That's correct.

Q You certainly didn't see anybody fighting out in the intersection. Is that right?

A Correct.

MR. GROMOWSKY: One moment, please, Your Honor. Nothing further.

Thank you, sir.

THE COURT: Redirect examination?

MR. GREEN: No, Your Honor. May this witness be excused?

THE COURT: Thank you, sir.

May the witness be excused?

Witness is excused.

(Witness excused.)

MR. KETCHMARK: Government calls Kathy Hentges to the stand.

KATHLEEN HENTGES, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Ma'am, would you, please, introduce yourself to the ladies

and gentlemen of the jury and spell your name for the court reporter?

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A Kathleen Hentges, H-E-N-T-G-E-S.

Q And, Ms. Hentges, what do you do for a living?

A I'm a forensic specialist four, retired as of last Friday with the Kansas City, Missouri Police Department. Which means I'm a certified latent fingerprint examiner.

Q And how long did you hold that job down with the Kansas City Police Department Crime Lab?

A I worked there for almost 32 years.

Q Can you explain just in very general terms your education, background and experience?

A As I stated, I'm a certified latent fingerprint examiner which means I'm one of only 833 certified examiners in the world. I also am a member of the International Association for Identification, the parent body which is worldwide. Also a member of the Missouri Division, the Kansas Division and the New England Division. I also served as the chairman of the certification board for the State of Missouri. And I'm currently also a board member for the Missouri Division.

Q And in your capacity as a latent print examiner, have you testified in court as an expert?

A Yes, sir, I have.

Q Can you put a number of times you've done that?

A Probably over 1300 times.

Q Did you, in fact, testify in state court this morning on

another matter?

A Yes, I did.

Q Would it be fair to say you're trying to wrap up some of your cases before you move away?

A Yes, sir.

Q Ms. Hentges, could you, briefly, explain to the ladies and gentlemen what a latent fingerprint is?

A A latent fingerprint is generally lifted from a crime scene. It's either processed by crime scene personnel or lab personnel or police officers. And what it is is there's moisture or oils on your fingers or your palm area at the time that an item is touched. Some times you can see that with the naked eye. An example would be on like a piece of glass. Other times it needs to be chemically enhanced such as on a piece of paper. You could actually touch this paper and possibly produce a latent print. So what it is, it is made up of the moisture and oils when an object is touched.

Q And, Ms. Hentges, is it possible for a person to touch a particular object or surface and not leave a fingerprint?

A Yes.

Q Can you explain why that is?

A As I stated there has to be some type of moisture or oils on your finger or palm at the time an item is touched. If you do not have something on your fingers, most likely

you're not going to leave a print.

Q Ms. Hentges, can you also explain to the ladies and gentlemen of the jury what a known inked fingerprint is?

A A known inked fingerprint is a set of known prints that are taken in a controlled environment where a latent print is not in a controlled environment. By placing a thin film of ink upon the fingers and the palm area and placing it on a recipient surface, such as a white piece of paper or cardboard, a recording of the ridge detail is placed on that. And you roll them out from nail to nail.

Now, you may have heard of loops and whirls.

Those are pattern types. What makes each person individually unique are the breakages that are occurring within those pattern types. And no two individuals will have the same print.

Q You answered the next couple questions that I had. Are all prints that are recovered good for comparison purposes?

A No, sir.

Q And can you explain the difference between prints of value and prints of no value?

A Prints of no value would be something on the lift card or a photograph that does not contain enough ridge detail to make a comparison of a known inked print. A print of value contains enough ridge detail. And what ridge detail

is in your fingers and your palm print are breakages. And that's what makes each person individually unique. An example would be a single ridge that ends or single ridge that divides into two called bifurcation. Those are the unique characteristics that make each person individually unique.

Q Ms. Hentges, I'm going to show you, if I could at this point, what's been previously offered and I believe admitted into evidence as Government's Exhibits 72A and 72B and ask if you recognize those?

A Yes. Those are two latent lift cards that have my initials on the front of them indicating that I examined these lift cards.

Q I'm going to direct your attention, ma'am, to the screen in front of you. And just so the jury is able to understand some of what you're talking about, what is the dark area that is reflected at the top of Government's Exhibit 72A?

A That is where the crime scene technician that processed for latent prints, that is the lift card that is received in my section and the dark area is the piece of tape where they lifted the prints.

Q And, similarly, just so the jury has an opportunity, I don't believe they saw these when they were initially referenced by the crime scene technician but in 72B would

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this be an example where there were three separate lifts

that would be accompanying this particular card?

A Yes, sir.

MR. KETCHMARK: Government's Exhibit 74, Ms. Marko,

please. Just for the witness.

BY MR. KETCHMARK:

Q Ms. Hentges, again, directing your attention to the screen in front of you. I'm going to show you what has been marked as Government's Exhibit 74. And do you recognize what is contained in Government's Exhibit 74?

A Yes. That is my report on this particular case.

Q And have we had an opportunity to meet and discuss your findings?

A Yes, sir.

Q And is this report a fair and accurate copy of what --the analysis you would have done in this case as relates to these two particular lift cards?

A Yes, sir.

MR. KETCHMARK: Your Honor, at this time I move

admission of Government's Exhibit 74 into evidence.

THE COURT: Without objection 74 is admitted.

BY MR. KETCHMARK:

Q Again, looking at the summary results section of the

report.

Ms. Marko, if you would blow that up?

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BY MR. KETCHMARK:

Q And, Ms. Hentges, in the blown up portion, does it indicate that the comparison of the latent prints of value for identification with the inked fingerprints of a William Stafford, a Steven Sandstrom, a Gary Eye and a Vincent Deleon revealed that one latent fingerprint on Item 1-12B, labeled right front window from Jeep, and one latent fingerprint on Item 1-16A, labeled Trick Daddy CD from the Jeep matched the impressions of Vincent Deleon and then number associated next to Mr. Deleon's name?

A Yes, sir, that is correct.

Q And is that the two items that we previously talked about briefly, Government's Exhibit 72A and 72B, being the lift cards that were of value?

A Yes, sir, that is correct.

Q So tell the ladies and gentlemen, it's kind of obvious from reading the summary but whose fingerprints did you find to have been left on those lift cards?

A On Exhibit 72A I identified the right index finger impression of Vincent Deleon, lifted from Trick Daddy CD from Jeep. On Exhibit 72B I identified the left ring finger impression of Vincent Deleon and that was lifted from right front window from Jeep.

Q And the other individuals whose names are mentioned in this summary of results section, a William Stafford, a

Steven Sandstrom and a Gary Eye, would those have been prints you would have compared to the latent lift cards there to determine if there was a match?

A Yes, sir.

Q In addition to the two lift cards that were admitted and discussed as Government's Exhibits 72A and B, Ms. Hentges, were there any other prints of value that were submitted in connection with those two cards?

A There were several lift cards that were submitted but those two prints were the only prints of value.

Q So the other cards you looked at and determined that they were insufficient for you to do any comparison?

A That is correct.

MR. KETCHMARK: One moment, Your Honor.

That's all I have for Ms. Hentges at this time, Your

Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q What all types of materials can you take prints from?

A Generally, the best surfaces are anything that are not

rough. You can lift from glass items. You could actually make an attempt to lift off of this type of wood, counter tops. Anything that's rough is very difficult to obtain a print.

Q What about fabric?

A It is possible but very rare.

Q What about something like a backpack?

A Once again, anything is possible in processing but that would be an item that would be a rare type of surface.

Q Would it make any difference if it's fabric or buckle or strap or something?

A Well, it depends on what type of material those items are.

Q Would this backpack, for example, have areas that it might be fruitful to examine for prints such as this buckle here?

A You could possibly make an attempt to process that particular item. It's not a very large area but you could possibly attempt or the metal portions of the zippers. But due to the fact that it's a small area, it would be highly unlikely.

Q What about the --where like it's different fabric in different places? What about like this fabric back here or up here?

A Once again, the fabric would be a difficult surface to obtain any type of prints.

Q Okay. Were you asked to at least attempt to see if that was possible with this item?

A I actually did not process anything on this case.

Q Do you know --were you head of the department, the

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section?

A No, sir.

Q Okay. If you were asked though to examine that, you wouldn't outright reject the possibility of finding something? Would you go ahead and attempt to do an analysis?

A Absolutely, I would make an attempt to.

Q And if you thought that someone had touched that, that would give you some idea of where to look and how to proceed if you were given some explanations where they might have possibly touched it?

A I would be focusing on the entire item to process, not necessarily a specific area.

Q Okay. Thank you.

Oh, I'm sorry. Something like headphones, would that

be more susceptible perhaps to leaving a print on? Plastic?

A

Once again, it depends on the type of material that the item was made out of.

Q

Okay. All right. Thank you.

CROSS-EXAMINATION

BY MR. ROGERS:

Q

How are you, ma'am?

A

Good, sir.

Q

There are different ways of processing various surfaces

for fingerprints, correct?

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A Yes, sir.

Q And so when you're talking about the latent lifts, as seen on latent lift cards like 72A and 72B, those are processed by dusting the target area with a graphite powder using a camel hair brush or something like that?

A Yes, sir.

Q And then if latent fingerprints are developed by the fine graphite powder, adhering to the oils you talked about, then they are lifted off with the wide tape and put on the white card so you can look at them?

A That's correct, sir.

Q In terms of processing a backpack, would you do it some other way?

A That's correct.

Q How would you do that?

A Once again, the material on the bag is probably a very difficult type surface. You could use, on the metal portions on there, possibly, the powders or you could possibly use super glue.

Q Okay. And the super glue works on a variety of more porous surfaces than the regular powders would work on, right?

A That is correct, sir.

Q And so what happens is the super glue is heated and sprayed in a fine mist?

A Well, it's not a fine mist. It produces kind of a

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cloud-like substance that comes up and adheres to the
moistures or the oils on the particular item.

Q
So it's not sprayed certainly but there is a cloud-like
mist?

A Yes, sir.

Q Then after it dries, you can look at it and see if there
are any fingerprint patterns?

A Yes, sir.

Q Then the comparison is the same either way?

A That's correct.

Q That's what you specialize in?

A Yes, sir.

Q Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. KETCHMARK:

Q

Ms. Hentges, in your experience in working with the crime scene technicians, are you surprised that they wouldn't have processed that backpack for any type of lifts?

A

No, sir.

Q

And in terms of whether or not you were requested to do a processing of that, in your experience working at the crime lab, do requests some times come from defense attorneys as well as from the government to have additional items looked at?

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A Yes, sir.

Q Do you honor those requests, equally, if they come from

the defense?

A Yes, sir.

Q And in this case you had indicated there was no request

for you to actually process any items?

A That is correct.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Recross?

MR. OSGOOD: Nothing, Your Honor.

MR. ROGERS: No. Thank you, Your Honor.

THE COURT: Thank you, Ms. Hentges. You may step

down.

MR. KETCHMARK: May she be excused, Your Honor?

THE COURT: Without objection, she is excused.

(Witness excused.)

MR. KETCHMARK: Government calls Joseph Thompson.

JOSEPH THOMPSON, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Sir, would you, please, introduce yourself to the ladies

and gentlemen of the jury?

A My name is Joseph K. Thompson.

Q And, Mr. Thompson, how old are you?
A Be 77 this month.

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Q Do you live in the Kansas City, Missouri area?

A Yes.

Q And how long have you lived in Kansas City?

A 1949.

Q For quite some time?

A Yes.

Q Back in March of 2005, sir, did you have a particular place you liked to go for breakfast in the morning?

A Yes.

Q Where was that?

A On 9th Street, G & E Cafe.

Q Is that by 9th and Spruce?

A Yes.

Q How often would you say that you ate at the G & E Cafe back in March 2005?

A Yes.

Q How often would you say you ate there?

A Three times a week.

Q Was that your standard routine pretty much?

A Standard routine.

Q How long had you been doing that for?

A Several years.

Q Was there a particular time in the morning that you would typically go in there to have breakfast?

A Around 6:00.

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Q Around 6:00 a.m.?

A Uh-huh.

Q And if I could, sir, I would like to direct your attention back to around March 9 of 2005. Did something happen that morning that resulted in you ultimately coming into court here today?

A Yes.

Q Can you tell the ladies and gentlemen of the jury about what happened when you're going to breakfast that morning on March 9th at the cafe?

A As I got out of the truck and went into the cafe, I heard some gunshot.

Q Now, do you have any background or experience with guns, Mr. Thompson?

A Well, I've hunted all my life. Most of it, anyway.

Q Hunted most of your life?

A Yeah.

Q Do you have any background in the military experience, sir?

A Yes.

Q What is your military background?

A I was in the 45th Division, Korea.

Q And how long did you serve, sir?

A Two years.

Q So on that morning that you heard the gunshot, was there

any doubt in your mind that it was a gunshot that you heard?

A Sure. No doubt about it.

Q No doubt about it?

A Right.

Q Now, did you, did you tell anybody when you heard the gunshot that you heard it?

A I told the lady in the restaurant, that runs the restaurant.

Q And who was that?

A Brenda.

Q Other than telling Brenda, sir, did you call the police?

A No.

Q And at some point in time did you have an occasion to meet with agents from the FBI?

A Yes.

Q And did they come and ask you, basically, similar questions to what we're asking?

A That's true.

Q And let me ask you this, sir. Do you remember on that morning, do you remember where you were at when you heard the gunshots?

A I was outside of the cafe.

Q You remember being outside?

A Yes, coming in.

Q Do you remember, Mr. Thompson, when the agents talked with you that we had you come in and talk in front of a grand jury? Do you remember doing that?

A Yes.

Q And that would have been back in September of, September 28 of 2005. Does that sound about right?

A Doesn't seem like it's been that long.

Q Time kind of flies by, doesn't it, sir?

A Yes.

Q Well, if I were to show you a copy or would you have any reason to disagree with me when you testified in grand jury at that point the questions were asked about where you were at and there was a question about being inside, at a table, eating breakfast by the window? Do you remember those questions being asked you back then?

A That's possible, yeah.

Q But is it your memory here, as you sit here today, were you inside at the table or were you outside when you heard the shots?

A I was outside when I heard the shot.

MR. KETCHMARK: One moment, Your Honor.

That's all I have, Judge.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q How long have you lived in that area, Mr. Thompson?

A Pardon?

Q How long have you lived in that area?

A In that area?

Q Yes, sir.

A 1960.

Q And has the neighborhood over the years changed some?

A Yes, I'm sure it has. Yeah.

Q Are there --when you were a young man, younger man, back in 1960, had you ever heard the term "drive-by shooting", for example? Did you know what a "drive-by shooting" was back then?

A I don't believe so, that I recall.

Q And, in fact, you said you had guns as you were young, back in the 60s. Was it common to see people running around that were hunters with guns up in the back of their pickup truck in the window or something?

A Yeah.

Q Times changed, didn't they?

A Uh-huh.

Q Is it true, sir, that now days it's not uncommon to hear gunshots in that area where you live?

A That's right.

Q All the time?

A Uh-huh.

Q You need to say yes or no not, because I want you -A
Okay.

Q You're not offending me but she has to take down
everything you say. You hear gunshots all the time, don't
you?

A Yes.

Q And it's almost so common any more that you don't, if you
called every time you heard one, you would have the police
out there all the time?

A Yes.

Q Giving police reports all the time, wouldn't you?

A Uh-huh.

Q Is your answer yes?

A Yes.

Q Now, it was almost three months to the day that, well -strike
that.

The FBI interviewed you on March or August 29 of
2005. Does that date seem right to you?

A Yes.

Q And how is it that they located you?

A The woman at the restaurant, Brenda, she told them where I
live.

Q Okay. So they apparently had been in there and talked to
her?

A Yes.

Q Did she remember --have you talked to her about this incident?

A No, I don't go there any more.

Q Okay. What--what was it about the conversation with her that caused you to think the FBI wanted to talk to you?

A Say that again?

Q You had a conversation with Brenda?

A Yeah.

Q As a result of that conversation, did you contact the FBI or did they contact you?

A They contacted me.

Q So apparently she just told you that she had given them your name and address?

A Uh-huh.

Q And how frequently were you eating in there during that time?

A Excuse me?

Q How frequently were you eating in the restaurant?

A Three times a week, Mondays, Wednesdays and Fridays.

MR. OSGOOD: May I have just a minute, Your Honor?

BY MR. OSGOOD:

Q

You say you were eating there Mondays, Wednesdays, Fridays?

A

Yes.

Q

Any other days?

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A Maybe two or three times a year I might be in there some other day.

Q Were you still working at that time?

A No.

Q What did you do for a living up to this point before you retired?

A Last 21 years I worked at GM in Fairfax.

Q Okay. On the line or?

A Yes.

Q What was your job?

A Working on the brake lines.

Q Okay. Is it noisy in that factory?

A Yes.

Q Now, I notice you had a little bit of trouble hearing me and getting up in years myself, still have trouble hearing myself some time. Are you having problems as you -you're a little bit older than me. Do you have any hearing problems?

A Some times.

Q Okay. And when you met with the FBI you told them what you knew and thought, right?

A Uh-huh. Yes.

Q When you met with the FBI in August had you heard other gunshots since these gunshots you're talking about in the neighborhood in the area? Do you remember?

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A

Around my house or over there?

Q

Anywhere in that area. Around your house?

A

Some times, yeah.

Q

So that happened frequently it sounds like?

A

Not that much, no.

Q

It was frequent enough that you didn't think it was necessary to call the 9-1-1 that morning?

A

Right.

Q

All right. Can you say here today with absolute certainty that the shots you heard that day in the restaurant occurred on March 9 of 2005?

A

Yes.

Q

Why is it you're so certain about that?

A

Well, I heard them.

Q

But how are you so certain it was March 9th?

A

Well, I don't know if it was March 9th, actually.

Q Thank you, sir. That's all.

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q

Good afternoon, sir.

A

Good afternoon.

Q

Now, you testified already that you regularly went into this restaurant, G & E Grill?

A

Yes.

Q

And, sir, you went in there about the same time every

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morning, roughly 6:00, is that true?

A That's true.

Q Some days, couple minutes before, some days couple minutes after?

A Probably.

Q And the days that you did go in were Mondays, Wednesdays and Fridays, is that correct?

A That's correct.

Q And I don't know if you have gone over it with prosecutors when you were preparing for your testimony but March 9, 2005, was, in fact, a Wednesday, is that true?

A I have no idea what day it was.

Q And you heard these 5 or 6 shots, is that correct?

A That's correct.

Q Now, when you heard them, you were outside the building, is that true?

A That is true.

Q Which in relationship to the intersection of 9th and Spruce, where is G & E? Is it on the east side of Spruce or west side of Spruce?

A It's on the west side.

Q How far away from the actual intersection is it to the front door of the restaurant? Rough estimate?

A Approximately 100, 80 feet, 90 feet.

Q 80, 90 feet from the intersection to the front door of the

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restaurant?

A That's right.

Q And the door to the restaurant, is that on the east side or west side of the building?

A It's on the north side.

Q I understand but it's not dead center of the restaurant?

A No. It's right on the corner there, the restaurant.

Q And what corner is that on, the northeast side or the northwest side?

A Northeast side.

Q So it's actually closer, it's the closest point from the restaurant to the intersection of 9th and Spruce, is that true?

A Yes.

Q So when we're talking about 80 feet away, when you're outside the door you're even closer, maybe, than the 80 feet, is that true? From the restaurant to the intersection?

A Yeah, from the restaurant to the intersection.

Q Because when you're outside the restaurant door, being it's on the northeast side, you're actually between the restaurant and Spruce Street at your back as you're walking in the door, is that correct?

A Yes.

Q Okay. And you heard gunshots when you were going into the

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restaurant?

A Uh-huh. Yes.

Q And you said earlier there was no doubt about it that it was a gunshot, is that true?

A That's true.

Q You were even able to distinguish, when you described it to the gentlemen who came to interview you, you were able to distinguish it from rifle fire versus handgun fire.

You said it was handgun fire, is that correct?

A That's correct.

Q That's how clearly you heard it, is that true? That's how clearly you heard it?

A Yes.

Q
Sir, when you heard the gunshots, are you so accustomed to hearing them, that you just kind of ignore them or did you turn around and look to see where they're coming from?

A

I don't turn around.

Q

You went on in the restaurant and talked to Ms. Brenda?

A

That's right.

Q Thank you, sir.

THE COURT: Redirect examination?

REDIRECT EXAMINATION

BY MR. KETCHMARK:

Q

Just so I'm clear and I understand and the jury

understands, Mr. Thompson, what you're saying is you went

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into the restaurant that morning and you told Brenda who owns or works there at the G & E Cafe?

A Right.

Q And then you're assuming Brenda told the FBI because the FBI then comes knocking on your door at your house and says we'd like to talk to you based on what Brenda told us at the restaurant?

A Yes.

Q Is that how it happened?

A That is how it happened.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Recross?

REXCROSS-EXAMINATION

BY MR. OSGOOD:

Q

Mr. Thompson, they brought you down, after the FBI talked to you, to the grand jury, is that right?

A

I'm sorry?

Q

They brought you down to the grand jury after you

testified or after they interviewed you, is that correct?

A

Yes.

Q

And, of course, they asked you questions and you gave

answers, is that right?

A

That is right, yes.

Q

And do you remember a young lady taking down what you were

asked and what you said, much like this young lady in

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front of us is doing?

A When? When?

Q When you were in the grand jury?

A Yeah.

Q There was a court reporter?

A Sure.

Q And she took down what was said, what was asked and what was answered, is that right?

A Yes.

Q All right. Do you remember them asking you where you were at when this, when you heard these shots?

A Yes.

Q And what did they ask you or what did you tell them?

A I told them I was going in the restaurant.

Q Well, let me show you your grand jury transcript here.

And would you read this, right here, this question and these answers and then I'll ask you a little bit more.

Does that refresh your memory as to where you were when you heard the shots that you think you heard?

A I must, I don't know that. I heard them when I was walking in.

Q But do you agree with me you told the grand jury that -A I may have told them that. I'm not sure.

Q The question was on March 9th did you hear anything while you were eating your breakfast by that table by the

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window?

Yes. I heard some gunshots.

Approximately how many?

Five, maybe. Six, maybe.

Was that question asked and did you give that

answer according to this transcript?

A Yeah.

Q You're not telling me it was taken down wrong?

A It must be because I heard them when I was going in.

Q Well, you remember it different today?

A Yeah.

Q You're not suggesting that the lady put it down wrong?

A I'm not saying that. But I heard them when I went in the

restaurant.

Q Okay. Thank you.

That's all I have, Your Honor.

THE COURT: Mr. Gromowsky?

MR. GROMOWSKY: No, Your Honor. Thank you.

THE COURT: Thank you, Mr. Thompson.

May he be excused?

Mr. Thompson, you are excused.

(Witness excused.)

MR. GREEN: Your Honor, the United States calls Tony Neutzler.

TONY NEUTZLER, GOVERNMENT'S WITNESS, SWORN

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DIRECT EXAMINATION

BY MR. GREEN:

Q That was my fault, Mr. Neutzler. I should have shown you where to go and I apologize for that.

A I haven't been in a courtroom too frequently. This is the first time.

Q Sir, would you tell us your name and spell your last name?

A Tony Neutzler. That's spelled N-E-U-T-Z-L-E-R.

Q I'm going to go ahead and just move this microphone.

There you go. Thank you. If you could sort of direct your voice towards the microphone.

Sir, what city do you live in?

A Kansas City.

Q And do you live in Kansas City, well, what's your address?

A 1505 NE 80th Place.

Q And where in relation to the metropolitan area or where we are today, where is that?

A It is in Kansas City North.

Q And is that north of the river?

A Yes.

Q Is it near the City of Gladstone?

A Yes, it is.

Q And how long have you lived there?

A Since 1995.

Q And just describe what kind of neighborhood you live in?

A It's a very nice neighborhood. The homes are probably in the \$200,000 range.

Q Single family dwelling?

A Yes.

Q Back in early March of 2005, what type of vehicle did you drive?

A I had a Jeep that I was using that I actually rented from Bob Hoss Dodge. I had another vehicle that was in the garage.

Q Was this Jeep Cherokee, the type --was that the vehicle you mainly drove?

A Most of the time, yes.

Q And what was your connection to Bob Hoss Dodge?

A My wife is the owner of Bob Hoss Dodge.

Q Now, and you stated that you were renting that vehicle, is that correct?

A Yes.

Q Now, I want to direct your attention back to March 9th of 2005. What happened on that day that you recall?

A Well, on that day nothing, really. The next morning.

Q Well, let me ask it this way. Did you discover that your Jeep Cherokee had been stolen?

A Yes.

Q And do you recall that was on March 9, 2005 that you discovered that?

A Yes. It was when I discovered it was missing.

Q And describe for the jury how it was you discovered that that vehicle was missing?

A I walked out to get the newspaper about 7:30 in the morning and realized the vehicle was gone.

Q And where had it been when you last had seen it?

A It was in the driveway.

Q And when had you last seen that vehicle?

A Probably about 8:00 that evening.

Q The evening before?

A Yes, the evening before.

Q About what time would you have gone to bed on March 8th?

A Around 10:30.

Q As far as you knew, when you went to bed was that car still in your driveway?

A It should have still been there because I didn't hear any noise of any motor starting.

Q Now, on March 8, 2005, that would have been the last day that you saw the vehicle before this incident we're going to talk about, correct?

A Yes.

Q What was the condition of the vehicle?

A It was in very good condition. It only had about 30,000 miles on it.

Q So it didn't have, for instance, a broken rear window or

anything?

A No.

Q When you went out to get your paper on the morning of March 9, 2005, and saw the Jeep Cherokee was gone, what did you do?

A I went in and told my wife somebody must have borrowed our Jeep. But I thought about it awhile and then I called the police. And they told me I would have to come up and fill out a statement that it was missing.

Q And did you do that?

A Yes, I did.

Q And did you later learn that the vehicle was recovered?

A Yes, I did.

Q And, in fact, did you get that vehicle back?

A It went directly to the dealership.

Q Right. But, eventually, did you get the vehicle back?

A Yes, I did.

Q In fact, do you still have that vehicle?

A Yes.

Q After you got it back from the dealership, did you have to have some repairs done on it?

A It had been repaired at the dealership.

Q I'm going to now display some photographs for you that are already in evidence. The first one would be Plaintiff's Exhibit 73D. And, sir, can you identify what 73D is?

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What is that?

A That's the Jeep Cherokee.

Q The Jeep Cherokee that you were renting?

A Yes.

Q On the front of it there is something called a tow master.

Do you see that?

A Yes.

Q And what was that for?

A That, I pulled behind a motor home. I pulled the Jeep

behind a motor home. That's one of the reasons I had it

at the house.

MR. GREEN: And then if you could show Mr. Neutzler

73CC.

BY MR. GREEN:

Q And do you see that, sir?

A Yes.

Q Now -THE

COURT: Just a moment. That has not been admitted.

MR. GREEN: I'm sorry. Well, actually, let me -

let's instead show Plaintiff's Exhibit 73L, which I think has been admitted.

BY MR. GREEN:

Q Do you see that?

A I see it.

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Q

And was that in that condition on March 8th when it was in your driveway?

A

No, it was not.

MR. GREEN: And the next, if you would show

Mr. Neutzler Plaintiff's Exhibit 73M, as in Mary.

BY MR. GREEN:

Q And do you see that, Mr. Neutzler?

A Yes.

Q That is a photograph of your passenger side door. And was that mark, that damage there on March 8 of 2005?

A No. It was not in that condition.

Q

Next I want to show what is in evidence as Plaintiff's Exhibit 73N, as in Ned. That's a photograph of the driver's side door. Do you see that, Mr. Neutzler?

A Yes.

Q Was that, obviously, a lock of the driver side door,

correct?

A That was not like that previously.

Q Now, I want to show what is already in evidence as

Plaintiff's Exhibit 73NN.

THE COURT: NN.

MR. GREEN: MM. I'm sorry.

BY MR. GREEN:

Q Do you see that, Mr. Neutzler?

A Yes, I see it.

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Q Do you have any idea what that is?

A No, I don't.

Q All right. Next, Plaintiff's Exhibit 73OO. And do you see that's a photograph of a screw driver?

A Yes, I see it.

Q And is that your screw driver?

A No.

Q Do you know anything about that screw driver?

A No, I don't.

Q Plaintiff's Exhibit 73KK. Now, do you see --do you recognize any items that are yours in this picture?

A Pardon?

Q Do you recognize any of the items displayed in 73KK?

A Yes. The bungee cords and the dog bed, they belong to me. And also the --there is a little package or sack there that had my cables in, that I use for towing but it was not there when I got the Jeep back. They tossed it out, I presume.

Q Now, Mr. Neutzler, when this vehicle was sitting in your driveway on March 8th, did it have the proper --did it have any tags on it?

A Yes. It had a dealer tag on the back and also it had a Marine license on the front.

Q And then, finally, Mr. Neutzler, back in March of 2005, particularly on March 8 and 9 of 2005, did you listen to a

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music group known as Trick Daddy?

A No.

Q Do you have any idea what I'm talking about?

A No.

Q May sound silly but I had to ask you that, Mr. Neutzler.

I don't have any further questions.

THE COURT: Cross-examination?

MR. OSGOOD: I don't have anything, Your Honor.

MR. ROGERS: No questions, Your Honor. Thank you.

THE COURT: Thank you, Mr. Neutzler. You may step

down.

And may he be excused?

Without objection you are excused.

(Witness excused.)

THE COURT: Do you have a 10-minute witness?

MR. GREEN: Yes, Your Honor.

Richard Hoss.

RICHARD HOSS, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you, please, state your name and spell your last

name?

A Rick Hoss, H-O-S-S.

Q And how are you employed, sir?

A I'm sorry?

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Q How are you employed?

A I have a car dealership over in Kansas City, Missouri.

Q Is that called Bob Hoss Dodge Chrysler Jeep?

A Or, Kansas City, Kansas. Yes, Bob Hoss Dodge, Chrysler, Jeep.

Q Do you know Tony Neutzler?

A Yes.

Q Who is he?

A He's my stepfather.

Q And I want to direct your attention back to March of 2005.

Were you familiar with what vehicle Mr. Neutzler drove?

A Yes.

Q And what vehicle was that?

A It was a '99 Jeep Grand Cherokee.

MR. GREEN: And display for the witness Plaintiff's

Exhibit 73D.

THE WITNESS: D470.

BY MR. GREEN:

Q And on your monitor there, do you recognize what the

photograph of that is?

A Yes. That's the vehicle.

Q Now, in March of 2005 did it come to your attention that

that vehicle had been stolen from Mr. Neutzler's
residence?

A Yes.

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Q And did you have communication with the police about that?

A Yes.

Q And at some point did you find out that, from the police that the car, in fact, had been recovered?

A Yes. But they were holding the car.

Q And so they held the car for a few days, is that right?

A Yes.

Q At some point did you see the car?

A Yes.

Q And how was it the --did the car come back to the dealership, Bob Hoss?

A Yes.

Q And how did it get to the dealership?

A It was towed.

Q And once it got back to the dealership, did you inspect the car?

A Yes, I did.

Q And when you inspected it, we have already seen photographs but when you inspected it, what did you notice, generally?

A It had broken glass out of it. Somebody throwing some bricks on it because it had some dents on it. And the steering column was tore up on it. There was some items left in it. And I went back there with my body shop manager to assess the damage for the estimate.

Q And did that damage, did you end up getting that damage repaired?

A Yes.

Q Now, when you went through the vehicle, did you have occasion to notice any items?

A Yes, I did.

Q And what types of items did you notice?

A There was an inhaler, a --let's see, steak knife, some kind of little medallion. And I just put everything in a bag. I had previously talked with one of the detectives that helped me get it released. I put them all in the bag and told them we found those items and they came by and picked them up.

Q Do you remember the name of the detective who came by?

A Williams, I believe.

Q Did you talk to a Detective Williams on the telephone?

A Yes.

Q And did a Detective Blehm come by and actually pick up the item?

A Yeah. He came by and picked up the items.

MR. GREEN: Nothing further, Your Honor.

THE COURT: Cross-examination?

MR. OSGOOD: Nothing, Your Honor.

MR. ROGERS: Just very briefly, sir.

CROSS-EXAMINATION

BY MR. ROGERS:

Q Is that a Grand Cherokee or is that a Cherokee Classic or what is it?

A It's a Grand Cherokee.

Q Okay. Thank you.

THE COURT: Redirect examination?

MR. GREEN: No, Your Honor.

THE COURT: Thank you, Mr. Hoss. You may step down.

I assume he can be excused.

Without objection, he can be excused.

(Witness excused.)

THE COURT: Do you have a 4-minute witness?

MR. GREEN: I don't think so, Your Honor.

THE COURT: All right. We're going to take another

overnight recess. Please remember the instruction I gave you earlier. Don't talk about the case among yourselves or with anyone else. Don't read, watch or listen to any news reports about the case. And keep an open mind until all of the evidence has been received and you have heard the views of your fellow jurors.

I'll ask Mr. Janacaro and --Mr. Janacaro and Mr. Wood to remain in the jury room for just a few minutes, if you would, please. And then we'll either talk to you or let you go from there.

We'll be in recess.

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Good night.

I'll ask that the spectators leave the courtroom at this time.

Just wait in the jury room, if you would, please, folks.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: All right. We have two problems. One is Mr. Janacaro. And I want to find out more about who he knows and why he is apprehensive or what is causing his anxiety.

Secondly, the first alternate, Mr. Brown, napped yesterday and on two or three occasions today I've notice that he was not paying attention, had his eyes closed. And I assume he was napping.

MR. ROGERS: Judge, is it Mr. Brown? Do you mean Mr. Wood?

THE COURT: I'm sorry. Mr. Wood, yes, Alternate No.

1.
I propose first to bring in Mr. Janacaro and see if we can get to the root of whatever his concerns or his anxiety is. Depending upon what we do with him, I will either bring in

Mr. Wood and admonish him that he needs to pay attention or, alternatively, release him.

MR. KETCHMARK: And on that one note, Judge, I

haven't noticed, I haven't looked. Is his head bobbing or just

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his eyes closed?

THE COURT: His head is -

MR. KETCHMARK: Okay.

THE COURT: It's back. It's forward. His eyes are closed.

You know, I think he's making an effort but I don't know what, maybe he's not sleeping at night. Obviously, we can't have him sleeping in here.

So let's begin with Mr. Janacaro.

Eva, if you'll bring him in.

(JUROR NO. 6 ENTERS THE COURTROOM.)

THE COURT: Mr. Janacaro, would you step back up, please?

JUROR NO. 6: Yes, sir.

THE COURT: Tell me again which person it is you believe that you recognize.

JUROR NO. 6: Can I do that in confidence?

THE COURT: Well, we've excluded all the spectators, everybody in here now --needs to be part -

JUROR NO. 6: I still feel very uncomfortable.

THE COURT: Folks, what do you want to do?

MR. OSGOOD: We could say on the record who we think it is and if that gives him a better ability to answer, Your Honor.

I guess I'm speaking for the group. They called me

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over there. We, as a consensus, have decided that if this juror is uncomfortable, we have alternates. And that's why we have alternates. And it might be appropriate at this point to excuse him if he would like to be excused, Your Honor.

THE COURT: Mr. Janacaro, is your anxiety level such that you are uncomfortable continuing to serve as a juror in this case?

JUROR NO. 6: I believe so, yes.

THE COURT: All right. You're excused. You need not come back tomorrow. Okay.

MR. KETCHMARK: Your Honor, if we might though, Mr. Sandage brought up a good point. I don't know if we need to inquire of whether this has been expressed to any of the other jurors.

THE COURT: Have you discussed this with any other jurors?

JUROR NO. 6: No one in particular. I think just a few heard me visiting with her about my potential concern but not a person, no identification.

THE COURT: Did any of the jurors overhear that conversation? Were other jurors in close proximity so they might have heard it?

JUROR NO. 6: There's a potential.

THE COURT: Who?

THE COURTROOM DEPUTY: Juror No. --the one that

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stands in the hallway.

THE COURT: Mr. Bielawski, No. 3.

Anyone else?

JUROR NO. 6: No.

THE COURT: Okay.

MR. ROGERS: Your Honor, Mr. Bielawski overheard.
What did you say?

JUROR NO. 6: Potentially like, that the,
potentially, someone in the --one of the spectators I may know
somebody or they may know who I am.

MR. ROGERS: Nothing more than that?

JUROR NO. 6: No, sir. No identification whatsoever.

THE COURTROOM DEPUTY: I think he did mention it was
a woman.

MR. ROGERS: Maybe a woman?

JUROR NO. 6: If I did, I can look you in the eye and say I had potential concern.

THE COURT: Let me ask the lawyers to step up. Turn on the white noise machine for awhile.

Mr. Janacaro, if you would step back, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: Steve mentioned his concern may be that the defendants are present in the courtroom.

MR. KETCHMARK: I think that's it, Your Honor.

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THE COURT: Any problem with sending them out?

MR. OSGOOD: No, not at all.

THE COURT: Okay. I'd like to get to the bottom of this. If, for no other reason, just curiosity.

MR. OSGOOD: As a death case, I think we need to.

THE COURT: All right. Thank you.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Ty, you can take the two defendants on out of the courtroom.

Mr. Janacaro?

JUROR NO. 6: Yes, Your Honor?

THE COURT: I'm sorry to be so slow to tumble to this. But it was evidently your concern about the defendants interfered with your ability to tell us what the situation was?

JUROR NO. 6: That's correct.

THE COURT: Okay. Now can you tell us?

JUROR NO. 6: Appreciate your attention to that.

Probably the second row was a young female that's been here every day. When I looked around the courtroom, people in the room, I believe that there's not with certainty but high degree that I either know who she is or I think she knows who I am.

And last October when we completed the questionnaire for this situation, the list of witnesses or potential witnesses, I did not recognize any name. However, the last

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name Rios, I know it's a very common name. However, one of my closest friends, I do not recognize Regennia Rios. Still don't, in my mind. That's one of my best friends. His wife. I know that his mother Linda or Olivia, maiden name was Rios in Kansas City. West side. Potentially, the northeast. I don't know if there is a -

I'm concerned now, more so than I have the last three nights I've been resting or not resting actually. But regardless of what the verdict may render, I'm just, I don't know if I see people in public. It's very -

MR. OSGOOD: The lady he's referring to, Your Honor, is Stephanie Fabela, formerly, who is married to my client. Her name is now, obviously, Stephanie Eye. She is the one young lady that, she was endorsed as a witness, obviously, potential witness. But she's not a witness and she's been in the courtroom. She's not related to the Rios' and doesn't know any Rioses.

THE COURT: Does that name mean anything to you?

JUROR NO. 6: No. The face does but the name does not.

THE COURT: All right. Do you continue to be apprehensive?

JUROR NO. 6: My stomach says yes. My head says no, because I've still got a clear mind but -

THE COURT: What do you folks want to do?

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MR. ROGERS: Let me ask another question, if I can,

sir.

Stand over here. Talk loud.

Is that the young woman who was wearing red today?

JUROR NO. 6: Yes, or purple.

MR. ROGERS: And that I believe is Ms. Eye, formerly

known as Fabela.

JUROR NO. 6: Glasses, second row on the end.

MR. ROGERS: Right. And there was a heavysset

Hispanic man sitting near her today?

JUROR NO. 6: Off and on.

MR. ROGERS: Did you recognize that person?

JUROR NO. 6: No.

MR. ROGERS: So that's not anybody who you think

might be related to your best friend's wife?

JUROR NO. 6: Never seen him before.

MR. ROGERS: Okay. And have you seen the young

woman, Mrs. Eye, any place, under circumstances that would be threatening in and of themselves? In other words, are you scared of her for some reason?

JUROR NO. 6: Threatening? I don't understand that part of the question. But in terms of recognizing the face, seems to be a more noticeable face, a recognizable face. So, threatening, no.

MR. ROGERS: But you may have, you're a businessman?

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A State Farm agent?

JUROR NO. 6: That's another area of my concern because of that. With the amount-

MR. ROGERS: I don't think that, well, obviously, if they see your name and your picture on T.V. or something, then they'll know who you are if they've been looking at you and paying attention, which is another question. But you think you may have encountered her? Is your office in the northeast area?

JUROR NO. 6: No. In the northeast I insure homes down there. Fair Access prohibited me from red lining or not writing business in certain areas that I'm aware of. I would have hesitation to be down in that area.

MR. ROGERS: Those are my questions.

MR. OSGOOD: The only other question I would have -

THE COURT: John, microphone.

MR. OSGOOD: I'm sorry.

I don't have any problem at this point excusing this juror. It appears to me that there are grounds and cause to do so and seat an alternate. That's why we have alternates.

I am concerned about the potential of what other jurors may have heard or been exposed to. But we can perhaps take that up after we make a decision here as to what to do. I want to preserve the potential objection I have and other issues.

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THE COURT: If there are no objections to excusing Mr. Janacaro, he'll be excused.

MR. KETCHMARK: No objection.

THE COURT: Thank you, Mr. Janacaro. You do not need to return.

JUROR NO. 6: Remain quiet and not talk about it.

MR. ROGERS: That's what I was going to ask, the admonition continues until the case -

THE COURT: The admonition continues until the jury finishes its work in this case. Don't talk about the case with anyone.

JUROR NO. 6: Okay. I'll not do that.

THE COURT: Thank you, sir.

Wait just a moment before you bring in Mr. Wood.

(JUROR NO. 6 HAS LEFT THE COURTROOM.)

MR. OSGOOD: I feel almost compelled, it's a capital case, to ask for a mistrial based on the fact that other jurors

may have heard what he said.

THE COURT: My intention is to bring in Mr. Bielawski in the morning, outside the hearing of the other jurors and ask him what he heard. He is the only one who may have heard anything. And I'll plan on doing that tomorrow morning.

As to Mr. Wood, if I excuse him then we're

essentially down to one alternate. I think my preference would be to admonish him to get a good night's sleep and come back

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tomorrow, ready to step up and take the place of Mr. Janacaro. And if you don't object to that, that's what I'll do. Then we'll continue to observe him. If he continues to fade out then I don't think we have any choice but to. If that's all right with you folks, that's what I'll do today.

MR. ROGERS: He seems to be fairly young.

THE COURT: You know there are times when he is paying very close attention and then other times when he is not. So all right. Let's -

Oh, yeah. Motion for mistrial is overruled.

MR. ROGERS: For the record, I did not join in that motion.

(ALTERNATE JUROR NO. 1 ENTERS THE COURTROOM.)

THE COURT: Hello, Mr. Wood. Do you know why you're

in here?

ALTERNATE JUROR NO. 1: Not sure.

THE COURT: Not sure yet. Well, you have had trouble paying attention. I noticed on at least three occasions today and one yesterday that you appeared to have dozed off.

ALTERNATE JUROR NO. 1: I apologize. I have a head cold. Didn't sleep well last night.

THE COURT: Are you on medication?

ALTERNATE JUROR NO. 1: No. Just, I mean, I just take night time medication. But, you know, that's it for my cold. But I really want to serve on the jury. I just today -

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I just didn't sleep well last night.

THE COURT: Well, here's the situation, Mr. Wood. I

have just excused Mr. Janacaro. You are the first alternate.

ALTERNATE JUROR NO. 1: Yes, sir.

THE COURT: I have some hesitancy about seating you

as a juror in this case because of what I have observed over the last two days. However, I am going to do that. And you'll move up and take Mr. Janacaro's place. But you must pay attention.

ALTERNATE JUROR NO. 1: I, absolutely.

THE COURT: That means if you need to go to bed at

7:00 p.m. tonight, then you need to go to bed at 7:00 p.m. tonight.

ALTERNATE JUROR NO. 1: Yes, Your Honor.

THE COURT: I expect you to be alert and attentive

throughout the rest of the trial.

ALTERNATE JUROR NO. 1: Absolutely, Your Honor.

THE COURT: Okay?

ALTERNATE JUROR NO. 1: I apologize to the Court.

THE COURT: Thank you, sir. You may go.

(ALTERNATE JUROR NO. 1 HAS LEFT THE COURTROOM.)

THE COURT: Anything else, folks?

MR. GREEN: I have one thing that might sort of

expedite things tomorrow. We're going to call Justin Buchanan.
And through him we're going to be putting in some letters that

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Defendant Sandstrom wrote to him. These letters, we excerpted out the relevant portions. They're pretty lengthy, the relevant portions. We already provided those to the defense. And I would just say that, you know, possibly take a look at those and if there are objections in advance we can take them up tomorrow morning before Mr. Buchanan hits the stand.

THE COURT: I'll be in here at 8 in the morning. If you need me, let me know.
(End of session)

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(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Let's go on the record.

There was a phone call on Eva's message machine this morning from Mr. Janacaro who said that he also mentioned to the juror sitting next to him, which I believe is No. 5, he described him as an older gentleman, that he believed he knew someone. And so I would propose to bring in Mr. Moorefield and Mr. Bielawski and inquire of them outside the hearing of others on the jury as to what, if anything, was said to them.

If there's no objection to that procedure, do we have everyone here? Eva?

THE COURTROOM DEPUTY: Yes.

THE COURT: Let's bring in Mr. Moorefield first, No.

5.

(JUROR NO. 5 ENTERED THE COURTROOM.)

THE COURT: Good morning, Mr. Moorefield. Would you step up, please?

Mr. Moorefield, during the proceedings yesterday afternoon, Mr. Janacaro who was sitting next to you -JUROR NO. 5: No. 6?

THE COURT: No. 6.

JUROR NO. 5: Yes, sir.

THE COURT: --mentioned that he thought he knew

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someone who had been in the courtroom throughout the course of the trial. He also mentioned that he may have said something about that to you. And so I've asked you to come in this morning so I can ask you about any conversations you may have had with Mr. Janacaro concerning someone he may or may not have known?

JUROR NO. 5: He just said I think there were a

couple. He didn't say who.

THE COURT: Okay. He didn't identify them to you?

JUROR NO. 5: No.

THE COURT: Did he say how he knew them?

JUROR NO. 5: Not that I recall.

THE COURT: He said he thought there were a few?

JUROR NO. 5: No. I thought he said two.

THE COURT: Two?

JUROR NO. 5: Yeah.

THE COURT: Did he identify -JUROR

NO. 5: I wasn't -THE

COURT: Did he identify where they were sitting?

JUROR NO. 5: No. No.

THE COURT: Is there anything about that

conversation, Mr. Moorefield, that causes you to be concerned about your fairness if you were to continue as a juror in this case?

JUROR NO. 5: No.

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THE COURT: Well, I brought you in because

Mr. Janacaro has been excused.

JUROR NO. 5: I see.

THE COURT: And so he will not be here this morning.

JUROR NO. 5: I thought he said a couple but he

didn't mention a name or whether he knew them at work or church or whatever.

THE COURT: Okay. And didn't say whether he had had

any conversations with them?

JUROR NO. 5: No.

THE COURT: Since the beginning of the trial?

JUROR NO. 5: No.

THE COURT: All right. Any questions, folks?

MR. KETCHMARK: Nothing from the government.

MR. OSGOOD: No, Your Honor.

MR. ROGERS: No, Your Honor. Thank you.

THE COURT: Thank you, Mr. Moorefield.

We'll bring the entire group back in, in just a

moment.

But, first, let's bring in Mr. Bielawski.

(JUROR NO. 5 LEAVES THE COURTROOM AND JUROR NO. 3 ENTERS THE COURTROOM.)

THE COURT: Mr. Bielawski, would you come up, please?

Mr. Bielawski, Mr. Janacaro, who was Juror No. 6,

told me yesterday that he thought he recognized some people

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sitting in the courtroom. And as a result of that he has been excused from further service.

He also mentioned that you may have overheard him saying that to Eva. Did you hear Mr. Janacaro talking about people he might know that were in the courtroom during the course of the trial?

JUROR NO. 3: I did not.

THE COURT: Okay. Any questions?

MR. KETCHMARK: Not from the government.

MR. OSGOOD: No, Your Honor.

MR. ROGERS: No.

THE COURT: Thank you, sir.

And you can bring in the whole panel, Eva.

Eva, go ahead and put Mr. Wood in No. 6's chair.

(The following proceedings were had IN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Welcome back, ladies and gentlemen.

Couple of housekeeping announcements. As I promised you at the beginning of this trial, we'll stop at 1 today. We'll see how things go, but maybe it would be appropriate to take two short breaks this morning rather than one longer break. So somewhere around 10 or 10:15 we'll break for about 10 minutes, then again somewhere around 11:30 or 11:45 another 10-minute break. Then at 1 you will be released.

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You may have noticed that Mr. Janacaro, Juror No. 6, is not with us. Mr. Janacaro told us yesterday that he thought he recognized one or more individuals who had been in the courtroom. And as a result of a discussion which ensued following that announcement, Mr. Janacaro has been excused. Alternate Juror No. 1, Mr. Wood, has been seated to replace him. And I wanted you to be aware of that as we move forward.

All right. Is the government ready?

MR. KETCHMARK: The government is, Your Honor.

THE COURT: You may proceed.

MR. KETCHMARK: Call Special Agent Arch Gothard.

ARCH GOTHARD, RECALLED

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q And, again, you're Special Agent Arch Gothard with the

FBI?

A I am.

Q In connection with the investigation that, obviously, has

been the subject of this trial, are you aware of when the

indictment would have been returned?

A September 29, 2005.

Q Following the return of that indictment, Special Agent

Gothard, was there another investigation that was opened

up regarding potential threats?
A There was.

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Q And when would that separate threat have been opened?

A On about November 3, 2005.

Q In connection with that threat investigation, were there additional subpoenas that would have been issued to various correctional institutions?

A Yes, sir.

Q And did you and Special Agent Janke take steps to serve the subpoenas on, in particular, three various detention or correctional facilities?

A We did.

Q I'm going to show you what's been marked as Government's Exhibit 152, an eight-page document. Do you recognize what is contained in 152?

A I do.

Q And what is contained in Government's Exhibit 152?

A That is documents we received from St. Claire County Jail pursuant to one of the subpoenas that was issued.

Q Do you know when this particular document containing Government's 152 would have been received by the FBI?

A November 15 of 2005.

Q Upon obtaining this document from St. Claire, what would have happened with it?

A It would have been taken back to the FBI and turned into the file.

Q In addition to that particular document, you mentioned

that there were other subpoenas that were also served?

A Yes, sir.

Q And was there a subpoena that was served on the Jackson County Detention Facility?

A There was.

Q Do you know when that subpoena would have been served?

A November 10, 2005.

Q And did you or Special Agent Janke become aware at some point that Jackson County had items that were responsive to what was requested pursuant to that subpoena?

A Yes.

Q Did you and Special Agent Janke take steps to pick up those items?

A Special Agent Janke did, yes.

Q Have you reviewed the items that were picked up?

A Yes.

Q Again, Special Agent Gothard, I'm going to show you what's been previously marked as Government's Exhibit 153 and it's a two-page document. Do you recognize what is contained in 153?

A Yes, I do.

Q What is contained in Government's Exhibit 153?

A That's one of the letters that was picked up from Jackson County.

Q Showing you now what's been marked previously as

Government's Exhibit 154, also a two-page document. Do you recognize what is contained in that?

A Yes. That's another letter that was picked up from Jackson County.

Q Pursuant to the subpoena that we're discussing?

A Yes, sir.

Q Also going to show you what's been marked previously as Government's Exhibit 155, also a two-page document. Do you recognize that?

A Yes, I do.

Q And what is contained in Government's Exhibit 155?

A That is another letter that was picked up from Jackson County.

Q And when these documents would have been picked up by Special Agent Janke, are you aware what would have happened with them?

A Yes. They were taken back to the FBI and submitted into evidence.

Q The third subpoena that you mentioned that was issued, do you recall what correctional facility that subpoena would have been issued to?

A To Crossroads Correctional Institute.

Q Is that in Cameron, Missouri?

A It is.

Q Do you know when that subpoena would have been served?

A It was served on November 16, 2005 and I think it's actually Crossroads Correctional Center, Detention Center, not institute. Excuse me.

Q Thank you. You mentioned November 16 of 2005?

A Yes.

Q And did they have documents that were responsive to what was being requested in that subpoena?

A They did.

Q Special Agent Gothard, I'm going to show you what's been marked previously as Government's Exhibit 116 and appears to be a paper, single page plus an envelope. Is that correct?

A Yes, it is.

Q And what is contained in Government's Exhibit 116?

A That is one of the letters we obtained from Crossroads.

Q Showing you now what's been marked as Government's Exhibit 117. And it's a single page with writing on both sides.

What is contained in Government's Exhibit 117?

A That is another letter we obtained from Crossroads.

Q Showing you now what's been marked previously as Government's Exhibit 120, which is a two-page document with writing on both sides. Do you recognize what Government's Exhibit 120 is?

A That's another letter we obtained at Crossroads.

Q Government's Exhibit 121, also a two-page document. Do

you recognize what Government's Exhibit 121 is?

A That is another letter we received from Crossroads Correctional.

Q Government's Exhibit 126, also a two-page document. Do you recognize what is contained therein?

A Yes. That's another letter we received from Crossroads.

Q Government's Exhibit 135, a single page with an envelope attached. Do you recognize what is contained in Government's Exhibit 135?

A This, again, is another letter from Crossroads and the envelope, too.

Q Government's Exhibit 136, also a two-page document with an envelope attached. Do you recognize what is contained in Government's Exhibit 136?

A It's another letter from Crossroads Correctional.

Q Government's Exhibit 138, also a two-page document with a letter attached or an envelope attached. Do you recognize what is contained therein?

A This is another letter we obtained at Crossroads.

Q Government's Exhibit 139, a two-page document with an envelope attached. Do you recognize what is contained in Government's Exhibit 139?

A That's another letter we obtained at Crossroads.

Q Government's Exhibit 140, also a two-page document with an envelope attached. What is contained in Government's

Exhibit 140?

A That's another letter we obtained at Crossroads.

Q Government's Exhibit 141, eight pages with an envelope attached. What is contained in Government's Exhibit 141?

A That is another letter we received from Crossroads pursuant to the subpoena we served on them.

Q And with respect to all of the government's exhibits that we just talked about, with those being letters obtained from Crossroads, what would you and Special Agent Janke have done with those items?

A We took them back to the FBI and made arrangements to check them into evidence.

Q And, again, with the last series of letters that we referenced coming from Crossroads, do you know from whom at Crossroads you would have received those?

A Bill Black.

Q And who is Mr. Black?

A He is one of the --I can't remember what his specific title is there.

Q Is he an employee of the state that works at the facility there?

A He is.

Q And in particular did Mr. Black or are you aware where these letters would have come from?

A They were letters that were from Justin Buchanan's

property.

Q And you mentioned Mr. Buchanan. Special Agent Gothard, at some point in this separate threat investigation did Mr. Buchanan become a target of that investigation?

A He did.

Q At the time that, well, with respect to the last group of letters that we talked about coming from the Crossroads Correctional Facility, you mentioned a subpoena was served on November 16th of 2005, is that correct?

A Yes.

Q Is that also or what date do you know did Crossroads provide to you and Special Agent Janke with the documents that we have just discussed?

A On November 16th.

Q And on that date or shortly thereafter did you and Special Agent Janke take steps to review those documents?

A We did.

Q Were there more letters received than just these that we have referenced pursuant to that subpoena?

A Yes. Many.

Q And did you and Special Agent Janke also review those additional correspondence?

A I don't think we read every letter we got from Crossroads, no, but there were a bunch of other letters that we did ultimately discuss with Mr. Buchanan.

Q Well, that's what I'm getting at is based on your review of these letters, did you take steps to interview Justin Buchanan?

A Yes, sir, we did.

Q And when would your interview with Mr. Buchanan have occurred?

A On November 17, 2005.

Q So the day after these letters would have been received from Bill Black?

A Yes, sir.

Q Is there a particular reason why there was such a quick turn around in your interview of Mr. Buchanan following your receipt of these letters from Mr. Black?

A Because he was scheduled to be released from Crossroads, I think, on November 18th.

Q So his release was imminent from Crossroads?

A It was.

Q And based upon your review, not only of the letters that we have discussed here but also the letters that were received in particular from St. Claire County, was it concerning to you based on the content of the letters that Mr. Buchanan needed to be interviewed prior to his release from the Missouri Department of Corrections?

A Yes. I wanted to make sure we interviewed him before he was released.

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MR. KETCHMARK: One moment, Your Honor.
That's all I have at this time. Your Honor.
THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q
Agent Gothard, was he arrested the next day?

A
Justin Buchanan was arrested November 18, 2005.

Q
Did you ultimately transport him to this building?

A
Yes, Mr. Osgood.

Q
And then I believe he was, not through your doing but
through routine procedure, housed at a correctional
facility, the holding facility in Leavenworth?

A
Yes.

Q Okay. Thank you.

THE COURT: Further cross-examination?

CROSS-EXAMINATION

BY MR. ROGERS:

Q

And that facility in Leavenworth is called CCA, is that right?

A

Yes, it is.

Q

Thank you.

A

It's Corrections Corporation of America but it's commonly referred to as CCA.

Q

Corrections Corporation of America owns and operates the facility and they call it the Leavenworth Detention

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Center, right?

A

I'm not sure about that. We all, in the law enforcement community we call it CCA.

Q

There are other CCA facilities across the country, in fact, in other cities?

A Yes, there are.

Q Thank you.

THE COURT: Redirect examination?

MR. KETCHMARK: No, Your Honor.

THE COURT: It goes without saying that Agent

Gothard's testimony has been under oath because he took the oath, initially. If he returns to the stand, that oath is still binding.

MR. OSGOOD: I neglected to ask one question.

FURTHER CROSS-EXAMINATION

BY MR. OSGOOD:

Q Is that, it's a private contract facility where they,

basically, house people awaiting trial in federal cases as you understand it?

A

That's where people who are awaiting federal trials are housed. I'm not sure about the contractual arrangement between the marshals and all that.

Q Basically, a facility where people awaiting trial are kept?

A Yes, Mr. Osgood.

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Q Thank you.

THE COURT: Any redirect?

MR. KETCHMARK: No, Your Honor.

THE COURT: Thank you. You may step down.

(Witness excused.)

MR. OSGOOD: Could we approach a minute while you get your other witness?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: It's obviously going to come out that my client is in custody and I would expect the jury would expect a person charged with this offense would be in custody.

Mr. Buchanan is going to testify, a lot of his testimony is going to involve testimony that was back and forth while these two people were in segregation, which is solitary confinement. That implies dangerousness and a number of other things.

I have a motion in limine at this time to prohibit the government from bringing out these conversations occurred in segregation. I don't think it adds or detracts anything. I prefer it be limited. These were conversations in this facility there that houses people for federal trials.

THE COURT: Does the government have a response?

MR. GREEN: Well, I'm going to handle Mr. Buchanan.
Mr. Buchanan will say he was taken to CCA and put in general
population. He then gets in a dispute with a guard and gets

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put in a segregation unit. That's where he learns Mr. Eye is in and they have these conversations. I wasn't going to focus on the fact that, you know, Eye was in segregation, was considered dangerous for that reason, however, that is right. Now, that is the background as to how Buchanan gets into the same unit with Eye.

THE COURT: I don't think it adds anything. Why don't you just ask him if he was in the same unit.

MR. GREEN: What I can do is lead him through -THE COURT: Okay.

MR. GREEN: And while we're up here on the subject,

when we get to the part where Buchanan is having these conversations with Eye, Buchanan has told us previously and the FBI, that Eye expressed concern to him, Buchanan, that he could be charged with other murders now.

THE COURT: Charged with?

MR. GREEN: Other murders now. Buchanan has been instructed not to say anything about that. And what I would propose to do though in that area is to get into very much leading, to focus him in on the conversations we want out and to stay away from that whole area. So -

MR. OSGOOD: That's fine.

THE COURT: Okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)
MR. GIBSON: Thank you, Your Honor.

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Government calls Dr. Mary Dudley.

DR. MARY DUDLEY, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GIBSON:

Q Good morning, Dr. Dudley.

A Good morning.

Q Are you situated?

A Yes.

Q Okay. I just need to make sure you speak into the microphone. I know it's a little bit far away from where you're sitting right at this moment and the microphone unfortunately is stationary. You might have to lean in.

A Yes.

Q Could you tell us your current position and title?

A Yes. I'm the Chief Medical Examiner at the Jackson County Medical Examiner's Office here in Kansas City, Missouri.

Q How long have you held that position, ma'am?

A For the past year and a half.

Q Could you tell us a little about your training?

A Medical degree. And following medical school I have two years of anatomic pathology, two years of clinical pathology and two years forensic pathology.

Q How long have you been with the Jackson County Medical Examiner's Office?

A Approximately, for a year and a half.

Q And what did you do immediately prior to that?

A I was the Chief Medical Examiner and District Coroner of the Sedgewick County Forensics in Wichita, Kansas.

Q And what does a medical examiner do? Could you describe that for the ladies and gentlemen of the jury, please?

A Yes. Basically, as a forensic pathologist and medical examiner, we determine the cause and the manner of death of individuals that come under our jurisdiction.

Basically, pathology is the study of disease and forensic pathology is the study of disease and injury and how it interfaces with the law or legal issues.

Q And in the nature of the work that you do, do you conduct autopsies?

A Yes.

Q Approximately, how many autopsies do you conduct a year?

A I, personally, conduct up to about 250 a year.

Q And in conducting your autopsies, are reports prepared?

A Yes.

Q And do those reports document your conclusions as to the cause of death and the manner of death?

A Yes.

Q And are you prepared to testify to your conclusions today regarding the cause of death and manner of death of an individual named William D. McCay from an autopsy conducted on March 9th of 2005?

A Yes. This autopsy was not conducted by me but I did review the report and I can give you my opinions on that report.

Q Are those opinions to a reasonable degree of medical certainty?

A Yes.

Q Now, specifically, doctor, with respect to the autopsy reports, these are reports that you rely on in the ordinary course of business, is that correct?

A Yes.

Q And the particular autopsy that was done in this case was that by Thomas Gill?

A Yes, it was.

Q And was Thomas Gill at one time affiliated with the Jackson County Office of Medical Examiner?

A Yes.

Q He has since left for another position, is that correct?

A That's correct.

Q So you're pinch hitting today?

A Yes.

Q Now, ma'am, in connection with the report, will that assist you in your testimony today?

A Yes, it will.

Q Approaching with Government's Exhibit 54A for identification purposes.

Is that the report for this particular autopsy, ma'am?

A Yes.

Q Now, specifically, you started to talk a little bit about the cause of death and manner of death. And I'd like you, first, to explain to the ladies and gentlemen of the jury, what is the cause of death? What do you mean by that?

A The cause of death is that disease or injury which leads to a downward spiral of events that will eventually lead to death.

Q And what is manner of death? How is that distinguished from cause of death?

A There are five basic manners of death and they can be natural, homicide, suicide, accident or undetermined manners. As a forensic pathologist, we can check on the death certificate any of those manners. But if it's anything other than natural, then that would have to come to our office. Otherwise, a general family physician or surgeon can sign only natural manners of death.

Q And what in the case of, well, let's start this way. This autopsy was conducted, specifically, on March 9 of 2005, is that correct?

A That's correct, yes.

Q And what was the cause of Mr. McCay's death?

MR. ROGERS: Objection, Your Honor. May I voir dire

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the witness?

THE COURT: Step up.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: Ordinarily, the answer would be yes but I'd like to know.

MR. ROGERS: I'm going to ask if she actually reviewed anything other than the report. If she looked at the photographs and what ever contemporaneous notes were taken. Did she actually review the autopsy or just read the report?

MR. GIBSON: We're going to get to that, Your Honor, but that wouldn't go to her qualifications to testify. And if that were the subject area of Mr. Rogers' examination, that would be more appropriate for cross-examination.

MR. ROGERS: I think it's prefatory, Your Honor. If, in fact, she did review those documents then I don't have a valid proffered objection. If she didn't, then I think I do.

THE COURT: Do you mind if Eric just asks her those questions?

MR. ROGERS: That's fine. Kind of expected him to.

MR. GIBSON: In addition, Your Honor, autopsy reports are specifically excluded from proffered analysis. There is federal --by definition, not testimony, and also business record in this case.

MR. ROGERS: I think I can establish, first of all,

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that it's testimonial within the meaning of Crawford and I can voir dire the witness.

And, secondly, I think that case law is contrary in other circuits notwithstanding or even in this Circuit, notwithstanding. I certainly need to do that if that's the case. I don't think being a business record has anything to do with it. Business record is an exception to hearsay and Crawford specifically case --of hearsay rule are not-

MR. GIBSON: That's not what it says. But that's immaterial and that's part of the examination that is about to come out.

THE COURT: Why don't you proceed with the examination.

If you feel like you need to voir dire her, I'll permit that.

MR. ROGERS: I thought he would ask her for the conclusion as to the manner of death so that's why I was -

MR. GIBSON: Well, I did. She's going to go over the basis for that.

MR. ROGERS: I --Okay. I think you have to have the basis before the conclusion.

MR. GIBSON: Judge, he has all the discovery. He knows what the cause of death is and manner of death. He knows what is coming.

MR. ROGERS: I'm not -

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THE COURT: Any dispute as to the manner or cause of death? So, let's proceed.
(THE PROCEEDINGS RETURNED TO OPEN COURT.)
BY MR. GIBSON:

Q Ma'am, did the Medical Examiner's Office keep a file with respect to this particular examination?

A Yes.

Q And, in fact, you keep files on all of the autopsies you do, isn't that correct?

A That's correct.

Q And in preparation for your testimony today, did you review that file?

A Yes.

Q Did you review Dr. Gill's notes?

A Yes.

Q Did you review the photographs or --Strike that.
Were there photographs taken during the autopsy?

A Yes.

Q Did you review those photographs?

A Yes, I did.

Q Did you review Dr. Gill's diagram of where the wound location was with respect to Mr. McCay?

A Yes.

Q And as a result of your examination did you prepare your own diagram as a result of all the material that you had

reviewed?

A Yes.

THE COURT: Mr. Gibson, you're blasting us a bit with that microphone. You might -MR.

GIBSON: I'm sorry, Judge.

BY MR. GIBSON:

Q And what was the cause of William McCay's death?

A The cause of death is gunshot wound to the chest.

Q And what was the manner of death?

A The manner of death is homicide.

Q Now, walk us through that. What is done in terms of the autopsy? What examination do you do? How does that take place?

A Basically, we do an external examination, take photographs, document if there's any defects in the clothing, any --We do, in the external examination, looking for identifying features of the individual. If there's any marks, scars, height, weight, hair color, that sort of thing. Then we take photographs of the injury prior to autopsy. Take x-rays and note if there's any projectiles within the body or anything else of unusual features on the x-ray. And then we'll continue to progress with the autopsy.

We will take some of the toxicology specimens prior to autopsy, a peripheral blood, femoral blood is

done. Then we'll proceed to do the autopsy and look at the internal organs and document the organs as far as their weight, any features that there may be, any natural disease, and document any injury that we see in the body. And collect more toxicology samples.

Then if there is a projectile, we'll recover that. We'll also note the trajectory of the projectile through the body and any associated bleeding or fluids in the body cavities. And then we will also take sections of the organs to look at microscopically. And as those reports come back to us, the toxicology, the looking at the microscopic sections, that's called the histology.

Then we'll complete our autopsy report and make a determination of the cause and manner of death.

Q And, specifically, with respect to Mr. McCay, what did the external examination yield? What was determined as a result of the external examination?

A I'm not sure how detailed you want me to go. Do you mean regarding the injuries?

Q Yes, ma'am.

A As far as injuries on the external body, there was a gunshot wound to the left side of the chest.

Q And could you describe that wound in more detail, ma'am?

A I'm just referring, again, to the notes regarding the entry gunshot wound. That there is an abrasion rim on the

entry wound but there is no presence of soot or stippling surrounding the wound.

Q And what does that mean? An abrasion border, could you explain that for us?

A Basically, as a bullet enters the body, it will scrape the skin on entry so that is consistent with an entry gunshot wound.

Q What is meant by reference to an absence of soot or stippling? What is the significance of that?

A Basically, if there is soot or stippling or the absence of soot or stippling, that will help us in the range of fire.

If we see soot on a wound or surrounding a wound or in a wound, that means a contact gunshot wound. That's something that we normally see with a suicide. When the gun is actually on the body, we would see soot.

If the gun is further away from the body, we may see burned and unburned gun powder stippling or tattooing around that particular wound.

If the gun is so far away that those granules don't penetrate the skin, that's what we consider a distant range wound.

In this particular case it would be considered a distant range wound with no presence of soot or stippling.

Q Now, ma'am, with respect to an x-ray, was there an x-ray done of Mr. McCay?

A Yes.

Q What, if anything, did that x-ray reveal?

A It revealed a projectile on the right side of the chest.

Q By projectile, what do you mean? Is that the bullet?

A Yes.

Q Was that bullet removed from Mr. McCay?

A Yes, it was.

Q Now, why was this gunshot wound fatal?

A Because it passed through certain vital structures of the body. It entered the --between the lateral left 6th and 7th rib. Then went through the hemidiaphragm, which is the muscle that separates the chest cavity from the abdominal cavity. It went through the heart and bruised the lung on the way to the heart. It went from left to right. And also it lacerated or tore the right renal artery. And it was recovered from the right renal artery and caused, mainly, as it passed through the heart, passed through the left ventricle, the septum and the right ventricle of the heart. Then caused bleeding into both of the chest cavities, approximately a liter of blood in both of the chest cavities and blood in the heart sack which is called the pericardium.

Q So after the bullet passed through the heart, the heart continued to beat, is that correct?

A That's correct.

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Q And that resulted in the body cavity filling with blood?

A Yes.

Q So this gunshot wound did not immediately result in death, is that correct?

A That's correct.

Q Now, ma'am, I'm going to show you what has been previously marked as Government's Exhibit 54C and ask you if you recognize that?

A Yes.

Q Is that a photograph of William McCay associated with the autopsy done by Dr. Gill?

A Yes, it is.

Q Is that one of the photographs you reviewed in preparing for your testimony today?

A Yes.

MR. GIBSON: Your Honor, at this time I would move

for admission of Government's Exhibit 54C and ask that it be

published to the jury.

THE COURT: 54C is admitted and may be published.

BY MR. GIBSON:

Q Now, doctor, I'd like to show you what has previously been

marked as Government's Exhibit 54I and ask you if you

recognize that?

A Yes.

Q Is that one of the photographs that you reviewed in

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connection with the autopsy of William McCay?

A Yes.

Q And what is depicted in that photograph, ma'am?

A That shows the entry gunshot wound on the left side of the chest of the body.

MR. GIBSON: Your Honor, at this time I would ask

that Government's Exhibit 54I be admitted into evidence and

published to the jury.

MR. OSGOOD: No objection.

THE COURT: Motion granted.

BY MR. GIBSON:

Q

And I'd also like you to take a look at Government's Exhibit 54J for identification purposes and ask you if you recognize that?

A

Yes.

Q

And what is depicted in 54J?

A That's just a close up view of the entry gunshot wound.

MR. GIBSON: And at this time I would move for the

admission of 54J and ask that it be published to jury?

MR. OSGOOD: No objection.
THE COURT: Motion granted.

BY MR. GIBSON:

Q
And what can you see in this photograph, doctor?

A
You can see the abrasion rim surrounding the entry wound
and also the lack of soot or stippling on that wound.

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Q What, if anything, happened after the bullet was recovered? Do you turn that over to anyone?

A Yes.

Q Who does that go to?

A It would go to the investigating agency.

Q Which in this case was the Kansas City Police Department?

A Yes.

Q And, last, I'd like you to take a look at Government's Exhibit 55 and ask you if you recognize that?

A Yes.

Q Is that the diagram that you prepared?

A Yes, it is.

MR. GIBSON: And, Your Honor, at this time I would

ask that 55 be admitted into evidence and displayed to the

jury.

MR. OSGOOD: I don't have any objection.

Do we have a copy of that?

MR. GIBSON: Yes, you do.

MR. OSGOOD: That was the replacement?

MR. GIBSON: Yes.

THE COURT: 55 is admitted and may be published.

BY MR. GIBSON:

Q Now, what have you diagrammed for us here, doctor? Can you explain your diagram?

A This is the body diagram that we prepare, that I prepared

on this particular case from the notes and the reports and the diagram that was performed by Dr. Gill.

It shows on the left side of the body, on the chest, it shows the entry gunshot wound. And then there is an X over on the right side of the chest which shows where the projectile was recovered. The notes that I have on the bottom of the diagram, between the front and back of the body shows the trajectory which was left to right and upward and front to back.

And also the internal injuries where the bullet passed through the body including the left lateral 6th and 7th intercostal space between the 6th and 7th ribs. There is a contusion or bruise of the left lung. It passed through the left hemidiaphragm, the heart, the right renal artery. And there were bilateral hemo-thoracentesis meaning there's blood in both of the pleural cavities, the chest cavity between the chest wall and lungs which contain a liter of blood in each cavity and there was hemopericardium in the heart sack, which was 100 milliliters.

Q So Dr. Gill's conclusion was that the cause of death was a gunshot wound, is that correct?

A That's correct.

Q And you concur in that judgment?

A Yes, I do.

Q And the manner of death as determined by Dr. Gill was homicide, is that correct?

A Yes.

Q And you concur in that judgment?

A Yes.

Q Now, doctor, on your chart did you note any injuries to the face of Mr. McCay?

A No.

Q And also with respect to the heart continuing beating after the bullet passed through that area, do you have any way of determining approximately how long the heart would have continued to beat?

A No. It could probably be more based on the medical records as far as the time of incident and then the time that he was pronounced dead possibly.

Q Is it possible for an individual to engage in physical activity after that bullet passed through the heart?

A Yes.

Q And what kind of activity would an individual be able to engage in? Is that based on the individual or do you have some sense of that you could share?

A It, basically, depends on the amount of injury to the heart and also the fact that sometimes with a gunshot wound or even a stab wound to the heart, the heart can still close over as a muscle. The muscle can close over

and still pump blood to the brain as long as there's still blood being circulated and going to the brain, the person will be conscience. Some times will be able to actually move around or conduct other activity for a period of time until the blood leaks out of the heart.

Q Now, would the presence of clothing impact in any way whether or not there was a presence of soot or stippling?

A Yes.

Q And how could that impact it?

A It possibly could if there was thick clothing on the body that would screen out some of the soot or stippling. Say, if a person had a ski jacket or something on, that it may actually be a contact wound or intermediate range wound but that would screen out the amount of soot prior to it reaching the body.

Q As a matter of fact there was clothing on Mr. McCay when his body arrived for examination at the Medical Examiner's Office, is that correct? There was some clothing that came with the body? Excuse me.

A The clothing was probably cut from the body at the hospital and it may have arrived later for inspection. And it is actually documented under the external exam that there was clothing.

Q Thank you, doctor.

CROSS-EXAMINATION

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BY MR. OSGOOD:

Q Doctor -Your

Honor, have we put the report into evidence

yet? The autopsy?

THE COURT: The report is what number?

MR. GIBSON: 54A, Your Honor.

THE COURT: 54A has not been offered.

MR. OSGOOD: I move the admission of that document on

behalf of defense.

MR. GIBSON: No objection, Your Honor. It was my

intention to admit it.

THE COURT: 54A, without objection will be admitted.

MR. OSGOOD: Could we have the ELMO, please?

BY MR. OSGOOD:

Q Doctor, an autopsy report like this contains sections,

doesn't it?

A Yes.

Q And you highlight and bold some sections then you've got

paragraphs and sub-paragraphs?

A That's right.

Q And that's a routine way to prepare an autopsy report,

right?

A Yes.

Q Now, I'm going to show you the autopsy findings. What does the autopsy findings say?

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A This is a summary?

Q Yes, ma'am.

A On page 6.

Q Do you have the ELMO in front of you? This is the report, itself. Read me paragraph 1 under autopsy findings?

Paragraph 1.

A Gunshot wound to the chest penetrating -Q

To the lay person, what does the chest mean? It means the front of your body?

A That's right. It actually means from front to back.

Q To those of us who haven't gone to medical school, what do we talk about about the chest?

A It's, basically, the heart and lungs and anything contained on the upper part of the body.

Q The front of the chest, the upper part of the body?

A Right.

Q So to the average lay person, for example, a witness in this case who read this, if they saw this, a gunshot wound to the chest, they would think it was in the front of the body, wouldn't they?

A No. It just means to the chest.

Q That's what I mean, to the chest area in the front, a lay person reads that, that's what they would think, wouldn't they?

A I can't answer that. If the person was shot in the back,

I would still call it a gunshot wound to the chest.

Q Exactly. As medical terminology, you would say gunshot wound to the chest even if it was in the back?

A Yes.

Q But we all talk about having a big chest and we're talking about front of our body, aren't they? In every day conversation?

A I don't know.

Q Okay.

A And I can't answer for what everyone interprets that word to be.

Q And then the next paragraph is a description by actual measurement as to where the wound is, isn't it?

A Yes.

Q And there is no question whatsoever in your mind, having reviewed this report, having seen these photographs, that the wound was in the side, wasn't it? Shot in the side?

A It's actually going closer to the side than the front.

It's going from front to back, yes.

Q Do you have children?

A Yes.

Q How old are they?

A Old.

Q Old? Grown?

A I have grandchildren.

Q You don't look that old.

A My son is 37.

Q You have grandchildren then. They would refer to this as their side. The side of their body, if you're talking to your kids. Do you teach your kids medical technology?

A Yes.

Q You do? Maybe you're the wrong person to ask. If you've got an ache, you've got an ache in your side. It's in your side, isn't it?

A Yes.

Q You've got an ache in your chest, it's up here in your chest, isn't it? You've got an ache in your back, you hold your back, don't you? Do you get what I'm talking about?

A Yes.

Q So common lay terminology is, reading that report, this person was shot in the chest?

A That's right. He was shot in the chest.

Q But the person wasn't, was he?

THE COURT: Do you have an objection, Mr. Gibson?

MR. GIBSON: She's testifying to medical conclusions

in a medical report, Your Honor. I don't understand what the point would be of lay language as this is not meant nor intended to reflect lay language.

THE COURT: I understand your objection. I'll allow

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him to continue. Overruled.

MR. OSGOOD: Thank you.

BY MR. OSGOOD:

Q I'll get off that subject now.

There isn't any question this wound entered his side by the ribs, between the 6th and 7th ribs or something?

A That's correct. It says exactly.

Q I'm not disputing that.

A Okay.

Q Now, you said clothing would be important in an examination of a body, in an autopsy, if you could have the clothing?

A Yes.

Q One of the things on a contact wound on suicide, where the weapon, particularly a revolver, would you not expect to find if it was a contact wound, up close, whether through clothing or not, actual burn residue in the wound itself?

A Yes.

Q Do find any such burn residue in this wound?

A No.

Q So the absence of stippling and the absence of burn residue would indicate that this shot was at some distance?

A That's correct.

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Q Conversely, based on the autopsy report, is it plausible in your mind that somebody held a gun directly to the front of the chest and fired three shots into the chest, would that account for this wound in the side?

A No.

Q Now, ma'am, if a person was shot in this manner with this wound, with this injury, at 8th and Spruce, would they be able to cover a half mile's distance in two minutes or less with this wound?

A Again, I wouldn't know. I guess it would depend on the actual circumstances. If that did happen, then we can say it's possible.

Q Are you aware that a high school track star, for example, if he's good at all, can run a half mile in two minutes?

A Possibly.

Q Running at sprint speed?

A Okay.

Q Could this person at this age, with this wound, cover a half mile in two minutes or less?

A That's totally beyond my scope as a medical examiner.

MR. GIBSON: Objection.

THE COURT: Objection is?

MR. GIBSON: May we approach?

MR. OSGOOD: I'll withdraw the question.

BY MR. OSGOOD:

Q Were there any bullet wounds to -

THE COURT: By the way, the jury will disregard the question and the answer.

BY MR. OSGOOD:

Q Were there any bullets wounds to the head, ma'am?

A No.

Q Now, is the position of the clothing, vis-a-vis the wound, important to you in a medical examination?

A Excuse me? The position of the clothing?

Q Yes, ma'am. The position of the clothing, vis-a-vis the position of the wound itself? Does that tell you anything in your examination? Let me re-phrase it. For example, in a suicide if someone is wearing clothing and shoots themselves in the chest, in the heart, you would expect to find a bullet hole in the clothing and the entry wound in the body to match, wouldn't you?

A Yes.

Q I mean, you could almost stick a probe through the bullet hole itself and probe right into the wound, wouldn't you?

A Yes.

Q Is it important to know, in terms of trying to analyze and figure out what happened, to know whether or not the clothing was disheveled or moved around when trying to reconstruct that crime?

A Basically, we would look for any defect in the clothing

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and see where it was in relationship to the wound on the body.

Q

And that would tell you whether or not there was a struggle going on versus a clean shot?

A

It would show if there was any movement or if the clothes were in a different location.

Q

Okay. I believe you answered there were no other injuries to the head?

A

That's correct.

Q

Now, did you examine the hand?

A

As I mentioned, I didn't do, perform this autopsy so I'm looking at the photos -

Q

I understand.

A

--and documentation in the notes and in the report and there is no mention of any injury to the hands, no.

Q

You didn't see a laceration on the hand?

A I don't believe there is anything in the report that mentioned that, no.

MR. OSGOOD: Could we have that photo, please?

BY MR. OSGOOD:

Q So you only reviewed part of the photos it sounds like?

MR. GIBSON: Your Honor, she reviewed the photos from

the medical examiner. The photo Mr. Osgood is referring to is

not from the medical examiner.

MR. OSGOOD: Oh, okay.

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BY MR. OSGOOD:

Q

You may not know the answer to this. Lacerations are what?

A

Tears in the skin, blunt force injury.

Q

Pardon?

A

Blunt force injury. It's a tear.

Q

If there is a chain link fence with the typical fence top

ends sticking up on it and you put your hand up and fell,

would that account for a laceration on the hand?

A Yes.

Q Okay.

You don't need to show the photo.

It's not on the main screen.

Would that laceration on the hand you see there,

would that be consistent with perhaps a wound that

occurred when someone was falling on a fence, moving their hand along the sharp end on a fence?

A Yes, it's possible.

MR. OSGOOD: I believe that's all I have, Your Honor.

MR. GIBSON: That was 17O for the record.

MR. OSGOOD: That's all I have.

THE COURT: Mr. Rogers?

CROSS-EXAMINATION

BY MR. ROGERS:

Q While we're looking at 17O -

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Could we have that back up, please?

BY MR. ROGERS:

Q If you had done this autopsy and done the external examination and seen the laceration shown in 17O, you would have noted it in your report, wouldn't you?

A Yes.

Q And you certainly would not have said in your report, as Dr. Gill did, the upper and lower extremities reveal no trauma, would you?

A No.

Q Okay. And Dr. Gill doesn't work there any more, does he?

A No.

Q
Is that related to issues concerning his performance?

A No.
I believe -MR.

GIBSON: Objection.
THE COURT: Sustained.

BY MR. ROGERS:

Q
When we say upper and lower extremities, we mean arms and hands are upper, legs and feet are lower?

A
That's right.

Q
Okay. So there is, in fact, trauma on one of the upper

extremities?

A
It appears to be. Again, I'm looking at a photograph. It could also be dried blood. But it would have to be, someone would have to, and again, there is no way of

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knowing how old that injury would be.

Q And you don't know where the photograph was taken or when the photograph was taken or even if it's Mr. McCay, right?

Just from looking at it?

A Yes. It doesn't have our identifying number on it. No.

Q Right. But if I were to represent to you that a crime scene technician from the police department says that she took that photograph at the morgue, I guess during or shortly before the autopsy or during part of the autopsy procedures, and she did it to document a laceration, you would have no reason to dispute that, would you?

A Well, to kind of use your term, I guess that would be hearsay to use someone's opinion when there is no documentation.

Q Right. But you don't --maybe she came in to testify with documentation. Okay?

A Right. You would have to then question her about that.

Q But what I'm saying is what you see there, if it is as I have represented to you, you would describe as trauma?

A Yes.

Q Okay. Now, let's talk -Could

I see the close up of the wound, please?

54J. Thank you. And could you enlarge the actual wound part a little bit, please?

Thank you.

BY MR. ROGERS:

Q That is one of the photographs you did look at, right?

A Yes.

Q Because that's an autopsy photo that was in the file there at the Medical Examiner's Office?

A That's right.

Q And you indicated the abrasion rim, which is the darkened area around the actual wound?

A Yes.

Q And the way that happens is the skin is somewhat elastic, correct?

A Yes.

Q And the bullet, as it penetrates, although this is all happening very fast because it's a gunshot, the bullet stretches the skin and causes that abrasion as it goes through the skin into the subcutaneous tissue?

A That's correct.

Q Now, you have also examined what are true contact wounds, haven't you?

A Yes.

Q And leaving aside for the moment the issue of soot, contact wounds don't look like this, do they?

A Contact wounds also have an abrasion rim. Any entry gunshot wound will have that abrasion rim as the bullet passes. But, generally, with the contact wound, you may

have soot around the wound or in the wound. And if the gun is right on the skin, you may have what is called a muzzle abrasion where the skin kind of comes back and slaps against the muzzle of the gun. You can have an imprint or a pattern of that, of the muzzle of the gun.

Q And that's --but if the muzzle of the gun is on the bare skin.

A That's correct.

Q There is also characteristics of a contact wound which are caused by the gases which are also expelled from the barrel of the gun the same time the bullet is expelled, correct?

A At times. The only time you would see the effect of the gas is generally in contact wound of the head, where it actually causes a splitting of the skin or sort of stellate or star-like entrance wound as the gas is trapped between the skin and the bone.

Q Because the skull is closer to the skin in the head than ribs would be to the skin in the side or the chest, the lateral part of the chest, I guess we'll call it?

A Generally, there is just a little more elasticity in the chest and the abdomen for those gases to expand then go down. In the head, it gets trapped underneath the scalp and then will tear.

Q And the defect, I'll call it, the right side of the wound

depicted in Exhibit 59J is not one of those gas kinds of tears?

A No, I don't believe so.

Q Now, you mentioned earlier that soot or stippling could be screened by clothing?

A Yes.

Q If that happened, would there not be soot or stippling or soot or gun powder residue on the clothing?

A Depending on how the clothing was handled, yes.

Q But if the clothing is screening the soot or the gun powder from either being in the wound or causing stippling, then the clothing would have to stop it and have it there, correct?

A Usually it would with soot. Some times with stippling, if it's only a fine dusting of powder, it may, soon as you lift those clothing or cut them away or manipulate, may fall off of that other clothing.

Q Let's talk about that a minute. Stippling is a burning of the skin caused by hot particles of gun powder, right?

A Yes.

Q So at the time that the --if it were bare skin, there would be stippling. If it were a nylon jacket, there would be melting of the nylon, wouldn't there?

A Probably the burnt and unburnt gun powder grains and they're very minute. They're really just pinpoint flecks.

I doubt that they would melt clothing. And some times you just see it as a dusting, depending on how far away the gun may be, may or may not still be present, you know, on the clothing.

Q But if the gun is directly touching the clothing, in fact, held touching the body through the clothing, if you know what I'm talking about?

A Yes.

Q Is that clear? Then there certainly wouldn't be such a fine powder, would there?

A No. That would be soot and generally the soot would be on the clothing.

Q And the soot would also follow the projectile into the wound?

A Yes.

Q So it's not going to be --The soot, itself, is not going to be screened by the clothing because the clothing is -there is a hole torn there by the bullet, correct?

A Yes. It depends how thick the bullet or how thick the clothing is that there should be some soot on the clothing and through the fabric of the clothing. But as I mentioned with the ski jacket or some layering, it may actually be screened prior because the gun has been actually further away because of the clothing, that it may not show a dense deposit of soot on it.

Q Now, with regard to the location of the holes in the clothing and the location of the wound in the side, is it your practice when you do an autopsy and the clothing has been cut off at the hospital to try and line up the holes?

A Yes.

Q And can you tell from looking at Dr. Gill's notes and or report whether he tried that?

A He--he documents the clothing and then he does make some mention of the bullet hole and I believe it's in reference to the clothing. But there's no photograph of the clothing. This would be under the external examination. And he does mention here --Would you like me to read that section to you on the clothing?

Q No. I was going to ask you specifically about the part that says, purple T-shirt which has been cut from the body with the similar patterns of blood and the bullet hole at the mid to interior left axilla region which corresponds to a gunshot entrance wound to the body noted. My question is, this corresponds to, does it mean he lined them up?

A Yes.

Q So can you infer from that that if he had lined up any of the other clothing and it hadn't matched, he would have maybe noted that?

A He actually does note that on the first part of that

paragraph. He mentions that on the jacket that there appeared to be a defect at the seam between the front and back of the jacket. And that there was a long sleeve shirt and with a similar pattern of blood and that there was a bullet hole in the mid axillary zone.

Q But he does use the word corresponds to the wound on the body there?

A Right. But it's pretty much meaning it is on the left side. So it seems like all the layers of clothing seems to be on the left side of the body.

Q For example, if I lift my left arm, my jacket is raised but my shirt hasn't moved?

A Right.

Q So there is no way you can tell from this, right?

A Right.

Q Whether all of the layers lined up, as Mr. Osgood said, so you can stick a probe right there?

A That's right.

Q Okay. Now, you saw only one gunshot wound, is that correct?

A Yes.

Q When you looked at the pictures and the reports, you only saw one gunshot wound. Nobody has, as far as you know, ever saw more than one gunshot wound, is that correct?

A That's correct.

Q And there certainly are no wounds to the head or face?

A Yes, that's correct.

Q And there are certainly, this is not a situation where two or three or five bullets could have been fired through the same hole and taken the same path because you would have found five bullets?

A That's correct.

Q And so, can you say to a --beyond a reasonable degree of medical certainty that only one gunshot struck Mr. McCay on this particular evening, at least, or morning, whatever it was?

A Yes.

Q Okay. Now, let's talk about the wound itself. It goes in through, and by the way, even though the chest is kind of a general description for the entire upper torso in medical terminology, correct?

A Yes.

Q And includes back and sides as well as what civilians call a chest, right?

A That's right.

Q Dr. Gill and you are more specific in describing the location of the actual entry wound, correct?

A Yes.

Q And that's what he calls the, between the anterior and middle left axillary lines?

A Yes.

Q Okay. The anterior line is straight down the middle of the front of the chest, right?

A No.

Q When you take a measurement from the anterior line, is that what it is from?

A No. That would be, just be considered the anterior mid-line.

Q Anterior mid-line. Okay. What is an axillary line?

A Axillary is actually your armpit. So it would be in that entire area. He's measuring from the middle which would be right in the side and to the front of the axilla or the armpit.

Q So the left axilla, I can't say that word, left axillary line is the front of your left armpit, straight down?

A Yes.

Q And the anterior, no, excuse me -A

That would be -Q

We're talking left, right? Because it's the left armpit, left axilla?

A In that region, say two or three inches, that the one closest to the front would be the anterior or front, and then there would be the middle which would be right at the side of the body. And then there would be a posterior axillary line which would be closer to the back.

Q So you've, basically, got three theoretical lines and this is between the front one and the middle one?

A That's correct.

Q And so this is how somebody whose been to medical school and done the two-year residency in anatomical pathology talks about the front of the left side?

A That's correct. And actually Dr. Gill, he's very specific where he mentions that it's 19-1/2 inches below the top of the head, 4-3/4 inches from the left nipple, 8 inches left of the anterior mid-line. So he's very specific of exactly where that wound is. Plus you can see it on the photograph.

Q But unless you sat there and read the entire thing and asked questions like, what is an axilla, and things we've been talking about, the regular civilian wouldn't know that from hearing about a penetrating gunshot wound to the chest?

A That's correct, unless it's explained.

Q Okay. Now, this wound enters between the ribs. The 5th and 6th ribs, which is kind of halfway down?

A It's actually the 6th and 7th.

Q 6th and 7th. I'm sorry. And then goes through the diaphragm?

A Yes. Goes into the chest between the two ribs and then it goes through the diaphragm.

Q Is there a difference between the diaphragm and like I learned in fifth grade health and I was watching, "Are You Smarter Than a Fifth Grader?" before the storms came up, and the hemidiaphragm, I believe you called it?

A It's basically the same. It's just that to, we sort of separate out. The diaphragm is sort of like a leaf that has sort of an upward dome. And so some times we talk about the left hemidiaphragm and the right hemidiaphragm even though it's one large muscle that goes across and separates out the chest cavity organs from the abdominal cavity.

Q The left hemidiaphragm is the left half of the diaphragm?

A Yes.

Q Okay. Good. And then it went to, you say grazing or bruising the left lung. And then penetrated the heart?

A Yes.

Q And went through two different chambers of the heart?

A Yes.

Q And then exited the heart?

A That's correct.

Q Did --it didn't do anything to the right lung?

A No.

Q But then it hit the, and severed the right renal artery?

A That's correct.

Q Okay. The right renal artery goes from the heart to the

kidney?

A It, basically, goes from the aorta, which is the largest artery that leaves the heart, and it has a branch that goes over to the kidney.

Q Okay. So the aorta is the big, the descending aorta, I guess?

A Yes.

Q Is the biggest artery in your body, right?

A That's right.

Q And it pumps, basically, all of the blood that is leaving the heart, going down, goes through the aorta?

A Yes.

Q This is just a branch right off of the aorta?

A Yes.

Q How far from the aorta was this artery severed?

A It doesn't say exactly where it severed but it just mentioned that it is the right renal artery. That branch is only about an inch or two in length from the aorta.

Q So severe that, there's going to be a rather rapid exsanguination?

A It really won't be that rapid. It actually will just stop the blood supply to the kidney. That artery is only maybe a quarter of an inch in diameter and so it wouldn't bleed that much.

Q It's not like having a ruptured aorta where you're going

to die. It's something that, if caught in time, can be treated, surgically?

A It would take some time and it would be treatable because you have another kidney that is filtering the blood and still getting the blood supply.

Q And the blood that you found in the --or that Dr. Gill found in and you verified I should say, in the abdominal cavity was sort of equally distributed between the left and the right, is that correct?

A It was actually in the chest cavity.

Q Chest cavity. I'm sorry. I said abdominal.

A Yes.

Q Thoracic is that the word?

A That's correct.

Q Okay. And that would indicate that rather than coming from the renal artery on the right, it was mostly coming from the heart itself?

A That's right.

Q And there was about a liter of blood in each side of the thoracic cavities, the left and right?

A Yes.

Q And as the thoracic cavity filled up with blood, not only would there be no blood to go to the brain to keep someone alive but it would also be increasingly difficult to breathe, wouldn't it?

A That's correct.

Q Because the blood would fill the cavity and there is no place for the lungs to expand?

A That's correct.

Q And so given that information, unless somebody said they saw it happen, you wouldn't believe somebody could run half a mile while their lungs or their thoracic cavity is filling up with a liter of blood on each side?

A That would probably be the blood that was found in both sides of the chest cavity, would be after a period of time. So initially as long as the heart is still pumping blood to the brain, you know, and some of it is leaking out into the pericardial sack, that a person could still continue to move and walk around.

Q But continue to move and walk around, go a hundred feet or something is one thing but running half a mile in two minutes or under, I couldn't do on my best day. I was never that athletic. But doing that and then engaging in a protracted struggle and then running from the middle of a four lane street to a nearby fence on the side of the street, that would be a whole lot of stuff to do with this kind of injury, wouldn't it?

A Yes.

Q And you don't know of any cases where that has ever been documented happening?

A There actually is an article describing movement and injury following stab wounds and gunshot wounds that does mention cases where people have done amazing things with stab wounds and gunshot wounds.

Q But when they say amazing things, stab wounds and gunshot wounds to the heart, penetrating through it. Right? This degree of wound you're talking about is amazing if somebody can run a hundred yards, correct?

A Again, depends on the amount of injury through --with that wound through the heart, as I mentioned, the heart can still contract with that injury and close up that injury. So it would depend on the amount of injury.

Q Especially if there's nothing in this article that says somebody was able to, with a penetrating wound through and through the heart which ultimately resulted in a liter of blood in each half of the thorax, not to mention the hundred milliliters in the pericardium, being able to run that far, that fast and then engage in that kind of activity, is there?

A I don't think there's anything that specifically says that. But it's --You can check the article. It's an article on survival timing wounds. And there are --only one I remember is a person who was either shot or stabbed in the heart and went a hundred yards or hundred feet. So I don't know. I haven't read that article for awhile.

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Q Hundred yards or hundred feet is much less than a half

mile?

A Right. But -Q

Mile is 880 yards. I do remember that part.

A It would be a matter of doing research and seeing what

type of injury and what type activity a person would have.

MR. ROGERS: I believe that's all I have, Your Honor.

THE COURT: Redirect.

MR. GIBSON: No, Your Honor.

THE COURT: Thank you, Dr. Dudley. You may step

down.

Let's go ahead and take a short break, about ten minutes. Don't talk about the case. Keep an open mind. We'll see you back here.

MR. GIBSON: May Dr. Dudley be excused?

THE COURT: Without objection Dr. Dudley is excused.

(Witness excused.)

(Recess)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

MR. GREEN: Your Honor, actually, the next --we're going to put several letters in through him and Mr. Gromowsky for Mr. Sandstrom had an issue that he wanted to take up.

MR. GROMOWSKY: Your Honor, what it is, there's a couple letters. One of them comes from Mr. Buchanan to

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Mr. Sandstrom then Mr. Sandstrom then returns a letter quoting essentially the same language in it and I think it's governed, one, by the motion in limine.

THE COURT: Government what?

MR. GROMOWSKY: It's governed by the motion in limine regarding gangs because it does talk about a gang in it, which even if it's not a specific gang and they're not going to have a gang expert coming in, talking about it, it certainly looks like a gang in front of a jury because the word gang does appear in it.

MR. GREEN: I'll let the Judge read it.

Mr. Buchanan is going to say he made that up just to, basically, as a joke and to be funny and sends it. He sent it off to the defendant. It's not a gang. And the relevance of it is in Exhibit, in Plaintiff's Exhibit 138D, which is the response letter from Mr. Sandstrom, he puts the initials there. Then he says, like it, love it or leave it. And the relevance is two-fold. One is the phrase, like it, love it or leave it, has come in evidence as a phrase used by Mr. Sandstrom. And Mr. Buchanan will say that's a phrase used by Mr. Sandstrom in reference to the murder of Mr. McCay. So that's corroborative of that. Mr. Buchanan will say, like it, love it, leave it, is a phrase they commonly used growing up. As far as him saying, like it, leave it or love it, pointing to those initials, it's, basically, Mr. Sandstrom agreeing with or saying he likes this

type of organization which is White Gorilla Power, which would go to the racial animus which is part of the elements the United States needs to prove.

MR. GROMOWSKY: Your Honor, as far as like it, love it, leave it, the fact they said it growing up is irrelevant to this case. It's already into evidence. He said it the morning of March 9th after the shooting occurred. Already been in front of the jury, and described. The fact that they said it, you know, many times in the past, you know, distant from the occurrence of March 8th and March 9th is completely irrelevant to this case.

With regard to the argument talking about some sort of assumed probative value of the gang, made up gang thing, it's --there is no probative value because this is a time distant from when March 8th and March 9th occurred. It doesn't go to show what his feelings would have been on the date in question. It just shows, even if he did adopt this language, it's something that occurred much after the fact. The probative value of it then is diminished and substantially outweighed by the prejudicial value, all of a sudden coming up with White Power, White Gorilla gang inference.

THE COURT: I don't know what it means, folks. Northeast Side. Fifth Street. White Gorilla Gang bitch. Is that a reference to a person?

MR. GREEN: Buchanan will say he just made it up. It

was just something he made up to, basically, sort of a joke, although he's putting in there the idea of White Gorilla Gang. Not a gang. It was never a gang.

And then it's sent to Sandstrom who acknowledges and using the phrase that I think is probative. We have here in Sandstrom's own writing, him using that phrase. And the fact is the racial animus has been, it is part of this case. And the defense is trying to, of course, attack that. And this is evidence and there will be other evidence in these letters and Mr. Sandstrom using derogatory terms toward African-Americans which could show racial animus on his part.

I would also note this letter is within a few months of March 9th. It's not like something three or four years removed.

THE COURT: What is the date? I don't see a date on it.

MR. KETCHMARK: Postmark on Mr. Sandstrom's letter responds back to Mr. Buchanan is September 7 of 2005. It also establishes the continuity, Judge, and the sequencing of the letters. And I think Mr. Buchanan is also going to testify the reason he put that on there is because blacks and black inmates, they have their own thing. And there's going to be kind of racial animus is going to be developed through the context of the other letters. And Buchanan is adamantly clear, and I think he's going to be, this isn't a gang. It's him

writing something to his cousin when they're having this discussion back and forth. His cousin, then basically, comes back and says in a corresponding letter, I like the name. So it's not suggesting there's any type of gang that this White Gorilla Gang is out there.

MR. GROMOWSKY: Your Honor, at the very least, going to be confusing to the jury. And, secondly, it is distant in time from these events. If you want to show what his animus was on the date in question, it should be things that were done prior to the date in question. Anything that occurred after it is irrelevant. It's not probative of what his thinking was on the date in question.

THE COURT: Let me just rule. I don't see this as violating the order in limine with respect to gang activity. I don't see this, particularly if Buchanan describes it as has been represented, as being evidence of a gang as such. I am a little concerned about the remoteness of it compared to the date of the offense. Nevertheless, I will admit it and we'll show the defendant's objection.

MR. OSGOOD: Like to join in the objection for the spill over effect, Your Honor.

THE COURT: All right. Both objections are overruled.

MR. GREEN: This was 154 and 138D.

MR. KETCHMARK: And 154B, these are excerpts of the

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parent letters.

THE COURT: Let's bring Mr. Buchanan in.

MR. GREEN: I'm sorry. Actually we have another witness who was not here and who's now here. So we would take Carolyn Galyean.

MR. OSGOOD: I would want an instruction, since this is post conspiracy, that these letters are admissible against Mr. Sandstrom only.

MR. KETCHMARK: And I think, like with respect to this particular letter, I would agree that there's nothing to suggest Mr. Eye was aware of the correspondence back and forth on this particular aspect. There are aspects of the letters that will come in, Your Honor, where it appears there are discussions about an ongoing conspiracy between Mr. Sandstrom and Mr. Eye to try to cover up and to deflect this in terms of how they're going to get their stories together in terms of what their belief is going to be. And I think those would come in as admissions of --equivalent of co-conspirator exceptions as relies on conspiracy to cover up or obstruct. And I think with respect to this, I don't --I have no objection to represent that --there's aspects of the other letters that would be admissible against both.

THE COURT: I'll take your objection and request the instruction at the time the letter is read.

MR. OSGOOD: Obviously, what I'm concerned about is

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the threat charged itself. And the evidence supporting the threat charged is clearly not admissible as to Eye. That's what I'm concerned about.

THE COURT: I haven't read the letters. I don't know what they say so make your objection in a timely fashion and I'll rule it.

Let's bring Ms. Galyean in and the jury.
(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Call your next witness, please.

MR. GREEN: Your Honor, the United States calls

Carolyn Galyean.

CAROLYN GALYEAN, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you, please, tell us your name and spell your last

name?

A Carolyn Galyean, G-A-L-Y-E-A-N.

Q Ms. Galyean, I can tell already you're going to need to

keep your voice up and project into that microphone. Will you do that?

A Yes.

Q How old are you, Ms. Galyean?

A 25.

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Q And what city did you grow up in?

A Gladstone.

Q And is that Gladstone, Missouri?

A Yes.

Q Now, Ms. Galyean, were you adopted by your parents?

A Yes.

Q And while growing up at some point did you have occasion to meet your birth mother?

A Yes.

Q And about how old were you when you met your birth mother?

A About 13, 14.

Q Now, at some point did your birth mother pass away?

A Yes.

Q And at her funeral did you have occasion to meet anyone?

A My brothers.

Q And these would have been your natural brothers?

A Yes.

Q And, again, you have to project your voice out?

A Yes.

Q And did you then learn from meeting your natural brothers, did you learn where at least some of them lived?

A Yes.

Q Where did they live?

A In the northeast.

Q What is called the northeast side?

A Yes.

Q And is that of Kansas City, Missouri?

A Yes.

Q And how old were you when you met your natural brothers?

A About 14.

Q Did you begin visiting them?

A Yes.

Q And did you begin visiting them in the northeast side?

A Yes.

Q While spending time in the northeast side did you have occasion to meet someone named Chris Foster?

A Yes.

Q And who is Chris Foster?

A He was my boyfriend.

Q Again?

A He was my boyfriend.

Q And did you begin dating Chris Foster?

A Yes.

Q And about how old were you when you began dating him?

A 17.

Q And where did Chris Foster live?

A In northeast.

Q Did you visit him at his residence?

A Yes.

Q Now, did Mr. Foster live near a woman named Christine

Taylor?

A Yes.

Q About how far away did Mr. Foster live from Ms. Taylor?

A Two houses.

Q Did you then begin, after meeting, dating Mr. Foster, did you have occasion to go to Ms. Taylor's house?

A Yes.

Q And how often would you go to Ms. Taylor's house?

A Almost every day.

Q And while visiting Ms. Taylor at her residence, did you have occasion to meet a person named Regennia Rios?

A Yes.

Q And where did you see Regennia Rios?

A At Christine's house.

Q Did you become friends with Regennia Rios?

A Yes.

Q And how would you describe the friendship you developed with Regennia Rios?

A She's my best friend.

Q Excuse me?

A She's my best friend.

Q Just based on your best recollection, about how old was Regennia Rios when you met her?

A 15.

Q And so how old were you?

A About 17.

Q And how long ago, this is 2008, just approximately how long ago was it that you actually met Regennia Rios?

A Like 8 years, I would say.

Q Okay. Now, again, you're going to have to project your voice, ma'am. About how long?

A About 7 or 8 years.

Q Now, from spending time in the northeast side, did you also have occasion to meet a person named Steven Sandstrom?

A Yes.

Q And how did you meet Steven Sandstrom?

A Through other friends that we both knew.

Q And so you didn't meet him through Regennia Rios?

A No.

Q Did you become friends with Steven Sandstrom?

A Yes.

Q Ms. Galyean, I'll ask you to look around the courtroom.

Do you see Mr. Sandstrom in the courtroom today?

A Yes.

Q Would you point him out for us, please?

A (Witness indicating.)

Q Okay. Sitting in the corner of the courtroom?

A Yes.

Q Just approximately what color is his shirt?

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A There's a big screen in front of him.

Q Is he the man standing?

A Blue. Yeah.

MR. GREEN: Your Honor, may the record reflect the

witness has identified the defendant, Steven Sandstrom?

THE COURT: Yes.

BY MR. GREEN:

Q Was there, in fact, a time when Steven Sandstrom lived

with you and your parents in Gladstone, Missouri?

A Yes.

Q For about how long?

A Just a few months.

Q And would that, if you recall, have been about the year

2002?

A Yes.

Q Now, through your dealings with Regennia Rios did you know whether or not Regennia Rios and Steven Sandstrom associated with each other?

A
Yes.

Q
And how would you describe their relationship based on your observations?

A
Well, they were friends. They dated for a period of time but they were friends for a long time.

Q
Did you ever have occasion to meet a man named Gary Eye?

A
Yes.

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Q And do you recall where it was you met Gary Eye?

A At Vincent's.

Q Vincent Deleon's house?

A Uh-huh.

Q And just generally, was that in the northeast side?

A I think it was on the east side.

Q Did Gary Eye become a friend of yours?

A Oh, no. I didn't really know him.

Q But you did meet him?

A Yes.

Q Do you see him in the courtroom today?

A Yes.

Q And is he the man standing?

A Yes.

MR. GREEN: Your Honor, may the record reflect the

witness has identified the defendant, Gary Eye?

THE COURT: Yes.

BY MR. GREEN:

Q

I want to direct your attention to March of 2005,

Ms. Galyean. Do you recall receiving a telephone call or

a phone call from Regennia Rios?

A

Yes.

Q

And in this phone call did she ask you to do something for her?

A

Yes.

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Q What did she ask you to do?

A She asked me, if anybody called, like police-wise, came looking for her then to say she was with me.

Q Now, I'm sorry. Project that again. You're going to have the keep your voice up.

A If anybody came, any police came looking or asking about her, then she was with me whenever they asked.

Q And did she give you any other details?

A No.

Q Did you ask for any other details?

A No.

Q Did you know Regennia Rios at this time to use drugs?

A Yes.

Q Did the fact that Regennia Rios was wanting you to cover for her with the police, did that surprise you?

A No.

Q A short while after this telephone call with Regennia Rios, did you have occasion to see a news story?

A Yes.

Q And was it in the newspaper or do you recall?

A On the news, on the T.V.

Q And what was it about that news story that caught your attention?

A Gary's picture and that I associated him with Regennia.

Q And what was the news story about, just as you remember?

A About a murder.

Q Now, seeing this news story, seeing Mr. Eye's picture associated with it, did that cause you to do anything?

A It caused me to call Regennia.

Q How soon after you saw the news story?

A Right as soon as it was over.

Q And did you get hold of her?

A Yes.

Q And what did you tell her?

A I told her that Gary was arrested on a murder thing and she said she already knew all about it.

Q And in this phone call did she give you any further instructions?

A Just to still say that she was with me if they asked.

Q Now, at this time frame we're talking about, approximately the spring of 2005, how often would you and Regennia Rios talk?

A Almost every day.

Q So conversation between you and her was not unusual?

A No.

Q Do you recall conversation you had with Regennia Rios when she gave you some details about the event in question?

A She told me that her and Stevie and Gary were all in the car together.

Q And what did you understand her to be referring to?

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A The murder.

Q And what else did she tell you about the incident?

A That Gary shot the guy.

MR. OSGOOD: Objection.

MR. GREEN: May we approach, Your Honor.

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: This is hearsay. Pretty blatant. She testified Gary shot the guy. I don't know. This is self serving, corroborating hearsay testimony.

MR. GREEN: Your Honor, it's being offered as 801(D)(1)(b) as a prior consistent statement to declare Regennia Rios has been attacked, her credible has been attacked extensively in cross-examination. This is a statement that was elicited before Regennia Rios was even cooperating with the United States. So it's before any motive to fabricate on Rios's part which was implied by the defense. But before that could even arise. In other words, she's not even at this point cooperating with the FBI yet. So it's being offered as a prior consistent statement of Ms. Rios. The declarant to this witness.

MR. OSGOOD: She had given her March 9th lies to the police department at this point and asked this woman to alibi for her and implying my client is the shooter, trying to set up

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an alibi and put it off on him.

THE COURT: It will be admitted as a prior consistent

statement.

Overruled.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GREEN:

Q

Ms. Galyean, I want to go back on that point again. Who did Ms. Rios say shot the man?

A

Gary.

Q

Now, did Ms. Rios indicate to you, again, still focusing on the spring of 2005, did she indicate in a phone call that, in fact, she had talked to the FBI?

A

Yes.

Q

And what did she tell --did she tell you that she had told the FBI something about her in relation to you?

A

Yes. She told me that she had told the FBI she was with me during the murder.

Q

And you're going to have to keep up. What was the last part?

A

During the murder.

Q

And did she tell you or indicate to you in this conversation whether or not you were still under the instructions to tell law enforcement, if they asked, that she, Regennia, was with you?

A

Yes.

Q

Now, I want to direct your attention to late April of

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2005. Was there an occasion when you, in fact, were interviewed by an agent of the FBI?

A Yes.

Q And where did that interview take place?

A At my mom's house.

Q In Gladstone?

A Yes.

Q And do you recall who the agent was that interviewed you?

A Yes.

Q Do you see him sitting here at the counsel table? Special Agent Gothard?

A Yes.

Q And he was accompanied by a detective with the Kansas City, Missouri Police Department named Detective Blehm?

A I don't remember his name.

Q He was accompanied by somebody?

A Yes.

Q And do you recall what Special Agent Gothard and the detective asked you?

A They asked me if Regennia had been picked up from my house on that morning by Gary and Stevie and I told them, yes.

Q And was that true?

A No.

Q Did you lie to Special Agent Gothard and the detective?

A Yes.

Q Now, did they also ask you whether or not Regennia Rios, in fact, had contacted you about and told you that you might be questioned about her whereabouts?

A Yes.

Q What did you tell them?

A I told them she didn't tell me anything about them coming to talk to me.

Q And was that true?

A No.

Q And was that a lie?

A Yes.

Q Why did you tell these lies to Special Agent Gothard and the detective on Regennia Rios' behalf?

A Because she's my best friend. I didn't want her to get in any trouble.

Q To be clear, Ms. Rios, really, all you knew, or excuse me, Ms. Galyean, all you knew about this incident was, basically, what Ms. Rios had told you, correct?

A Yes.

Q But you, basically, in your mind believed that she needed your help?

A Yes.

Q Now, after the FBI, Agent Gothard and the detective left, did you let Ms. Rios know about this interview?

A Yes.

Q Describe what you did?

A Oh, I just call her and told her that I had talked to them. That they had come over asking me and I told her, I said she was with me.

Q And what was Ms. Rios's reaction to that?

A She was kind of relieved that, you know, I covered for her.

Q You're going to have to -A
That I covered for her.

Q Now, I want to direct your attention to the summer of 2005. You had testified before that you were friends with Steven Sandstrom?

A Yes.

Q And just, I want to stop and say, before summer of 2005 had you, in fact, had occasion to receive letters from him?

A Yes.

Q Specifically, in the summer of 2005 did you receive a letter from him that caused you concern?

A Yes.

Q I want to display what is already into evidence as Plaintiff's Exhibit 186A.

And if you could blow up the first part.

Can you see that? It should be on your monitor.

Can you see that?

A Yes.

Q This letter is dated July 31, 2005, is that correct?

A Yes.

Q And whose handwriting do you recognize that to be?

A Steve.

Q And it says, Carolyn, what's up? Same shit my way.

You're about ready to have that baby, huh?

Who was John-John?

A My daughter's father.

Q And had he been in --Where was he at this time?

A In prison.

Q Tell him that his cousin ain't right. Regennia gave a four-page statement to the police on me and Gary. Had my girl's house kicked in and all. Told homicide unit that I hid the murder weapon in my girl's house. That bitch shit fucking--after all I did for the bitch. It's real. I got her. That bitch better be out of my hood when I get out. She can be a North Oak ho but she better not be in the northeast or its like that for her.

When you read that, Ms. Galyean, did this cause you any concern?

A For Regennia, yes.

Q Who did you believe this letter was directed to?

A Regennia.

Q In fact, when you started reading this letter did you do

something?

A I called Regennia on the phone and read it to her.

Q Why did you do that?

A Well, I thought she should know that he was pretty upset with her. And I felt like it was more towards her.

Q It says, I'm going to, actually --and, again, if you follow along on your monitor, Ms. Galyean, it said, she can tell her dad or whoever else because I don't give a fuck. They don't want no problems. I try to cover her ass and take a case for her and that's how she repays me. Well, fuck her. I ain't got time for a dope whore.

Again, Ms. Galyean, what did you understand that to be referring to?

A Regennia.

Q Again, you don't really --this is not directed at you, is it?

A Yeah. Yeah.

Q Now, that excerpt at the bottom of 186A. I read them statements last week. When I read them, everything made sense. I put 2 and 2 together and why everything was happening, once I seen what that bitch said. When you see her, ask her why she told on me. She should have told on herself, too. She knows what she did.

And then if you could display for the witness what is in evidence as 186B.

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Do you see that, Ms. Galyean?

A Yes.

Q It says, let John-John know that bitch crossed the line. She's done dealing. I told that cunt to not make me have --hate her. Hard-headed bitch didn't listen. She knows as much as you do I'm a killer, my whole family is. And you don't try to fry a nigga that gets off laying niggas down. Do you see that?

A Yes.

Q Now, were you actually, Ms. Galyean, familiar with the word, nigga?

A Yes.

Q And in your experience and your observation, how is that word used?

A It can be -MR.

OSGOOD: Objection. That calls for conclusion, speculation as an expert.

THE COURT: Overruled.

BY MR. GREEN:

Q In your personal observation, how is that word used?

A Like it could be used like if you're just talking to one of your friends.

Q Now, are you familiar with the word, nigger?

A Yes.

Q Had you ever had occasion to hear Mr. Sandstrom use the

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word, nigger?

A Yes.

Q How many times as best you can estimate?

A I don't really know, just probably a couple. I don't know.

Q You have to keep your voice up.

A I don't know. Just a couple probably.

Q Then the middle portion, if you could, of 186B.

Regennia told the police I call my gun the dirty duece duece. Fucked up, huh? Let your man know I'm going to beat her ass if I see her.

And what would your understanding be when he said, let your man know?

A John-John, tell John-John.

Q And maybe I neglected to ask this. What was John-John's relationship to Regennia?

A They grew up together. They call each other cousins.

Q So they had a close relationship?

A Yes.

Q Talking about --and this is the last portion on 186B.

Talking about a little smack in the face either.

Or I'm not talking about a little smack in the face either. I'm going to beat her ass worse than Greg Wilson or Vince ever has. I'm using my fist on my mom and who ever is around. Better lay on back.

And then 186, what is in evidence as 186C.

Do you see that, Ms. Galyean?

A Yes.

Q She told FBI and police I'm a killer, all kind of other shit. Bitch must think I'm a pussy. I'm like Popeye. Me takes all me could take or till me can't take no more. Feel me? It's ass whipping time. Hands must be laid. Nothing is going to stop that. On my mom, my northeast side, on my baby niece. I'm going to try to break her face.

Again, I think as you already testified, Ms. Galyean, you actually called Regennia Rios up and read her this letter on the telephone?

A Yes.

Q What did you actually end up doing with 186?

A I gave it to Regennia.

Q And why did you do that?

A Well, I thought it was more towards her than to me so I just gave it to her.

Q At some point, moving into the late summer, early fall 2005, did you have a phone conversation with Regennia Rios in which she discussed her dealings with the FBI at that time?

A Yes.

Q And what was the subject of that conversation?

A She told me that she had told the FBI that she wasn't really with me so that it was okay for me to tell them, if they came back asking.

Q And your voice dropped there at the last part.

A When they came back asking me again.

Q And let me ask you, Ms. Galyean, did, in fact, the FBI come back asking?

A Yes.

Q Do you recall who that was? Which agent?

A The two here on the end.

Q Indicating Agent Gothard, Special Agents Gothard and Janke?

A Yes.

Q And does September 22, 2005, sound right?

A Yes.

Q And at that time, Ms. Galyean, what did, in general what did you tell them in September?

A That I lied, that I was covering for Regennia. She wasn't really with me.

Q And did you tell them, in fact, that Regennia had asked you to lie and give her a cover story?

A Yes.

Q And following the second interview with the FBI, did you have occasion to testify in front of a grand jury?

A Yes.

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Q And did you tell the grand jury, basically, what you told Special Agents Gothard and Janke in the second interview?
A Yes.

MR. GREEN: Those are all the questions I have, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Ms. Galyean, is it Galyean or Galyean?

A Galyean.

Q Ms. Galyean, I represent Mr. Eye. I'm his lawyer along

with Mr. Sandage. We've never talked, have we?

A No.

Q Or met?

A No.

Q I don't believe you have ever talked to -

MR. GROMOWSKY: Excuse me. Do you need this exhibit up?

MR. OSGOOD: No. You can take it down, please.

BY MR. OSGOOD:

Q You have not talked to any investigators for the defense

or anything prior to this time, have you?

A No.

Q You became friends with Ms. Rios when you were about 15?

A Yes. When she was about 15.

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Q And she told you that Mr. Eye had been at one point, well, let's back up. You met Mr. Eye at Vincent Deleon's house over on the east side?

A Yes.

Q Now, you and Ms. Rios used meth during this time frame together?

A Yes.

Q And you have seen her high quite a bit?

A Yes.

Q And does she say strange things when she's high?

A Not really, no.

Q You don't think so. Okay. Ever see her hallucinate?

A No.

Q Do you hallucinate when you use meth?

A No.

Q How does it effect you? Do you get giddy?

A I guess giddy is a good word.

Q Kind of laughing and smiling?

A I don't really know.

Q When is the last time you used any meth, ma'am? Honestly now, you're under oath.

A It's been almost a year.

Q Almost a year. Okay. Now, at any rate at some point you found out Gary had been charged in state court, right? And was locked up over in Jackson County?

A Yes.

Q And those charges were eventually dropped?

A Oh, I didn't keep up with it.

Q Moved over here?

A Yeah.

Q Then did you find out later that it was moved over here because they said it was a hate crime?

A Yes.

Q Jackson County Prosecutor?

A Probably, yes.

Q And now Ms. Rios calls you up to set up an alibi. That's pretty plain and simple?

A Yes.

Q And you agreed to do it?

A Yes.

Q And you agreed to lie for her?

A Yes.

Q Because she was your best friend?

A Yes.

Q And is still your best friend?

A Yes.

Q Now then, later Ms. Rios comes in and tells you what your next version is going to be, doesn't she?

A Yes.

Q She's guiding your responses to the federal government, to

the federal authorities?

MR. GREEN: Objection, that wasn't her testimony.

MR. OSGOOD: That's a question.

THE COURT: Overruled.

BY MR. OSGOOD:

Q Is she, basically, telling you what to do and guiding your responses?

A She was just telling me I was okay to tell the truth now.

Q Okay. What she says was the truth?

A Oh, yeah.

Q Right?

A All that I knew, yes.

Q All you knew came from her, didn't it?

A Yes.

Q And so if she was at the scene, did she tell you that eventually?

A That she was at the scene?

Q Yes, ma'am.

A Yes.

Q Then she tries to put it off on somebody else?

A To say she didn't kill anyone?

Q Yes.

A Yes.

Q She's putting it off on somebody else?

A She didn't kill anybody.

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Q How do you know that?

MR. GREEN: Your Honor, at this point, objection
argumentative.

THE COURT: Sustained.

BY MR. OSGOOD:

Q

Did she ever tell you she was the shooter?

A

No.

Q

She told you Mr. Eye was the shooter?

A

Yes.

Q

She also was the one who was telling you to lie about
where she was at the time?

A

Yes.

Q

Would you agree with me that she would have a motive to

put it on somebody else if she's the one who did it?

MR. GREEN: Objection, argumentative.

THE COURT: Overruled.

THE WITNESS: If she was the one who did it?

BY MR. OSGOOD:

Q

Wouldn't you agree with me, it would be to her benefit to tell you somebody else did it, if she's the one, in fact?

A

Oh, yeah.

Q

That's pretty common sense, isn't it?

A

Yes.

Q

She's setting up an alibi with you?

A

Yes.

Q Okay. Now, just one more question then I'll sit down. The letter you got from Mr. Sandstrom, which I marked as Defendant's Exhibit 37 and had typed but I believe it's in as another exhibit.

What's the number? 186? Thank you.

What was it again that was in the letter, that part of the letter?

A You want me to read that sentence?

Q Read that sentence highlighted. This is from Mr. Sandstrom, right?

A She knows as much as you do that I'm a killer. My whole family is. You don't fry a nigga that gets off on laying niggas down.

Q So what Mr. Sandstrom is telling you, he is a killer, right?

A Yes.

Q And that he'll fry a nigga, N-I-G-G-A, and he gets off on laying niggas down?

A Could I see it again because I don't think. I think that he's saying that Regennia shouldn't try to fry him.

Q No. No. She knows as much as you do, speaking about Regennia?

A Uh-huh.

Q That I'm a killer, says he's a killer?

A Uh-huh.

Q And you don't try to fry a nigga, I guess, meaning -A Stevie.

Q Stevie. That gets off on laying niggas down?

A Yeah.

Q He's basically saying he layed a nigga down, isn't he?

A I didn't really take it that way.

Q Is that what it says though?

A Yes.

Q Nothing in here about Mr. Eye shooting the defendant, is there?

A No.

Q In fact, you told the FBI and you told and testified under oath in the grand jury that neither of these defendants ever told you personally what happened, did they?

A Oh, no. No.

Q They never discussed who the shooter was?

A No.

Q They never said it was Regennia Rios or each other or anybody else, did they?

A No. Neither one of them did.

Q So all we've got is this letter and what she said?

A Yes.

Q And that's pretty much the extent of your knowledge on this?

A Yes.

Q Thank you, ma'am.

THE COURT: Mr. Gromowsky?

MR. GROMOWSKY: Thank you, Your Honor.

CROSS-EXAMINATION
BY MR. GROMOWSKY:

Q Good morning, ma'am.

A Good morning.

Q I represent Stevie here today. So pleased to meet you.

A You, too.

Q Mr. Osgood asked you about your drug use. Back when all this occurred, back in the spring of 2005, you were a methamphetamine user?

A I believe I was pregnant at the time this happened so I wasn't like right then.

Q That moment?

A Like since I was pregnant, no.

Q And you stopped using about a year ago, is that true?

A Yes.

Q So you continued to use after you had your baby?

A Yes.

Q Any other drug use, other than methamphetamine?

A Marijuana.

Q And do you still use marijuana?

A Yes.

Q When was the last time you used marijuana?

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A 5 months ago.

Q You haven't used it before coming in today?

A No.

Q Any other drugs besides marijuana?

A No.

Q Between October 2004 and roughly February 2005, Stevie lived somewhere else outside of Kansas City, is that correct?

A Yes.

Q Lived in Warrensburg?

A Yes.

Q While he was living in Warrensburg, he pretty much called you every day, didn't he?

A Yes.

Q You guys talked on the phone daily?

A Yes.

Q You guys are kind of like brother and sister, isn't that true?

A Yes.

Q In fact, the letter referenced in the 7-31 letter, he actually said you're like his big sister, doesn't he?

A Yes.

Q Did you have an acquaintance named Aaron?

A Aaron?

Q Aaron. Friend named Aaron, African-American gentleman?

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A Oh, yes.

Q And he's been over to your house, is that true?

A Yes.

Q And he and Stevie hang out together some times or at least know each other, is that true?

A Yes.

Q One of these phone calls while he was down in Warrensburg, Aaron was actually over at your house, wasn't he?

A I don't remember. There's a very good possibility of that.

Q You --could you recall whether or not when Stevie called one day, Aaron was there. You told Aaron who was on the phone and he said he wanted to talk to him?

A Oh, yes.

Q Then they continued to have a 5 or 10-minute conversation, friendly?

A Yes.

Q And Aaron is African-American?

A Yes.

Q And Aaron is a friend of Stevie's?

A Yes.

Q You have seen Stevie hanging around with a gentleman named Melvin Carter?

A Melvin?

Q Yes, ma'am. This would have been back in 2001 or 2002

before Mr. Carter went off to prison?

A Is there a name he goes by because I don't remember.

Q I don't know a nickname for him. That's fine.

You have seen him around other African-American people though, right?

A Yes.

Q And we already heard testimony he has a penchant or likes to date minority women, African-American?

A Yes.

Q And Hispanic, is that true?

A Yes.

Q And you've actually seen him dating minority women?

A Oh, yes.

Q Stevie loves to listen to rap music?

A Yes.

Q You do, too?

A Yes.

Q It's your preferred music?

A Yes.

Q Listen to it together?

A Yes.

Q Would you agree with me that Stevie at times can be a little bit crazy and immature?

A Yes.

Q And in addition to you being like a sister to him,

Regennia Rios for a time was pretty close to him, too?

A Yes. Very close.

Q And you've seen them together numerous occasions?

A Yes.

Q Hundreds of times probably?

A Yes.

Q And they get along some time, is that true?

A Yes.

Q Other times they fight like cats and dogs, don't they?

A Yes.

Q Some times Stevie does something to irritate her and she gets fired up at him?

A Yes.

Q Some times the other way around. She does something to Stevie and he gets fired up at her. Is that true?

A Yes.

Q Some times fight, no particular reason at all, as far as you can tell, true?

A Yes.

Q That's part of just the way the two of them react to each other, right?

A Yes.

Q They just kind of vent at each other some times?

A Yes.

Q How many times did you ever see --and you've known Stevie

for several years, true?

A Yes.

Q How many times did you ever see, other than today, Mr. Sandstrom in the company of Mr. Eye?

A Maybe once, maybe.

Q Maybe once, if ever?

A Yeah.

Q You testified a minute ago that this letter from July 31, 2005, which has been previously marked as Exhibit, Government's Exhibit 186, you thought that was really intended more for Regennia than for you?

A Yeah. I thought he was kind of mad and trying to vent toward her.

Q That's exactly what was happening, like one of their old childhood arguments?

A He was mad.

Q And, in fact, the letter, it included much more substance than what you were told here today, isn't that true?

A Yes.

Q It talked about you being pregnant?

A Yes.

Q Is that right? It talked about him, before getting locked up, he wanted to be able to get you a car, isn't that true?

A Yes.

Q He wanted to just give it to you, give it to you as a gift?

A Yes.

Q Wasn't expecting anything in return?

A No.

Q Just because you were a friend?

A Yes.

Q He even mentioned in there you were really his big sister?

A Yes.

Q That's one of the reasons he wanted to go ahead and give that to you?

A Yes.

Q Right?

A Yes.

Q He told you about his new girlfriend?

A Yes.

Q Very excited about her, right?

A Yeah, he was.

Q Certainly that conversation wasn't intended for Regennia?

A Oh, no.

Q Nor the conversation about getting the car for you?

A No.

Q Actually two references in here I see about you being pregnant, is that right?

A Yes.

Q That wasn't for Regennia, was it? That was for you?

A Yes.

Q Down at the bottom after he signs off on it he says, tell everybody I said, what's up?

A Yes.

Q That was for you to tell everyone?

A Yes.

Q He wasn't saying, here is this letter I'm sending to you. Hand it off to Regennia so Regennia can tell everyone I said, what's up?

A Oh, no.

Q So that was for you as well. He asked to get Jonnie Renee's address so he could write her some letters?

A Yes.

Q That was directed to you. That wasn't directed to Regennia?

A Yes.

Q He didn't expect Regennia to get this and respond to the letter to him, did he?

A No.

Q So we're categorizing this as a letter for Regennia. It's not a letter for Regennia. It's just, she's mentioned in it and you thought she'd like to hear about it?

A Yes.

Q This was, again, just an example of him venting, right?

A Yes.

Q At the time this letter came to you he was locked up in the Jackson County Jail, is that true?

A Yes.

Q And he was there on charges related to this case, is that true?

A Yes.

Q Tampering charge and arson charge, basically?

A Yes.

Q No murder charge over in Jackson County?

A No.

Q Okay. And, in fact, in the letter, itself, he says that on those charges, probably going to get 8 years, maybe 5, if he's lucky. Remember that?

A Yes.

Q And he also says that they could be hitting him up for felony murder, is that true?

A I don't know.

Q I mean, that's what he wrote in the letter?

A Yes.

Q Okay. And by this time that you received this letter Regennia had already talked to you about the whole incident that was involved?

A Yes.

Q So you knew that potentially when he says I could be hit

for felony murder?

A That whole scene.

Q Right. So when he says that he's going to get out there and kick her ass, you know we're looking at, if it's felony murder, life in prison. Is there any possibility of him ever kicking her ass?

MR. GREEN: Object, relevance.

THE COURT: Sustained.

MR. GROMOWSKY: Well, Your Honor, may we -(
COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
PROCEEDINGS WERE HAD:)

MR. GROMOWSKY: Your Honor, Count 9 of this indictment is based upon this 7-31 letter, which is supposedly a threat. It's not a threat if it's physically impossible to carry out this. She can establish that.

THE COURT: Telling the jury what the penalty may be for a state law offense, I think that's what I heard him object to and that's what I sustained. I'm letting you cross-examine her thoroughly on the letter. You can continue to do that but the objection to that question is sustained.

MR. GROMOWSKY: Very well, Your Honor.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)
BY MR. GROMOWSKY:

Q Ma'am, if someone is locked up in prison, for example, let's say Stevie is locked up in prison. You don't

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anticipate at this point Ms. Rios going and visiting him, having a contact visit with him?

A Oh, no.

Q You understand what a contact visit is?

A Yes.

Q And what is contact visit?

A Where you can actually touch each other. Like, there's no glass.

Q Okay. So you wouldn't expect Ms. Rios to be on his list of visitors for contact visits?

A No.

Q So if he's locked up, he's not going to be able to break her jaw?

A No.

Q And, in fact, like you said before this, you know these people, you know both?

A Yes.

Q You know both of them very, very well?

A Yes.

Q One is your very best friend and one is your play brother?

A Yes.

Q In your opinion, this is just an example of them venting?

MR. GREEN: Your Honor, objection, relevance.

THE COURT: Overruled.

BY MR. GROMOWSKY:

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Q Correct?

A Oh, yes.

Q Thank you, ma'am.

THE COURT: Redirect examination?

MR. GREEN: First, United States would offer Plaintiff's Exhibit 186, which is the entire letter.

THE COURT: Without objection, 186.

MR. OSGOOD: Could I have a minute, Your Honor?

THE COURT: Pardon?

MR. OSGOOD: Could I have a moment to look at it?

MR. GROMOWSKY: Your Honor, we don't object.

MR. OSGOOD: I don't have any objection.

THE COURT: 186 is admitted.

MR. OSGOOD: Your Honor, at this time I would like an instruction.

THE COURT: Okay. Ladies and gentlemen, this letter is purportedly written by Steven Sandstrom. You are --now, I have admitted the letter. However you are only to consider the letter in the government's case against Mr. Sandstrom. It is not admitted in the government's case against Mr. Eye. Okay?

MR. OSGOOD: Thank you.

REDIRECT EXAMINATION

BY MR. GREEN:

Q Ms. Galyean, Mr. Gromowsky asked you about in 186 there

were references to you, do you recall those questions?

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A

Yes.

Q

And the references to you did you consider those to be threats against you?

A

Oh, no.

Q

And the references to Regennia Rios, did you consider those to be threats against Regennia Rios?

A Oh, yes.

MR. GREEN: And if you would display what's in

evidence as 186C, the third portion.

BY MR. GREEN:

Q

Mr. Gromowsky read to you from part of that. But does the rest of it say, did you see me on T.V? If you can, get me Jonnie Renee's address. Regennia told police we all went over there after it all happened and was doing dope. Pretty much said it's a dope house. And then, that bitch ain't right. Do you see that?

A
Yes.

Q
And, again, after you read this letter, even though there were references in it to you and your situation, you turned the letter over to Regennia?

A
Yes.

Q
And, finally, Mr. Osgood asked you about Regennia Rios giving you directions about what to tell the federal government. Do you recall those questions?

A
Yes.

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Q

At the point at which you had the conversation in the spring of 2005, Regennia Rios gave you some details about the offense. Do you remember that?

A

Yes.

Q

She told you Gary shot the guy?

A

Yes.

Q

Did Regennia Rios tell you at this time, in the spring of '05 when you had that conversation, did she tell you she wanted you to go tell law enforcement that?

A To go tell them? No. No.

MR. GREEN: I have nothing further, Your Honor.

THE COURT: Recross?

REXCROSS-EXAMINATION

BY MR. OSGOOD:

Q

Obviously, if you went and told them that you would be

telling them she was there and her alibi wasn't any good,

wouldn't you?

A
Yes.

Q
That wouldn't make sense, would it?

A
No.

Q
Now, they asked you about, somebody did, about Mr.

Sandstrom dating Hispanic woman and black women?

A Yes.

Q Now --

Ms. --Mrs. Eye, would you stand up?

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Do you know my client's wife who's been in the courtroom here?

A Oh, no.

Q You don't know Stephanie Fabela?

THE COURT: Step up, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: John, do you have a good faith reason to believe she knew?

MR. OSGOOD: I asked my client. He said he thinks she might. That's all I know.

MR. GREEN: It's irrelevant. And there's no reason to believe that Ms. Galyean does know that woman. But it's relevance. I mean, now, we're starting to point out people in the gallery and giving opinions about racial heritage.

THE COURT: Let's do this. Let's just be real sure we have a good faith reason to believe that the answer has, that the witness has an answer to a question before we ask it. And not use that question as a way to demonstrate your client's married to a Hispanic woman.

MR. OSGOOD: Well, I'm concerned about that woman, number 1, being the one that the jury was concerned about going back to that other issue. That she's been here throughout the

trial and I think Mr. Buchanan knows her, too.

MR. GREEN: Well, that's for Mr. Buchanan. This

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witness has nothing.

THE COURT: You heard the instruction, John.

MR. OSGOOD: I'm conscience of it. I will.

THE COURT: The objection is sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

MR. OSGOOD: I don't have any other questions, Your

Honor.

THE COURT: Mr. Gromowsky?

MR. GROMOWSKY: Thank you, Your Honor.

RECROSS-EXAMINATION

BY MR. GROMOWSKY:

Q Ma'am, once again, with regard to the letters,

specifically, the government just got up here, again, and said I was taking something out of context here. So let's cover it again. He's asking for Jonnie Renee's address, is that correct?

A Yes.

Q He's going to write Jonnie Renee, correct?

A Yes.

Q He's going to warn her Regennia Rios is talking about her

running a dope house, is that true?

A Yes.

Q When he's talking to John-John, your baby daddy, right?

A Yes.

Q He's warning him, the girl ain't right, is that correct?

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A Yes.

Q He's warning him, you know, if you get out of jail and start messing around again, don't do it around Regennia Rios, is that true?

A Yes.

Q So what he's talking about, he's not talking about threatening Regennia at that point, is he? He's just giving warnings to other people?

A Oh, at that point?

Q That's right?

A Yes.

Q When I was up here talking to you, you were discussing the fact that the two of them had several arguments and fights together?

A Oh, yes.

Q Happened all the time?

A Yes.

Q During those fights and arguments, Regennia Rios some times said she was going to kick Stevie's ass, didn't she?

A Yes.

Q Vice versa. Sometimes he got angry and said he was going the kick her ass, too, didn't he?

A Yes.

Q Never did kick her ass?

A And never saw it happen.

Q The letter in your mind is venting just like one of those

arguments?

A Yes, pretty much.

Q Thank you.

THE COURT: Thank you. You may step down.

May Ms. Galyean be excused?

MR. GREEN: Yes, Your Honor.

THE COURT: Okay. Ms. Galyean, you are excused.

Let's take another real short break. I'll try to

keep this one to 10 minutes. Don't talk about the case. Keep
an open mind. We'll resume at 11:10.

(Witness excused.)

(Recess)

(The following proceedings were had OUT OF THE
PRESENCE AND HEARING OF THE JURY:)

MR. GREEN: I apologize, Your Honor, the witness has
indicated he wants to talk to me because of the sensitive
nature some of this information. I think maybe I need, with
his lawyer in the courtroom and an agent, go over and find out
what his particular problem is. I'll tell the Court I
instructed him not to mention the things we talked about this
morning. I don't know if he has a further question on that.

THE COURT: Do you know what he's doing?

MR. GROMOWSKY: I was just going for the record while
we have a chance here before the jury comes down, if we could

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have a continuing objection to you overruling our motion to exclude those two exhibits they're going into, 138 and 154. That way we don't have to interrupt.

THE COURT: We'll show the objection as continuing.

MR. GROMOWSKY: Thank you, Your Honor.

MR. KETCHMARK: Just for the Court's information,

while we're here, Mr. Buchanan is the last witness we have scheduled for today. But I think he'll probably take up to the break, if I had to guess.

MR. GREEN: It's okay, Your Honor. And I apologize.

THE COURT: Okay.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Your next witness, Mr. Green.

MR. GREEN: Yes, Your Honor. The United States calls

Justin Buchanan.

JUSTIN BUCHANAN, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. GREEN:

Q Sir, would you tell us your name and lean forward into the microphone when you do so?

A Justin Buchanan.

Q Spell your first name?

A J-U-S-T-I-N.

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Q Could you spell your last name for us?

A B-U-C-H-A-N-A-N.

Q I'm going to adjust that microphone for you. Hold on.

And, sir, if you make a point of directing your voice into that microphone. Would you do that for us?

A Yes.

Q How old are you?

A 25.

Q And where do you currently live. Where are you currently residing as of today?

A CCA.

Q And is that a federal holding facility for federal prisoners?

A Yes, sir.

Q Is that the result of a federal charge that you pled guilty to?

A Yes, sir.

Q Now, how long have you been in continuous custody?

A Since August 6, 2002.

Q Now, Mr. Buchanan, do you know a man named Steven Sandstrom?

A Yes, sir.

Q And how do you know him?

A He's my cousin.

Q And what is he? Second? Third?

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A First cousin.

Q Do you see him in the courtroom today?

A Yes, sir.

Q Would you point him out for us, please?

A (Witness indicating.)

Q Sitting in the corner of the courtroom?

A Yes, sir.

MR. GREEN: Your Honor, may the record reflect the

witness has identified the defendant, Steven Sandstrom?

THE COURT: Yes.

BY MR. GREEN:

Q How is Mr. Sandstrom related to you as a first cousin?

A My mom and his mother is sisters.

Q Is his mom's name Bonnie?

A Yes, sir.

Q What area of Kansas City did you grow up in?

A Northeast.

Q And do you recall the address of the home you lived in

mainly?

A 3710 East 7th.

Q When you were growing up, where did Steven Sandstrom grow up?

A In northeast.

Q And how often would you see Steven Sandstrom while growing up?

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A Often.

Q Could you --you were first cousins. But could you describe the type of relationship you had with Steven Sandstrom?

A Like brothers.

Q Did you spend a lot of time together?

A Yes.

Q Did there come a point in your life, Mr. Buchanan, when you became, you began getting in trouble with the law?

A Yes.

Q About how old were you?

A Ten, eleven, twelve, off and on.

Q And you, as you sit here today, do you have felony convictions?

A Yes, I do.

Q And, specifically, do you have a 1999 tampering with a motor vehicle conviction?

A Yes.

Q And do you have a 2000 receiving stolen property conviction?

A Yes.

Q And you also have an, out of Clay County, a 2000, year 2000 forgery conviction?

A Yes.

Q You have an attempted escape conviction out of Platte

County in 2001, is that correct?

A Yes, sir.

Q And you have a 2003 tampering out of Jackson County, is that correct?

A Yes, sir.

Q I want to direct your attention back to a date, February 18 of 2002. Do you recall something happening on that date?

A I absconded from my parole.

Q You absconded from your parole? On what charge or conviction? Do you recall which one it was?

A All of them.

Q When you absconded on your parole, where did you go?

A Went on the run.

Q And when were you finally caught?

A August 6, 2002.

Q In this time frame from February 18, 2002, to up until August 6, 2002, did you have occasion to see Steven Sandstrom?

A Yes.

Q And how much?

A A lot.

Q Did you, in fact, live with Steven Sandstrom and his parents for awhile?

A Yes.

Q Now, after you were caught on August 6, 2002, you were returned to custody, correct?

A Yes, I was.

Q And you've been in custody on one charge or another ever since that day, is that right?

A Yes, sir.

Q And, again, Mr. Buchanan, if you would project your voice into that microphone?

A Okay.

Q While you were, after you went back into custody on August 6, 2002, did Mr. Sandstrom have occasion to write letters to you?

A Yes, he did.

Q And so you had occasion to be familiar with Steven Sandstrom's handwriting?

A Yes, sir.

Q I want to, now, Mr. Buchanan, direct your attention to spring of 2005. Where were you incarcerated?

A Crossroads Correctional Center.

Q And is that in Cameron, Missouri?

A Yes, it is.

Q At some point in the spring of 2005 do you learn that Steven Sandstrom is the subject of a homicide investigation?

A Yes, I do.

Q How do you learn that?

A Through the family members and through newspaper clips.

Q Does Steven Sandstrom, himself, write you letters to you in Cameron?

A Yes, he does.

Q And in those letters does he give some details about his situation?

A Yes.

Q Does he mention the names of witnesses or potential witnesses against him?

A Yes.

Q Do you, specifically, recall any of those names?

A Yes.

Q Who are some of those names?

A Larry Stanley, Vincent Deleon, Regennia Rios.

Q Let's talk about Regennia Rios. Did you --I'm talking about the point at which, the spring of 2005, you start, when you were receiving these letters from Mr. Sandstrom. Did you already know who Regennia Rios was?

A Yes, I did.

Q And did you like Regennia Rios?

A No.

Q And why was is that you didn't like Regennia Rios?

A She turned state evidence against me.

Q And was that back in 2002, approximately, if you recall?

A No. It was in '99, 2000.

Q How about Vincent Deleon? Do you know him?

A Yes.

Q And did you like him?

A No.

Q Now, the letters that you received from Steven Sandstrom in Cameron that came to you while you were in Cameron, what did you do with the letters?

A Sent them to my property.

Q Excuse me?

A Sent them to my property.

Q So you didn't destroy them?

A No.

Q What ended up happening to those letters?

A The FBI ended up with them.

Q I'm sorry. You'll have to repeat.

A The FBI ended up with them, the federal government.

Q Did you turn those voluntarily over to the FBI?

A No, I didn't.

Q Were you happy that the FBI had gotten those letters?

A No.

Q Was there, do you recall --I'm kind of skipping ahead here to approximately mid November 2005. Do you recall, in fact, meeting with agents of the FBI and them reviewing these letters with you?

A Yes, I do.

Q And, again, Mr. Buchanan, were you happy about that?

A No.

Q Now, before you came in here today to testify, we showed you these letters?

A Yes, you have.

Q And we have also shown you excerpts from these letters?

A Yes.

Q And have you been able to identify --and these also are going to include letters that you sent to Steven Sandstrom, correct?

A Yes.

Q I'm going to take this in phases. I'm going to approach you and show you what is marked as Plaintiff's Exhibit 121. Can you identify what that is?

A A letter from my cousin.

Q And do you recognize the handwriting?

A Yes.

Q Is that dated June 7, 2005?

A Yes, it is.

Q Whose handwriting is that?

A Steven Sandstrom.

Q Now, I'm going to show you what is marked as Plaintiff's Exhibit 121A. And do you recognize this to be an excerpt from Plaintiff's Exhibit 121?

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A Yes, it is.

Q And Plaintiff's Exhibit 121B, do you recognize that to be an excerpt from Plaintiff's Exhibit 121?

A Yes.

MR. GREEN: Your Honor, at this time the United

States offers Plaintiff's Exhibits 121, 121A and 121B.

THE COURT: Government's 121, 121A -MR.

GROMOWSKY: Your Honor, if I may, I have an

objection. Relevance, at least occurred well after the fact.

THE COURT: Government's Exhibits 121, 121A and 121B are admitted over Defendant Sandstrom's objection.

MR. OSGOOD: I object to them on the ground they're hearsay as to my client.

THE COURT: And over Defendant Eye's objection.

BY MR. GREEN:

Q Let me show you next what is marked as Plaintiff's Exhibit

120. Can you identify this?

A Yes.

Q And what is that?

A A letter also from Steven.

Q And the handwriting is whose?

A Steven Sandstrom.

Q And this is dated June 14, 2005?

A Yes, sir.

Q And then Plaintiff's Exhibit 120A, do you recognize that

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as an excerpt from Plaintiff's Exhibit 120?

A Yes.

MR. GREEN: Your Honor, United States offers

Plaintiff's Exhibits 120 and 120A into evidence.

THE COURT: Same objection?

MR. GROMOWSKY: Yes, Your Honor.

THE COURT: Objections overruled. 120 and 120A are

admitted.

BY MR. GREEN:

Q

Next I want to show you what is marked as Plaintiff's Exhibit 117. Do you recognize this?

A

Yes, I do.

Q

What is that?

A

A letter also from Steven.

Q

And it's his handwriting?

A

Yes, it is.

Q

Dated July 2, 2005?

A

Yes, sir.

Q

And it's two-sided, correct?

A

Yes.

Q

Plaintiff's Exhibit 117A, do you recognize that as being

an excerpt from Plaintiff's Exhibit 117?

A Yes, I do.

MR. GREEN: Your Honor, United States offers

Plaintiff's Exhibit 117 and 117A into evidence.

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THE COURT: Record will reflect both defendants' objections. Both exhibits are admitted over the defendants' objections.

BY MR. GREEN:

Q Plaintiff's Exhibit 155, can you identify this?

A Yes.

Q What is it?

A It's a letter written by me July 9th.

Q Okay. And Plaintiff's Exhibit 155A, do you recognize that as being an excerpt from 155?

A Yes.

MR. GREEN: Your Honor, United States offers

Plaintiff's Exhibits 155 and 155A into evidence.

THE COURT: 155 and 155A are admitted over the objection of both defendants.

BY MR. GREEN:

Q Plaintiff's Exhibit 141, can you identify this?

A It's a July 11th letter from Steven to me.

Q And there is an envelope attached, correct?

A Yes, sir.

Q And do you recognize 141A as being an excerpt from

Plaintiff's Exhibit 141?

A Yes, sir.

MR. GREEN: Your Honor, United States offers

Plaintiff's Exhibit 141 and 141A into evidence.

THE COURT: 141 and 141A are admitted over the objection of both defendants.

BY MR. GREEN:

Q Showing you what is marked as Plaintiff's Exhibit 140, can you identify this?

A Also another letter written July 23rd.

Q Of 2005?

A Yes, sir.

Q With an attached envelope, is that correct?

A Yes, sir.

Q And do you recognize Plaintiff's Exhibit 140A as being a copy of that envelope?

A Yes, sir.

Q 140B as being a copy of the back side of that envelope?

A Yes, it is.

Q Plaintiff's Exhibit 140C as being an excerpt from Plaintiff's Exhibit 140?

A Yes, it is.

Q And Plaintiff's Exhibit 140D as being an excerpt from Plaintiff's Exhibit 140?

A Yes, it is.

MR. GREEN: At this time, Your Honor, the United

States offers Plaintiff's Exhibits 140, and 140A, 140B, 140C and 140D into evidence.

THE COURT: Those exhibits are admitted over the

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objections of both defendants.

MR. GREEN: And, Your Honor, may I then have portions

of these then displayed to the jury?

THE COURT: You may.

MR. OSGOOD: Your Honor, I want an additional

objection. I think it should be to testify as what he responded to the letters. I think the letters --is not appropriate. He can ask him if he got a letter and show him the letter he got from -

THE COURT: I assume he will do that. If not, you may object at the right time.

MR. GREEN: I may have missed the basis for the objection.

THE COURT: If the letter is responsive to a previous letter, they should be connected.

BY MR. GREEN:

Q I want to show first what is in evidence as Plaintiff's

Exhibit 121A. Can you see that on your screen,

Mr. Buchanan?

A Yes, I can.

Q I'm going to read this to you and you tell me if I read

this correctly. This is JB. Who is that?

A That's me.

Q And you're going to have to speak up.

A It's me, Your Honor.

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Q It's dated June 7, 2005?

A Yes, it is.

Q It says, I feel you. I'm not saying shit but I got him and the slut Regennia Rios both working against me, saying I killed the MF. Can you see that?

A Yes, I can.

Q And what was your understanding of what Mr. Sandstrom was referring to there?

A He was referring to Vincent Deleon and Regennia Rios working against him for the murder of Mr. McCay.

Q That's your understanding of the phrase, I killed the MF?

A Yes, it is.

Q I seen the pussy Gary at rec. He wouldn't even look at me. He seen me hitting the 240 and got spooked.

Then would you show the second part?

Says, I got a feeling feds are going to take us both down. They had divers at the river for a week. Yep.

They found it, too. All bad. Huh?

What do you understand that to be a reference to?

A They found the murder weapon.

Q And what was your understanding of what that was? The murder weapon? What type of weapon? What was it?

A A .22 caliber.

Q And, again, this is dated June 7 of 2005, correct?

A Yes, it is.

Q 121B.

Do you see that, Mr. Buchanan?

A Yes, I can.

Q It said, the feds can give me head. KCPD homicide, too. They both go off and jack their dick before they think an M will stick on me because I'm a solo night rider. Only reason I hit on this is because I couldn't control what went down. I wrote that MF Vincent D. Told him what's up with me and his cousin and etc. But any way, his girl told my girl he started crying when he read my letter. He told me not to break her heart. Shit. He's who is taking me away from her. Do you see that?

A Yes, I do.

Q What was your understanding of what Mr. Sandstrom was referring to there?

A He's referring to Vincent Deleon as being the one taking him away from his cousin, which Sandstrom was dating, by testifying on him.

Q And who is Mr. Sandstrom dating by this time to your knowledge?

A Kristina.

Q Did you know her last name?

A I don't know.

Q All right. Then the last portion of this, 121B.

So really it's him that's breaking her heart.

He thought I was just hitting the pussy. Most likely feds got us. So I'll probably be something state 100 percent.

Feel me? Probably bypass state 100 percent? Feel me? Do you see that?

A Bypass state 100 percent.

Q Now, the notation at the bottom, NES5. Do you see that?

A Yes I do.

Q And it says, much love, your little cousin, Stevie AKA High-speed. Do you see that?

A Yes, I do.

Q Was this a common way for your cousin, Mr. Sandstrom, to sign his letters?

A Yes, it is.

Q And the NES5, what's your understanding of what that's a reference to?

A To our neighborhood.

Q Which is what?

A Northeast side.

Q I want to go back, actually. And on 121B on the first portion where he says, Mr. Sandstrom had written to you, they think an M will stick on me. They better back off and go jack their dick before they think an M will stick on me.

What is your understanding of what the letter M

stands for?

A A murder.

Q Then on the second portion of 120B, or excuse me, 121A.

Actually, I think I'll pass that and go on to the next one, which is what is in evidence as Plaintiff's Exhibit 120A. Do you see that? Do you see that, Mr. Buchanan?

A Barely.

Q Okay. Well, here, I can show you the excerpt that's in evidence, if that will help you.

Does 120 state, Fucked up, cock suckers can give me head, suck on my sweet little white dick, you African bastards? Do you see that?

A Yes.

Q Your cousin, Steven Sandstrom, wrote that?

A Yes.

Q I want to next go to 117A.

And if you would highlight the top portion,

Ms. Marko.

Do you see that on your screen, Mr. Buchanan?

A Once, again, barely.

Q I'll just approach you then with the excerpt itself.

A I can see it better on hers.

Q It says, JB, dated 7-2-05, correct?

A Yes, it is.

Q It says, Shit. I like being locked down 22 hours. Walk,

waiter. I want some god damn juice. I need a cup, too.

While you're at it, give me head, you African prick.

Do you see that?

A Yes, I do.

Q And what's your understanding of what Mr. Sandstrom is referring to there?

A He's referring about the guards at Jackson County.

Q And then there is the second portion on 117A. Do you have that? It says, I'm going to beat the CO's ass tomorrow if he pops off his smart-ass mouth, again, you fucking nigger, better watch his cock-sucker. Do you see that?

A Yes.

Q Then, again, Mr. Sandstrom signed this letter, High-speed AKA Daddy NES5, is that correct?

A Yes.

Q And, Mr. Buchanan, what is your understanding of the term CO? What is a CO?

A Correctional officer.

Q Turning now to Plaintiff's Exhibit 155.

If you display 155A.

And if you could blow that up.

Can you read that on your screen, Mr. Buchanan?

A No.

Q All right. This is addressed, Little Speedy, July 9th, correct?

You're going to have to say, yes.

A Yes, it is.

Q And whose writing is this?

A This is my writing.

Q Says, Looks like they didn't want to give you a contact visit, huh, buddy? Give me head, nigger. Good one.

Chill on out. Don't be letting those niggers get to you, little bro. Straight up. Chill out. Keep your head up and try to get back out soon. Real shit. Tax those rugs, I be robbing the ass up here for real, for real. I never used to -What's

this? Can you read that for me?

A Never used to beat anyone but all these rugs up here in this house are lames so I take all their stamps, hygiene, etc. Don't like it, nigger? Pop the door then do something about it.

Q Now, these are your words, right, Mr. Buchanan?

A Yes, they are.

Q What are you first of all --what does the term rug mean?

A Referring to a black person.

Q Is it -A

Racial slur? Yes, it is.

MR. OSGOOD: Your Honor, may we approach a minute?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. OSGOOD: The instruction of these letters, none that have been read so far have anything to do with Eye and they're to be used against Mr. Sandstrom only.

THE COURT: Okay.

MR. OSGOOD: Up to this point.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Let me repeat the instruction I gave you earlier. These letters are admitted in the government's case against Mr. Sandstrom. They are not admitted in the government's case against Mr. Eye.

MR. OSGOOD: Thank you.

BY MR. GREEN:

Q What were you telling your cousin? What were you writing

to your cousin about? What were you talking about in this

letter?

A Can you approach me, again, with the letter, sir?

Q Yes, sir. 155A.

A They didn't give my cousin a contact visit that he was

wanting. And he wrote in a letter he, basically, give me head, nigger. And I wrote that's a good one. I, basically, told him to chill out. Don't be letting the

niggers get to you because all the black people up there,
I know he's on, could be charged with a murder for killing
a black man. And I told him, basically, chill out. Keep

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his head up and try to get back home soon as he can. And, basically, I was referring as far as mine to beating people, the black people, whatever, in Crossroads because, I mean, I'm in a segregation unit up there. And I'm selling cigarettes and a few people had robbed, stole my stuff. So I just started taking all the black people's stuff when they came through. Basically, I was just taking everybody's stuff and I didn't care because they was making racial slurs at me so I made them back.

Q Next, I want to turn to Plaintiff's Exhibit 141A, what is in evidence.

If you could display that.

Again, Mr. Buchanan, can you read that on your monitor? If I read along, will you be able to read that on your monitor?

A Yes, I would.

Q Okay. And this was from --the original exhibit was Plaintiff's Exhibit 141 was dated July 11, '05?

A Yes, it was.

Q And this says, first of all, whose handwriting is that?

A My cousin.

Q It says, he writes, he had that dope whore, Regennia, with him. She was talking shit. I told her, bitch, I'm breaking your jaw and then see how tough you are. Do me a

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favor. If you see her, smash that bitch.

Do you see that?

A Yes, I do.

Q And who would, what is your understanding of who your cousin is referring to in this part of the letter?

A Regennia Rios.

Q And also the reference to her talking shit, what is your

understanding of what that means?

A Turning over evidence.

Q Turning over evidence?

A Her giving information about the murder.

MR. OSGOOD: Objection, Your Honor. The Supreme

Court or the Eighth Circuit case we cited, I don't believe there was a foundation for him to interpret that that way. That's suggesting that's a code for something.

THE COURT: Step up.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GREEN: He's a party to this letter. This is his cousin. He can interpret letters being written by his cousin and it's not code. He's saying, she's talking shit. He can say that. He's a party to this, basically, through the written conversation that they're having. So this is like interpreting a telephone call that a party, a person is a party to. They can interpret that based on their dealings with the person.

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MR. OSGOOD: I don't think there's a foundation to show the word talking shit gets to what his answer was which was far afield. Talking shit can mean anything.

THE COURT: Well, the Eighth Circuit case says that an expert can't interpret codes. I understand. But I think in the order in limine I left the option open of witnesses testifying as to what their perception was. And I think that's what he's doing.

MR. OSGOOD: Well, I don't suggest they violated the motion in limine. I'm just saying I don't think that that comports with --it's not even akin to what was talked about in the opinion, frankly. It's an interpretation of something and his opinion and speculation as to what that phrase meant. I guess he needs to ask him a little more.

THE COURT: Let's make it clear it's his understanding and interpretation.

MR. GREEN: That's why I was asking it that way.

THE COURT: Okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GREEN:

Q Mr. Buchanan, what you're testifying to is your

understanding of what your cousin is meaning when he

writes you, correct?

A Yes, sir.

Q And then, well, then when he says, Mr. Sandstrom writes

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you, do me a favor. If you see her, smash that bitch.

What is your interpretation of what he means by that?

A Her -Q

What does he want you to do?

A To kill her, basically.

Q And who are we talking about?

A Regennia Rios.

Q Okay. Now, let's focus on the second part of 141A. Can

you see that on your monitor, Mr. Buchanan? Do you see

that?

A Yeah. I can read along with you.

Q I say, tell you, Gary wrote me. He said all they have is

hearsay. No eyewitness but me and Regennia. So our plan is to put it on her.

What do you think? What was your understanding of what Mr. Sandstrom was communicating there?

A That Sandstrom and Eye was going to pin the murder on

Regennia Rios.

MR. GREEN: Your Honor, may we?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. GREEN: The Court has been giving limiting

instructions on these letters as to Mr. Eye. And to this point that's been perfectly correct. However, the United States would represent that we're offering the second portion that I

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just read of 141A as a co-conspirator statement. So we would at some point want to make the Court aware that, you know, we'll be requesting that we be able to use that as a co-conspirator statement. Obviously, the Court will have to make the Bell finding at the close of all the evidence that there's been a conspiracy to obstruct justice and both Mr. Eye and Mr. Sandstrom were part of that, were in that conspiracy to obstruct justice, and the statements were in the course of and furtherance of that conspiracy. But that's what we're offering that portion of the letter for.

THE COURT: What do you want me to do now?

MR. GREEN: Nothing. We just want you, well, we're not actually wanting the Court to do anything now. Just make the parties aware of that.

MR. OSGOOD: I haven't objected to that.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GREEN:

Q And still looking at 141A, again. Mr. Buchanan, your

understanding is Mr. Sandstrom and Mr. Eye have it planned

to pin the murder on Regennia Rios?

A Yes, sir.

Q Next turning to Plaintiff's Exhibit 140.

And if you could just display 140A.
Do you see that, Mr. Buchanan?
A Yes.

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Q And that's the top side of the front side of the envelope.
It's from Steven M. Sandstrom addressed to you, Justin
Buchanan, correct?

A Yes, it is.

Q You're there in the Cameron Correctional Facility,
correct?

A Yes, I am.

Q Then did -If

you display 140B.

Do you see that, Mr. Buchanan?

A Yes, I do.

Q And was that the back side of the envelope?

A Yes, it is.

MR. GREEN: And is that already blown up?

BY MR. GREEN:

Q

I'm just going to point, this says --you can follow on
your monitor but this says, does this say north?

A

Yes, it does.

Q

And I'll point to the center there at the top, is that the

east?

A

Yes.

Q

And does this say side?

A

Yes, it does.

Q

And then what's this in the middle there?

A

It says, seal of approval.

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Q And then Roman Numeral 5 in the middle of that?

A Yes.

Q Was that common for Mr. Sandstrom to put that on the back side of the envelopes that you would receive?

A The majority of them, yes, it is.

Q And do you know what that meant?

A His seal of approval, he's the one that sealed it.

Q Now, I want to show you now 140C. Can you see that on your monitor?

A Barely.

Q Okay. Let me hand you the exhibit. This is addressed, JB, July 23, '05, correct?

A Yes, it is.

Q It says, they told Kristina I'll get 40 if feds keep the case. I can't do it. Gary said without an eyewitness they really don't have shit. All they have is statements and a pistol. I heard he got everyone's statements dropped but mine and Regennia's. So I wrote to the lawyers and said the detectives made me say I drove the car. And, shit, I figured a tampering is better than a murder so I confessed to the auto theft so I wouldn't get charged with murder. Feel me? It all back fired. So I'm going to try to say I was forced into the statement. I hope it works.

And what is your understanding of that,

1400

Mr. Buchanan? What was your understanding of what Mr. Sandstrom was writing to you?

A Admitting to his part in the homicide.

Q Was he saying that he had told the detectives enough that he thought he would get charged with auto theft?

A Yes.

Q But that for some reason something about that plan hadn't worked, correct?

A Correct.

Q You're going to have to speak into the microphone.

A Yes.

Q So he was going to say the detectives had, basically, forced him into a statement?

A Yes.

Q Then at the bottom of 140C, it says, you said, let you know how you could help out. Get me a lawyer or -Wait. And then I'm going to go to 140D. Can you see that on your monitor, 140D?

A Yeah.

Q Okay. It says, and this is a continuation from the prior page, 140C. You said, let you know how you can help out. Get me a lawyer or wait until --now I'm on 140D --until July 6 and bond me and I'll pay you back. Then run to Mexico.

What is your understanding what he's saying

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there, Mr. Buchanan?

A Wanted me to get him a lawyer or bond him out.

Q And then what is he saying what he'll do then?

A Go on the run.

Q Real talk. If they come with 40, I'm gone. I'll hit a fat leg to cover you and have enough to go south of the border to live. I can't do 40.

What is your understanding of what Mr. Sandstrom is saying there?

A He can't do the 40 years if that's what they're going to give to him.

Q So what is he telling you he's going to do?

A Go on the run.

Q And what is your understanding where he's saying he's going to run to?

A To Mexico.

Q Yeah. Regennia is suppose to go on some trip some time around November 18th, I think. Feel me?

Now, what is your understanding of what Mr. Sandstrom is saying in that sentence? And lean into the microphone.

A November 18th was my 1212 date, that's when I was suppose to get out of prison.

Q So what is your understanding of what he's saying about Regennia is suppose to go on some trip?

A I was suppose to go kill her. And make it look like she went out, she left, disappeared.

Q Okay. This continues, says something about moving south. That it wasn't a good spot for her up here. Got me? I know you don't like him but I'm positive that Bub has a vacation home for Regennia down by his Aunt Dee Dee's house. He has a good spot to put her up at. Holler at him.

What is your understanding of what Mr. Sandstrom is writing to you there, Mr. Buchanan?

A Get hold of Bub and he's got a spot for me where I can dispose of the body.

Q And whose body?

A Regennia Rios.

Q Now, did you know who this Bub was?

A Yes, I did.

Q What was his name?

A Bub Hayden, I believe.

Q And how well did you know Bub?

A Pretty well.

Q Did you know anything about this Aunt Dee Dee?

A No, I didn't.

Q Did you understand, holler at him, to mean to get with him when you got released?

A Talk to him, yes.

1403

MR. GREEN: Now, if you'll show the second portion on 140D.

BY MR. GREEN:

Q It says if that little cocksucker Vince wasn't my girl's

cousin, I would holler at him, too. Pussy said some off the wall shit, too, about as bad as Regennia did. I'll have to deal him in another way. I expected him to breakdown but not as bad as he did.

What is your understanding, Mr. Buchanan, what Mr. Sandstrom is saying in this letter?

A If it wasn't for him being with Deleon's cousin, he would want him killed, too.

Q I'm going to approach you now with some more letters to

show you and have you identify.

One moment, Your Honor.

I'll show you what is marked for identification

as Plaintiff's Exhibit 139 with an attached envelope. Can you identify what that is?

A A letter to me from Steven Sandstrom, August 3, 2005.

Q And whose handwriting is it in?

A My cousin.

Q And do you recognize Plaintiff's Exhibit 139C to be a copy

of the front side of the envelope?

A Yes.

Q And 139B to be a copy of the back side of the envelope?

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A Yes.

THE COURT: You said 139C?

MR. GREEN: I'm sorry. I meant B. A is the front

side, 139A. 139B is the back side of the envelope.

BY MR. GREEN:

Q 139C is an excerpt from 139?

A Yes.

Q 139D is an excerpt from 139?

A Yes, it is.

Q 139E is an excerpt from 139?

A Yes, it is.

MR. GREEN: Your Honor, at this time the United States offers Plaintiff's Exhibits 139, 139A, B, C, D and E?

THE COURT: Those exhibits will be admitted over the objection of both defendants.

BY MR. GREEN:

Q Plaintiff's Exhibit 154, can you identify this?

A It's a letter I had written to my cousin, August 31, 2005.

Q And Plaintiff's Exhibit 154A, do you recognize that as an

excerpt from 154?

A Yes, I do.

Q And 154B is also an excerpt from 154?

A Yes, it is.

MR. GREEN: Your Honor, United States offers Plaintiff's Exhibit 154 and 154A and 154B into evidence.

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1405

THE COURT: Those exhibits will be admitted over the objection of both defendants.

BY MR. GREEN:

Q Plaintiff's Exhibit 138, can you identify this?

A Letter also written to me by Steven Sandstrom on September 2, 2005.

Q And has an attached envelope, correct?

A Yes, it does.

Q And 138A is the front side of this envelope, is that correct?

A Yes, it is.

Q And 138B is the back side of this envelope?

A Yes.

Q 138C is an excerpt from 138?

A Yes, it is.

Q And 138D is also an excerpt from this 138?

A Yes.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibits 138, 138A, 138B, 138C, 138D into evidence.

THE COURT: 138, 138A through D are admitted over both defendants' objections.

BY MR. GREEN:

Q Plaintiff's Exhibit 153, can you identify what that is?

A A letter written by me to Sandstrom, September 12, 2005.

Q And Plaintiff's Exhibit 153A, is that an excerpt from 153?

1406

A Yes, it is.

MR. GREEN: Your Honor, the United States offers Plaintiff's Exhibits 153 and 153A into evidence.

THE COURT: 153 and 153A are admitted over defendants' objections.

BY MR. GREEN:

Q I want to show you, first, Plaintiff's Exhibit 139A. Do you see that, Mr. Buchanan?

A Yes.

Q And it's addressed from Steven Sandstrom to you at the

Cameron facility, correct?

A Yes, it is.

Q And then there is a red notation on there that says,

letter released by staff 8/22/05, CRCC Mail Room. Do you

see that?

A Yes.

Q Do you know what that is a reference to?

A A letter that the Crossroads Correctional Center, where I was being held at, mail room took it and had it under investigation and then was later released to me.

Q So you eventually got the letter?

A Yes, I did.

Q And then 139B, can you see that?

A Yes, I can.

Q That's the back side of the envelope, correct?

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1407

A Yes, it is.

Q And that has that same Northeast Side Seal of Approval on it?

A Yes, it does.

Q Now, I'm going to focus on 139C. It's the portion at the bottom. At the top you can see it says, JB, 8/3/05, correct?

A I can't see nothing.

Q I'm sorry. At the top it says, in the top left-hand corner it says, JB?

A Yes.

Q That's you, correct?

A Yes.

Q Then the date is 8-3-05, is that correct?

A Yes, it is.

Q And then the portion at the bottom, now can you read that?

As I read along, can you read along with me, Mr. Buchanan?

A Is there any way you can improve the screen? If I lean back, I can see it. If I'm up forward to it, I can't.

Q Well, here. You can follow along with me, see if I'm reading this correctly.

Vincent said some raw shit to police, too. I told my girl I wouldn't get at him because he's her cousin. It's up to you, bro. Feel me?

What's your understanding of what Mr. Sandstrom

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is referring to there?

A That Vincent had told on him about stuff about the murder and he told his girlfriend, which is Vincent Deleon's cousin, that he wouldn't do nothing to him but, basically, it was up to me if I wanted to.

Q Now, he says, I'm not going to call it but if you feel the need, then handle it.

What is your understanding of that?

A He's not going to put the hit out but it's up to me if I want to do it or not.

Q When I write your girl, I'll be sure not to say -Before I read this next portion at this time, August 3, 2005, Mr. Buchanan, were you in any type of correspondence with another inmate?

A Yes, I was.

Q Who was that?

A Black female by the name of Desiree Townsend.

Q Where was she being held at?

A Vandago.

Q Had you let your cousin in a prior letter know about this pen-pal relationship?

A Yes, I had.

Q He says, when I write your girl, I'll be sure not to say coal haulin' nigger, swastika, white power or rug. Feel me? I'll try not to mention the Rodney King deal. I'm a

fool, huh?

Then what else did he say?

A I'm never racist or am I?

Q And what is your understanding of what Mr. Sandstrom is saying to you there?

A That I told him he could write her and he was needing somebody to write. So I told him if he does write her, just be, verifying she is a nice black woman and not to disrespect her or mess up nothing for me. And he's just talking crazy in the letter.

Q Then 139D, the center portion, this says, on your traffic deal, they had you on T.V. awhile back for it with a reward. Your dad called and said, yeah, I know where he is. He's in prison. Can you give me my money?

What's your understanding of what Mr. Sandstrom is referring to there?

A I had a lot of, still got 16 traffic violations from high-speed with the police. And my dad, I was on the news for it and wanted for it. My dad, basically, called in and said, hey, can I get a reward? I know where my son is. He's in prison.

Q So that's sort of a joke there?

A Basically, yes, sir.

Q It says, he's a fool, huh? That Charger isn't red. The color is go, man, go. I love that color. I want an all

black one. The color probably isn't black. Probably run, nigger, run. I'm a fool, huh. See that?

A Yes, I do.

Q Now, the bottom portion of 139D. And does this, I'm going to read along, read with me, if this is what it says. Me and Gary has a good, good story to cover our ass. We about shit when Regennia shot it. We were shot. Two eyewitnesses seen her do it. Me and Gary. Bitch. Now, how you like me? Feel me?

Do you see that?

A Yes, I do.

Q And what was your understanding what he was referring to in that portion of the letter?

A That him and Gary would be putting the murder on Regennia Rios and they'd be witnesses that they saw her shoot Mr. McCay.

Q Then 139E. Do you see that on your monitor, Mr. Buchanan?

A Yes, I do.

Q Okay. This is the top portion. On the R trip, that's me and you, no one knows shit. That bitch has had my girl spot kicked in, too. I recently found that out. Yeah, bro, I feel you. No more games. Game over.

What's your understanding what your cousin is referring to there?

A Referring to Regennia Rios and me taking her and killing

her.

Q And is it your understanding that that's what the reference, game over, means?

A Yes, sir.

Q Now, I want to show you 154A. Do you see that on your monitor, Mr. Buchanan?

A Yes, I do.

Q And you address this to High-speed, correct?

A Yes.

Q Who is High-speed?

A My cousin.

Q And it's dated August 31 of '05?

A Yes, it is.

Q And the portion that I want to focus on, see that?

A Yes, I do.

Q Does it say --this is you writing, correct?

A Yes, it is.

Q Sounds good. Hopefully, you'll not get railroaded. Feel me? Need you out there. Just stop talking so freely to these letters. That paper trail is a bitch in court. For real. Be smart MF. Know you a fool.

What are you saying there, Mr. Buchanan? What are you trying to tell your cousin in that part of this letter?

A To quit writing me and asking me what needs to be done. I

already know what needs to be done.

Q And what is your understanding of what needs to be done?

A Kill the witnesses.

Q And are you concerned that these letters could be found at some point?

A Yes, I am.

Q Now, 154B, do you see that? Do you see that, Mr. Buchanan?

A Yes, I do.

Q Now, there's a grouping of letters. It says NES, looks like a dollar sign, FSWGGB. And then below it says, Northeast Side, Fifth Street, White Gorilla Gang, bitch. What is that all about?

A Something I was bored doing and made up when I was in the hole.

Q In fact, you say that's my new saying, NESFSWGGB?

A Yes, sir. That's correct.

Q And, again, this is just something you made up?

A Yes, it is.

Q I want to next direct your attention to 138. And 138A, can you see that?

A Yes, sir.

Q And it's the envelope addressed to you at Crossroads Correctional Center, correct?

A Yes, it is.

Q Then 138B, just --do you see that, Mr. Buchanan?

A Yes, I do.

Q And that's the back side of that envelope?

A Yes, sir.

Q With, again, the Northeast Side Seal of Approval?

A Yes.

Q Now, let's go to 138C. Can you see that?

A Yes, I can. Yes.

Q I'm going to read along. JB. Then it's dated 9-2-05, correct?

A Yes, it is.

Q You lazy prick. It took long enough to get at me.

What is he saying there?

A I took long enough to write him back.

Q I got some good news and some bad news. Which one do you want first? Fuck it. I don't care what you want first.

I'll give you the good news. I'm still white and I'm still a straight fool. Ready for the bad news? I wasn't either. Next week feds are suppose to pick up the case.

Papers are sent to Washington DC on us and I guess the U.S. Attorney approved them. Worse news. Rumor has it death penalty has been asked to be okayed on us.

What is your understanding of what Sandstrom is communicating there, Mr. Buchanan?

A That the murder is no loner going to be state. It's going

to the federal.

Q Okay. Then he writes, bro, it's like this. Anybody, wherever, however or whenever, it's on site.

What is your understanding of what Mr. Sandstrom is saying there or writing there?

A If I see any of the witnesses, take care of them right then.

Q And are you familiar, were you as of September of '05, with the term on site?

A Was I familiar with it?

Q With the term on site?

A Yeah.

Q What does on site mean to you?

A Basically, soon as I seen them, do what I got to do.

Q And I'm continuing on 138C. They have only one way to get us and that's her. Feel me?

What is your understanding of what Mr. Sandstrom is saying there?

A About Regennia Rios.

Q And the only way they have to get us and that's by her, correct?

A Yes, sir.

Q Bro, I don't know what to do. My girl is tripping, saying, if they kill me, she's killing herself. Going to set up her cousin because what he said. Bro, do you feel

me? Whatever or whoever, just please do what you do to help me.

What is your understanding what he's communicating there, Mr. Buchanan?

A Go and kill the witnesses.

Q And what other person is he referring to in the passage I just read to you?

A Can you read it again?

Q My girl is tripping, saying, if they kill me, she's killing herself. Going to set up her cousin because what he said.

Who is your understanding that's a reference to?

A Vincent Deleon.

Q Then the last sentence of 138C. My girl wants her own cousin dead because he told them that shit about me.

Who is your understanding of what, who is being referred to in that sentence?

A Kristina saying she wants her cousin, Vincent Deleon, dead.

Q Because why?

A Because he testified against Steven.

Q Now, I want to go to 138D and I want to display the top portion of 138D. Do you see that, Mr. Buchanan?

A Yes, I do.

Q He's written NESFSWGGB. And then there's a notation, like

it, love it or leave it, with an arrow pointing to that designation. Do you see that?

A Yes, I do.

Q Were you familiar with the term, as of September 2 of 2005 when this letter is dated, were you familiar with the term, like it, love it, or leave it?

A Yes, I was.

Q And how were you familiar with that term?

A How am I familiar? Have I used it?

Q Yes.

A Yes.

Q And have you ever heard Mr. Sandstrom use that term?

A Yes. Where did he get it from?

Q Yeah. What does it mean?

A You can like it, you can love it or leave it, basically.

Q Is that something -A

Like what we do. You can love it or fuck you, basically.

Pardon my word.

Q Was that a term that you used growing up in your association with Mr. Sandstrom?

A No. This is --just came about in 2002 when we was out there together.

Q Okay. Now, I want to focus on the writing of 138D. Do you see that, Mr. Buchanan?

A Yes, sir.

Q It says, if these feds are talking bad, it's on. Feel me? My girl said if I do that, she's got a spot for us. I need to learn Spanish. Feel me? I'm serious. On NES and Grandma and Barb, if it's clear to do, it's going to get done. Real talk.

What is your understanding of what Mr. Sandstrom is referring to there?

A If it's clear, kill the witnesses. No way he can get out.

Q Now, what is your understanding of the notation about I need to learn Spanish? What is he referring to there to your understanding?

A Because he wants to live in Mexico.

Q Now, continuing on, after real talk. I'm not going to get out without a fight. I'm going to put up more than a fight. Feel me? Better hope I can't get my hands on some heat because it will be all bad. Lately I've gotten a lot worse. Scheme. Scheme. Plop. Plop. Feel me? One way or another I'm coming home to my girl. Cop me a hemi and head west, southwest.

What is your understanding of what Mr. Sandstrom is referring to there?

A He's thinking of any and everything he can do to get out of this.

Q Is he referring to possibly escaping, to your understanding?

A Yes, sir.

Q What would be your understanding of the term, cop me a hemi and head west. What is cop me a hemi to your understanding?

A Get a hemi.

Q What is a hemi?

A A Dodge.

Q Is it truck?

A Super size.

Q Then continue on, he's written, head west, southwest.

Then does it say, bro, I need to take a trip, a must.

Feel me? Vince, too. Everybody is ready for early retirement. Then above he's got written Southwest Airlines, our group discount.

What is your understanding of what that refers to?

A That now, even now, he wants Vincent Deleon, too, and Regennia Rios and get rid of them and to make it like they took a trip.

Q Bro, like I said, I'm coming home regardless. Two COs on the floor. It's all killers up here. They're slipping.

Feel me? Mark my words, I'm coming home. I'm about to cut this short just like my dick. Get back at me.

Do you see that?

A Yes, I do.

Q Next I want to show you Plaintiff's Exhibit 153A. Do you see that, Mr. Buchanan?

A Yes, I do.

Q And is that your writing?

A Yes, it is.

Q And it's addressed to Little Stevie, September 12 of '05, is that correct?

A Yes.

Q This is you writing, Man, fuck you, punk. What you mean took me long enough to write you back? Then you say, I love the good news.

Do you see that?

A Yes.

Q What were you referring to there, Mr. Buchanan?

A That he is still white and he's acting a fool.

Q Then the middle portion you say, I'm --You wrote, I'm saying stop saying shit about what you need done. I got you, fuck. You trying to put me in some crazy spot.

What are you writing to your cousin there?

A I'm asking him to quit asking me to kill witnesses. I got him. I'll do whatever needs to be done. Quit writing me about it.

Q And the last portion of 153A, you write, do what's right. Shit. We'll always be good. You know I'm down. You stay off the pen. I don't need no more scribes about it. Feel

me, bro? I told you before that paper trail is no joke.

Okay. What are you telling your cousin there,

Mr. Buchanan?

A Meaning he done wrote me enough about it and paper trail, here I am today in this courtroom.

Q When you were interviewed by Agents Gothard and Janke on November 17 of 2005, did you in that interview tell them that paper trail is a bitch?

A Yes, I did.

Q Now, this thinking is wrong because I hope they read this because Regennia Rios killed that McCay guy and you want to believe that bitch, stupid fucks.

What are you writing there?

A Going along with the plan to put the murder on Regennia.

Q And how had you learned about this plan to put the murder on Regennia?

A Through letters.

Q Letters from Stevie?

A Yes.

Q The last portion of letters I want to show you, I'll approach and show you, Mr. Buchanan, Plaintiff's Exhibit 136. Can you identify what that is?

A A letter written to me from my cousin.

Q Dated 9-24-05?

A Yes, sir.

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Q And that's Steven Sandstrom's handwriting?

A Yes, it is.

Q There is an envelope attached?

A Yes.

Q Is Plaintiff's Exhibit 136A a copy of the top side of that envelope?

A Yes, it is.

Q Is Plaintiff's Exhibit 136B a copy of the back side of that envelope?

A Yes, it is.

Q Is Plaintiff's Exhibit 136C an excerpt from 136?

A Yes, it is.

MR. GREEN: Your Honor, United States offers

Plaintiff's Exhibit 136, 136A, 136B, and 136C into evidence.

THE COURT: 136, 136A through C are admitted over defendants' objections.

BY MR. GREEN:

Q Next, I'm going to show you what is marked as Plaintiff's

Exhibit 115. Can you identify that?

A A letter also from my cousin to me dated October 7, 2005.

Q With an attached envelope, correct?

A Yes, it is.

Q Is 135A a copy of the top side of that?

A Yes, it is.

THE COURT: What was the first exhibit you

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identified? 115?

MR. GREEN: I'm sorry if I said 115. I made a

mistake. 135.

BY MR. GREEN:

Q

135B, is that the back side?

A

Yes, it is.

Q

135C, is that an excerpt from 135?

A Yes, it is.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibit 135, 135A, 135B and 135C into evidence.

THE COURT: 135, 135A through C are admitted over

defendants' objections.

BY MR. GREEN:

Q

Plaintiff's Exhibit 116. Can you identify what 116 is?

A

It's a letter to me from my cousin.

Q

And is there a notation in the upper right-hand corner that says Saturday?

A

Yes.

Q

And there is an attached envelope, correct?

A

Yes, there is.

Q

And 116A, the top side of that envelope, is that correct?

A

Yes, sir.

Q

116B is an excerpt from 116, correct?

A

Yes.

Q

116C is an excerpt from 116, correct?

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A Yes, it is.

MR. GREEN: Your Honor, United States offers Plaintiff's Exhibits 116 and 116A, 116B and 116C into evidence.

THE COURT: Government's Exhibits 116, 116A through 116C are admitted over defendants' objections.

BY MR. GREEN:

Q Now, lastly, Mr. Buchanan, Plaintiff's Exhibit 152, can you identify what that is?

A It's a letter written by me November 10, 2005 to Steven Sandstrom.

Q And is Plaintiff's Exhibit 152A an excerpt from 152?

A Yes, it is.

Q And is 152B an excerpt from 152?

A Yes, it is.

Q Is 152C an excerpt?

A Yes, it is.

Q And 152D, is that a copy of the envelope?

A Yes, it is.

MR. GREEN: Your Honor, the United States offers

Plaintiff's Exhibits 152, 152A, 152B, 152C and 152D.

THE COURT: Government's Exhibits 152, 152A through D are admitted over defendants' objections.

BY MR. GREEN:

Q Going back to 136, Mr. Buchanan -

And if you would display Plaintiff's Exhibit

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136C. And if you would highlight the top portion.

Can you see that, Mr. Buchanan?

A Yes.

Q Does this say --this is your cousin writing you, Nobody can find R at all. She's in hiding. Bitch, you can't hide forever. Bro, she's going to get me.

What is your understanding of what this is saying?

A Talking about Regennia Rios is hiding out. She's going to testify against him.

Q And he says, bitch can't hide forever. Do you see that?

A Yes, I do.

Q Now, the second portion of this says, Vincent is at home being a daddy to his kid. If he gets out of line then lay him back. But R., bro, on site.

What is your understanding of what your cousin is writing you there?

A That if Vincent gets out of line or if I feel the need to kill him but Regennia, make sure I do it soon as I see her.

Q Then it says, Vincent is doing good with his two kids and baby by mom. I told him if he did that, I would let him live. He took me serious. He knew I meant business.

Correct?

A Yes.

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Q Then the bottom portion of this he writes, it's real.

Holler at you, boy.

Do you see that?

A Yes.

Q And then on the right-hand part of this it says, get at me. Do you see that?

A Yes.

Q What is your understanding what that means, get at me?

A Write him back.

Q Next going to show you 135 which is the October 7, '05 letter.

And if you would display 135C, the top portion.

Can you see that, Mr. Buchanan?

A Yes, I do.

Q And this letter was dated 10-7-05, correct?

A Yes.

Q It says, I got a paid lawyer. He told me straight up what's going to fuck me, R. But other than that the case is weak.

And who is your understanding of who the initial R refers to?

A Regennia Rios.

Q If you can handle that problem, I'm A okay. Feel me. You need to come see me asap.

What is your understanding of that part of this

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letter?

A If I get rid of Regennia Rios, he would be all right.

MR. GREEN: Now, the middle portion please.

BY MR. GREEN:

Q Now just kind of going back to the last portion just for this. It says you need to come see me asap. Do you see that?

A Yes, I do.

Q As of October 7, 2005, how close were you to your release date?

A Four to five weeks.

Q So?

A I was suppose to get out November 18.

Q And so did you understand --what did you understand you need to come see me asap means?

A Come visit him.

Q Now, the middle portion of this 135C, do you see that?

A Yes, I do.

Q It says, you know, R mom runs the trailer park where I used to live. Either or will open eyes. Feel me? A demonstration never hurt. Just let's people --just let's people know it's real. Do you see that?

A Yes, I do.

Q And what is your understanding of what your cousin was writing you there?

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A

He's notifying me where Regennia Rios could be and where her mom stays. And if I couldn't get Regennia, to, basically, could get her mom to let them know that we're not playing.

Q

Then the bottom portion of 135C, on the left-hand side it says, I'm cool. Just handle my number one issue for me. Send me some cash and bring my baby to see me. Also I'll be on point if you can do that for me. Bro, don't let me go out like this.

What is your understanding of, also I'll be on

point if you do that for me? What is your understanding

what that is a reference to?

A

Basically, the trial will be smooth sailing.

Q

If you can do what for him?

A To get rid of Regennia Rios, the number one issue.
MR. GREEN: Display Exhibit 116B.

BY MR. GREEN:

Q Do you see that, Mr. Buchanan?

A Yes.

Q It says, yeah, I keep letters clean for the most part. I

went through your letters and got rid of anything dirty.

Feel me? It's all good.

What is your understanding what your cousin is
writing you there?

A I'm trying to tell him just to keep his letters as clean

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as possible. If he's going to write me, write me. You know, keep everything down that needs to be down. And anything that I have said in the past that could incriminate me in court, he's gotten rid of them supposedly.

Q And then it says, yeah, I feel you. Gary said he won't let me go down but if you don't act fast then I will. Feel me?

Do you see that?

A Yes.

Q Then 116C, can you see that, Mr. Buchanan?

A Yes.

Q Does it say, I heard that rug Alvin Brooks on the radio while back. Said I'm an animal. I'll show his bitch ass an animal. His son sells dope. Daughter used to sell pussy. His black ass ought to worry about his own problems before he gets in a mix himself. Feel me?

Do you see that?

A Yes, I do.

Q And just what is your understanding of what your cousin is referring to there?

A He needs to mind his own business before something happens to him.

Q Who is your understanding --Did you know just from following things who Alvin Brooks was?

A Yeah. He's a community leader.

Q And what race is he?

A Black.

Q And then the last portion on 116C, do you see that, Mr. Buchanan?

A Yes, I do, sir.

Q Says, he writes, I'll holla at you. When you get out, handle that little bull shit for me. Feel me?

Do you see that?

A Yes, I do.

Q What is your understanding of what that is a reference to?

A Getting rid of the witness.

Q And particularly that little bull shit, in particular which one?

A Regennia Rios.

Q And then this letter was dated -Let's show 116A, if you would.

Do you see that on your monitor, Mr. Buchanan?

A Yes, I do.

Q There is a notation on there, this is addressed to you at Crossroads Correctional Center?

A Yes, there is.

Q There is an 31 Oct. the abbreviation for October, 2005.

Do you see that?

A Yes, sir.

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Q

As of October 31, 2005, did you still have your November 8th, what was your release date again?

A

I was done with all my time, finished completely. Was going to be free, 100 percent, November 18, 2005, 18 days after I received this letter.

Q

Lastly, I want to -

May I have one moment, Your Honor?

BY MR. GREEN:

Q I want to show you what also is marked as Plaintiff's

Exhibit 126. Can you identify what that is?

A A letter written from my cousin to me.

Q And it has a notation of 200 and the Roman Numeral 5 at

the top?

A Meaning 2005.

Q And was this something that was taken from your property

at Cameron to your knowledge?

A I believe it was, yes, sir.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GREEN: Your Honor, I want to offer Plaintiff's Exhibit 126 just for the purpose of showing the back side of that.

MR. OSGOOD: We haven't been given a copy of that excerpt heretofore. I have the disk. I'm looking at all of them. I looked on the screen. I went on the CD you gave us.

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MR. GREEN: It's on the exhibit list and you have had a copy of this letter. I don't know whether it was on the CD of excerpts but you have had a copy of this letter.

MR. OSGOOD: That's possible.

MR. GREEN: I just want to offer that back side.

THE COURT: If there is no surprise here, this is consistent with everything we have heard and everything you objected to so far.

MR. OSGOOD: It is surprise but it's --I'm saying it might be my fault. It could be in a huge stack of materials we got. I don't know. It's not on the CD they gave us when we got close to trial, the exhibits are going to be at trial.

MR. GREEN: It's listed on the exhibit list, the whole letter itself would have been turned over in discovery in the course of this case. What we gave, the CD with the excerpts of I've been showing the witness here, that wasn't on the CD. But the letter itself, they should have copies of in the discovery and it's on the exhibit list filed in advance of this trial. So it's not -

MR. OSGOOD: This is accurate.

MR. GROMOWSKY: I'm not going to claim surprise. I knew this was in discovery. I'm not --we did so I'm not making that objection. But I am saying this is not probative. And to the extent it might be probative it is grossly prejudicial and the prejudice substantially outweighs any
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probative value.

Additionally, I think this goes to the motion in limine about giving an opinion of being racist and whether or not it is racist because there's no other way to interpret these symbols. So they're just going to put in front of the jury and say this is racist. This isn't giving examples of how people witness people living among others, like we've been doing. And, you know, giving examples, African-Americans, that type of thing. This goes beyond that. Grossly prejudicial.

MR. OSGOOD: This would also imply it's a swastika. I'm somewhat of a history buff. There were no folks in Germany subjected to --the Jewish folks were. This would inject a whole new element into this as to whether or not this has to do with general prejudice against other racial groups which is not the focus of this prosecution. A swastika to me implies anti-Semitic attitude or anti-Semitism, I should say. It's not part of this case. So it's prejudicial for that reason.

THE COURT: Yeah. Well, objections are noted.
Overruled.

MR. OSGOOD: While we're here, I could probably save some time. I think that all of this we have heard so far is obviously subject to an eventual Bell determination that the Court is going to have to consider whether or not there was a second post homicide conspiracy formed between Mr. Buchanan, Mr. Sandstrom and Mr. Eye and whether Mr. Eye was aware of it

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and a party to it and was an ongoing conspiracy in furtherance of something. And there's been no evidence thus far that Mr. Eye in any way whatsoever knew this was happening or was a party to it. And the Court has very, I think, wisely and correctly thus far said this evidence is limited to Mr. Buchanan. That raises an additional issue that we raised all along that this is highly prejudicial stuff we're seeing here right now. And re-emphasize, again, my early-on concern about a joint trial. I'm going to renew my motion for severance and suggest that they're not going to be able to link this up under a Bell finding at the proper time and it's highly prejudicial.

MR. GREEN: Well, Your Honor, the evidence has been that right when they burned the Intrepid, after the homicide, a conspiracy was to obstruct and to cover up their role in this murder. It began at that point and this is just --there has been evidence it continued throughout.

Now, we have been --specific evidence about the statements of Sandstrom that we're offering as co-conspirator statements that we do believe after a proper Bell finding would come in against Mr. Eye, i.e., statements in the letter about me and Gary got a good plan putting it on Regennia Rios. That's clearly a conspirator statement. He told Mr. Sandstrom is trying to rope into a conspiracy to obstruct justice by killing witnesses. I think clearly when the Court is in

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position to make a Bell finding, we'll be very specific with the Court at that time what statements of Mr. Sandstrom's we believe can come in through the Bell finding and the co-conspirator exception to be applied against Mr. Eye also.

It's not, we're not asserting at this point that all these, lots of these other statements that Mr. Sandstrom is making could be used against Mr. Eye but there are certain statements that Mr. Sandstrom says that we do believe could be used against Mr. Eye's conspiracy.

THE COURT: Are you finished?

MR. GREEN: Yes, I am, sir.

THE COURT: Motion to sever is, again, denied. And if you want to, yet another instruction, this is admitted at this time only as to Mr. Sandstrom, I'll give that instruction.

MR. OSGOOD: I do, Your Honor. I don't want to beat that dead horse but I think it's vitally important.

THE COURT: Otherwise, the objection is overruled.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Mr. Green, is this the final page of the letter which is Exhibit 126?

MR. GREEN: It would be considered page 2 of 126.

THE COURT: Page 2 of 126 is admitted over the defendants' objections.

And I, again, remind the jury that this evidence is submitted and admitted only in the government's case against
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Mr. Sandstrom, not in the government's case against Mr. Eye.
Proceed.

MR. GREEN: And if that could be displayed to the
jury.

BY MR. GREEN:

Q Do you see that, Mr. Buchanan?

A Yes, I do.

Q Do you recognize, well, first, on the top it says, I
fuxed, F-U-X-E-D, up. Do you see that?

A Yes.

Q And then do you recognize this symbol that I'm pointing
at?

A It's a swastika.

Q And then to the right of it, what do you recognize that
symbol to be?

A Lightening bolts.

Q And what is your understanding of those symbols? What do
those mean?

A They represent racist.

Q Do they represent -A
White power.

MR. GREEN: Okay. Then, lastly, I want to display
for the witness 152A.

BY MR. GREEN:

Do you see that on your monitor?

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A Yes, I do.

Q And this is addressed to little SS then the date is 11-10-05. Do you see that?

A Yes, sir.

Q And so this is addressed to your cousin, Steven Sandstrom, correct?

A From me, yes.

Q And then the other portion says, Fuck Little Vincent. I'll do my best to get at him. I got my legal 16 warrants back today. They denied me, without a lawyer, for time served. So I'll turn myself in 11-21-05 and try to get in where he's at. Knock his block off for real decent, knock block off real decent. Fuck that, rat. Feel me?

What are you writing about there, Mr. Buchanan?

A I filed for my warrants to be dismissed. That way I didn't have to go from prison to the county jail and placed behind or whatever. And I wrote my cousin, let him know fuck Vincent Deleon. I'll get where he's at and kick his ass.

Q And then Plaintiff's Exhibit 152B, do you see that?

Does it say Vincent tomorrow for real. If I was you I would not write, dude, period. Fuck all these rats, period. On my stomach it says, no love for rats.

Do you see that?

A Yes, I do.

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Q And what are you writing there?

A He wrote me in previous letters stating he was going to write Vincent Deleon. And, basically, I'm telling him if he's supposedly testifying on you or giving information about you, why are you wanting to write him. That, you know, he's already ratted, told on me, my previous time when I was incarcerated before this went up.

Q And to be clear, you already testified about this, Mr. Buchanan, but you didn't like Vincent Deleon?

A No, I didn't.

Q All right. 152C, if you could look at that. Do you see that, Mr. Buchanan?

A Yes, I do.

Q Does it say lay down N and don't write me, talking NE stupid shit. Feel me?

What are you telling him there?

A Quit writing me about what needs to be done to the witnesses.

Q It says, you're tripping for real, in this last letter, you tripping for real in this last letter. True killers don't talk. Wise up, little nigga. Respect the game.

What are you saying there, Mr. Buchanan?

A Quit talking to me about it. Don't talk about what you do. Just do it.

Q Now, Mr. Buchanan, this letter that you wrote to
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Mr. Sandstrom dated November 10, 2005, is that what has led to you ultimately being here today?

A Yes, it is.

Q And you stated that you were due to be released on November 18, 2005, is that right?

A Yes, sir.

Q What happened on November 17, 2005?

A Two FBI agents came to Crossroads and went over all the letters. And, basically, let me know that I'll probably be getting charged for threatening retaliation against government witnesses in a pending homicide case.

Q And what happened on November 18, 2005?

A Two FBI agents, one, Mr. Gothard and another, came to Crossroads, grabbed me, took me down to the federal courthouse where they ran a criminal complaint and later on I was charged but I was then sent to CCA from there.

Q So you're taken out of Cameron and brought down to the federal courthouse and charged with threatening a federal witness?

A Yes, sir.

Q And was it your understanding that the federal witness they were charging you with threatening was Vincent Deleon?

A Yes, sir.

Q And you then were taken to CCA which is where you

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currently still reside, is that correct?

A Yes, sir.

Q Now, did you end up eventually being indicted for threatening a federal witness?

A Yes, I did.

Q And did you plead guilty to that offense in February of 2007?

A Yes, I did.

Q And I should back up and state that after you were charged by way of federal complaint, you were appointed a lawyer, is that right?

A Yes.

Q What is his name?

A Robert Martin.

Q Is he in the courtroom today?

A Yes, sir.

Q And has Mr. Martin been your attorney all along in this process?

A Yes, he has.

Q Now, you eventually decided to cooperate with the United States, is that right?

A That's right, sir.

Q But did you decide to cooperate right away after being charged?

A No, I didn't.

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Q Did it take you awhile to decide to cooperate?

A Yes, it did.

Q And why was it that it took you awhile to decide to cooperate?

A It's something I didn't believe in.

Q I'm sorry?

A It's something I didn't never believe in.

Q So you didn't want to cooperate at first because you didn't want to be a snitch, is that right?

A That's right, sir.

Q Now, you since have entered a guilty plea pursuant to a plea agreement, is that right?

A That's right.

Q And that guilty plea was to threatening a federal witness, correct?

A Yes, it was.

Q And as part of that plea agreement did you agree to do anything?

A To cooperate.

Q And what does your cooperation involve to your understanding?

A To tell the full truth.

Q Is your testimony here today part of that cooperation?

A Yes, sir.

Q Now, what is your understanding for --is it your

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understanding the United States is going to do something in return for you?

A That's right, sir.

Q And what is it, your understanding the United States is going to do for you?

A File a motion to put it in front of my sentencing judge and leave it, basically, in his hands if he wants to cut my time, he can do that.

Q Now, you said file a motion. That would be what is commonly or what's referred to as a Motion to Reduce Sentence, is that right?

A That's right, sir.

Q And that motion is filed in front of the sentencing judge who then decides what sentence to give you, correct?

A Correct.

Q Has it been explained to you that the judge is the one entirely in charge of what sentence you get?

A Yes, sir.

Q Have you been promised any specific sentence reduction?

A No, I haven't.

Q Have you been promised that, in fact, the judge is going to give you X number of years off or anything of that nature?

A No.

Q Now, I want to direct your attention back to the fact,

November 18 of 2005. You stated you were taken to CCA after this charge was filed, correct?

A Yes, sir.

Q And, in fact, was it your understanding the United States, basically, filed a motion to have you detained in custody pending the resolution of your case?

A Yes, sir.

Q At some point, let me ask you this, did it come to your attention once you got to CCA that your fellow inmates knew what the charge was against you?

A Yes.

Q Was that based on things that they said to you?

A That they said to me?

Q Yes. That your fellow inmates knew what you were in for?

A Yeah. It was in the paper and on the news.

Q Now, after a few days in CCA were you switched from the pod you were in --let me just ask it this way. After you were in CCA, you're taken from the pod you were originally put in and you were put in another pod, is that right?

A Yes, sir.

Q And in that other pod did you have occasion to learn whether or not Gary Eye was also in that pod?

A Yes, sir.

Q And how was it you learned that Gary Eye was also in your same pod?

A By speaking to him.

Q And how was it that that came about? Can you describe for us how that came about?

A How it came about?

Q How it came about that you learned that Gary Eye was in the same pod with you?

A From the guards.

Q They told you that?

A Yes, sir.

Q And then at some point did you, in fact, initiate any kind of contact with Gary Eye?

A Yes, sir.

Q Did you send Gary Eye anything? Was there a way for an inmate in CCA to get a correspondence to another inmate at CCA?

A Yes, there is.

Q How does that work?

A Through the COs.

Q Through?

A Through COs.

Q Correctional officers?

A Yes, sir.

Q So they will deliver things to other inmates for you?

A Yes, sir.

Q Did you have occasion to have a CO deliver anything to

Gary Eye?

A Yes, sir.

Q What did you have delivered to Gary Eye?

A My paperwork.

Q And describe for the jury what you mean by your paperwork?

A My criminal complaint showing my charges and, basically, showing that I'm, at that time I wasn't cooperating or wasn't willing to be cooperate.

Q Was that true at that time? Were you cooperating?

A No, I wasn't.

Q And did you receive anything from Gary Eye in response?

A Yes, I did.

Q What did you get in response?

A I received paperwork showing that Mr. Sandstrom --Rios and Deleon and people who had been cooperating, basically, police reports showing that they had turned evidence, turned witness.

Q So these were statements and reports that Mr. Eye had sent to you?

A Yes, sir.

Q Did you have discussions with Mr. Eye about these witness statements?

A Yes, sir.

Q And where did these conversations occur?

A Some times in the shower and once I was in his cell.

Q And describe for the jury the incident where you're in the

cell with Mr. Eye?

A Describe it?

Q Yeah. How did you come to be in a cell with Gary Eye?

A I got moved out of a cell and got moved in with him.

Q How long were you in that cell with him?

A Less than 5 minutes.

Q Was there anyone else in that cell with you and Mr. Eye?

A Yes, there was.

Q Who was that?

A Ed Branch.

Q And what is your understanding of who Ed Branch was?

A Ayan Brotherhood from California.

Q And now, Mr. -

THE COURT: Step up, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: That is a well known white supremacy organization, the Ayan Brotherhood. There have been multiple capital murder charges filed against members of the Ayan Brotherhood all over the United States. They've been trying those cases for months, if not years. It's common knowledge as to what Ayan Brotherhood stands for. And that was the subject of a motion in limine. And Mr. Branch is not going to be called as a witness. And that was injected into this case to

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highlight the white supremacist theory they have in this case and I request a mistrial.

MR. GREEN: Mr. Buchanan is going to say that Mr. Eye indicated that Mr. Branch could, if he would get Mr. Branch some money, \$5,000, Mr. Branch could have, specifically, Steven Sandstrom killed or could have witnesses killed. And that was the whole point of Mr. Branch. The contacts to have, through his Brotherhood, his connection to this Ayrar Brotherhood, to have witnesses killed. That's the relevance of it.

MR. OSGOOD: Actually Mr. Branch said he was a member of the Texas Mafia and that the money should be sent down there, wasn't it?

MR. KETCHMARK: That's Mr. Eye--that's a different one.

MR. GREEN: We're not getting into the Texas Syndicate.

MR. OSGOOD: If you're not calling Mr. Branch as a witness -

MR. GREEN: No, but his presence there with Mr. Eye and Eye taking care of these witnesses.

THE COURT: I don't know that it's necessary for the jury to know that Branch is a member of the Ayrar Brotherhood.

And I'll sustain the objection to the question and instruct the jury to disregard the answer. Then you can go ahead and ask whether Branch was going to implement this plan. But -

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MR. GREEN: Okay. I understand.

THE COURT: Motion for mistrial will be denied.

MR. GROMOWSKY: We renew our Bruton objection at this

time as to any statements this witness may testify that Mr. Eye would say regarding those.

MR. GREEN: I'm sorry?

THE COURT: He's renewed the Bruton objection as to what Eye said.

MR. GREEN: Well, I don't think it does what he's

wanting. These statements are, Eye is talking about getting Sandstrom killed. He's not incriminating. He's not incriminating, saying Sandstrom said anything. He's saying, he's going to have Sandstrom killed because -

THE COURT: Sandstrom? Deleon.

MR. GREEN: No, Sandstrom.

THE COURT: Eye is going to have Sandstrom killed? Where did this come from?

MR. ROGERS: That was in the motion for severance,

Judge.

THE COURT: Well, okay.

MR. GROMOWSKY: That would be the reference, Your

Honor.

THE COURT: Overruled. We'll plow ahead.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: An objection was made to the last

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question and answer. I have sustained that objection. You are instructed to disregard the answer.

BY MR. GREEN:

Q I'm going to actually back up a little bit, Mr. Buchanan.

You were transferred from the pod that you were in, originally, into the pod where you ended having contact with Mr. Eye because --it wasn't something you wanted. Is that right?

A

That's right.

Q

You had, basically, they wanted to move you out of the pod you were in and put you in the pod you were in with Mr. Eye because --it wasn't something you had requested, correct?

A

No, it wasn't.

Q

Now, I want to get back to, you have a conversation with Mr. Eye in this cell and Edgar Branch is in there. Do you recall that?

A

Yes, sir.

Q

And do you recall that the conversation came up that Mr. Eye and you discussed Mr. Eye wanted witnesses taken care of, correct?

A Yes, sir.

Q And what witnesses were those?

A My cousin Steven Sandstrom and Regennia Rios.

Q And anyone else that you can recall?

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A Vincent DeLeon. Anybody that was testifying against them.

Q Did Mr. Eye indicate that Mr. Branch could help you or could help with that in getting witnesses taken care of?

A Yes, sir.

Q Did Mr. Eye indicate that if you got a certain amount of money to someone on Mr. Branch's behalf, he could have that taken care of?

A That's right. 5,000.

Q At this time, Mr. Sandstrom, are you, yourself, upset with your cousin, Mr. Sandstrom?

Were you --I'm sorry. Were you, Mr. Buchanan, upset with your cousin Mr. Sandstrom?

A Yes.

Q And was that because of something that Gary Eye had shown you that would indicate that he believed Mr. Sandstrom was cooperating?

A Yes.

Q Did Mr. Eye ever write you any letters from his cell to your cell? Did he ever write you any letters about the subject of killing witnesses?

A Yes.

Q And what did you do with those letters?

A Returned them.

Q Returned them to who?

A Mr. Eye.

Q And why did you do that?

A Trust. Showing that I wasn't trying to cooperate. I'm not a snitch and he's got nothing to worry about.

Q In one of these letters that you recall did Mr. Eye use a certain phrase?

A Certain phrase?

Q Yeah. Certain word? Certain sentence?

A Yes, sir.

Q What was that sentence?

A An eye for an eye.

Q And did you, when you got that letter did you know what that meant?

A At the time, no, sir.

Q Did you end up having a conversation with Mr. Eye about what he meant?

A Yes, sir.

Q And what was --what did Mr. Eye tell you he meant by that phrase, an eye for an eye?

A If I would kill a witness, he would kill somebody for me. I kill somebody, he'll kill somebody for me.

Q Now, Mr. Buchanan, I'm about to conclude here. Were you aware at some point while you were being held in CCA that allegations were made against you, that you were trying to sell information about your case to other inmates?

A Yes, sir.

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Q And you were interviewed by agents of the FBI about that?

A Yes, sir.

Q And do you recall one of those inmates being a Terron Maples?

A Yes.

Q Is Terron spelled, T-E-R-R-O-N, to your knowledge?

A I believe so.

Q And the other individual being a Diante, D-I-A-N-T-E, Broadway?

A Yes.

Q And were you interviewed about allegations that inmates were claiming that you were trying to sell information about your case to them that could be used?

A Yes, sir.

MR. OSGOOD: Objection, selling information about

Mr. Eye's case.

BY MR. GREEN:

Q

You were trying to sell information about Mr. Eye's case to these other inmates?

A

That's what the allegations was, yes.

Q

Were those allegations true?

A

No, they're not.

Q

They're not true?

A

I wasn't trying to sell no information on Eye's case.

Q

Well, when --I'm about to conclude here, Mr. Buchanan.

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Going back to when you came to CCA and you got moved to the pod where Mr. Eye was, were you cooperating with the government at that time?

A No.

Q And during the few, say the first few the last weeks of 2005 into the first couple months of 2006, were you cooperating with the United States?

A No, I wasn't.

Q And, in fact, when you had these conversations with Mr. Eye about the witnesses, about Mr. Eye wanting witnesses killed, were you cooperating with the United States at that time?

A No, I wasn't.

Q At this time what was your mind set about cooperating?

A Wasn't nowhere near.

Q I'm sorry?

A There was no way that I was wanting to. I had no thought of doing.

Q And you, obviously, changed your mind at some point, correct?

A That's right.

Q And why did you change your mind?

A Mr. Eye was --wanted me to have my cousin, me pay for it, to have my cousin killed. And, also that I was suppose to be going and killing witnesses, why --if somebody's

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already cooperating, why do I need to do anything to anybody, if the part of the case with Sandstrom's already testifying or made statements about the murder to the people?

Q

Okay. And also would it be fair to say, Mr. Buchanan, that you also in the end, too, also would hope to receive a lesser sentence, too?

A

Yes, sir.

Q

In fact, I'm --probably didn't bring this out. What is your understanding of what the maximum sentence you can receive is?

A Ten years.

MR. GREEN: That's all I have, Your Honor.

THE COURT: It is very nearly one. So we will stop

for today and resume with the cross-examination of Mr. Buchanan on Monday morning.

Let me remind you of the Instruction No. 8. This is our first weekend recess. During this recess or any other recess you must not discuss this case with anyone including your fellow jurors, members of your family or anyone else. If anyone tries to talk to you about the case, please let me know that immediately. Do not read, watch or listen to any news

reports about the trial. Finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

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Thank you for your attention this week. We'll see you Monday morning at 8:30.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Take a few minutes before we start on instructions. See you back here at 1:15.

(Recess)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Okay. Let me tell you that we have more hearings in here this afternoon so I wanted to try to get through this as quickly as we can. And then when we are finished, if there is anything, you're welcome to leave whatever you want to leave in here. The courtroom will be locked at night. But if there's anything you don't want anybody to see, I suggest you set it out of the way.

We set this time to talk about the instructions for phase 1 as I told you earlier. If there is a second phase it's my expectation that you will want to take a break, at least the rest of whatever there is left of that day and maybe even more, to prepare for the second phase. And during that time I anticipate we would discuss the instructions for the second phase. So I want to limit our discussion today to the instructions which I have given you on the first phase.

I am most interested in whether you think that I

propose to do something that constitutes reversible error. If you see something else you want to mention, you're free to do that. We'll start with the government.

MR. KETCHMARK: Your Honor, the first thing I want to note and I might note on counts, the verdict director on Counts 1 and 3 as relates to the civil rights listed right now as Instructions 20 and 21.

THE COURT: Okay.

MR. KETCHMARK: In the government's proposed instruction on the second element on the defendant's actions, we had submitted it as willful and the Court, I noted, has it as voluntarily and intentional. I had done that modification pursuant to model Eighth Circuit instructions. I have talked with Mr. Gibson and the reason we switched it back was because my understanding from speaking with the civil rights shop or his office in the Department of Justice, it's required that it be done as willful. And that if we were to submit under voluntarily and intentional, it could potentially be error. So I think we would need to have that in there as willful instead of voluntarily and intentional.

THE COURT: Voluntarily and intentional language is from the model I believe. You think that's error?

MR. GIBSON: There is not a model instruction for the 245, Judge. There is a general discussion in the model instructions about how willfulness is not required for general

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criminal statutes. And that is, of course, correct. However, when it indicates that there are circumstances under which willfulness is required, 245 is, in fact, one of those statutes where willful is required. It's in the legislative history. There was also some case law that we submitted with the proposed instruction that discusses that. And the willfulness was inserted into the statute and the statute specifically includes it, purposely by Congress.

MR. KETCHMARK: And what I was referring to, Your Honor, is in Model 7.02, it talks about willful. In the committee notes, it recommends that willful not be used and that voluntarily and intentional be used and that's how I had it, because I drafted the first crack at the instructions, and Mr. Gibson had suggested that we needed to change that back. And I think, I don't know if the defendants would object. I think willful will be a higher stand than voluntarily and intentional.

MR. OSGOOD: It is specific intent, specific intent instruction, the law states. I can't quote it but -

THE COURT: John, might put the microphone up so Cynthia can hear you.

MR. GIBSON: There was also a proposed definition of willfulness that was in the government's original version. We would ask that be incorporated as well.

MR. OSGOOD: That's the one I'm probably thinking of.

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MR. KETCHMARK: And that is on page 39 of the

government's proposed packet where it defines a person acts willfully, then that last paragraph of that.

MR. OSGOOD: Yes. That's the classic specific intent instruction. Generally been done away with in cases, I agree. But I think it's appropriate in this case.

THE COURT: And, okay. Willfully is defined on page 39. Okay.

MR. OSGOOD: That's typically what you give in a

white collar case, embezzlement or something. But I think it

does apply in this case, as they say.

THE COURT: Okay. That would be in 20 and 21?

MR. KETCHMARK: That's correct, Your Honor.

And then, again, I don't know if the Court wants me to point out things of that nature first. Obviously, I have some suggestions on other aspects. One of the other things that concerned me is that we have --the way I'm looking at it is on the instruction there is a verdict director instruction on Count 7 that the Court has in there as Instruction No. 45 in the packet. And it sets forth, basically, the allegation as it relates to, I'm sorry, that's --it's 44. And then the aiding and abetting is 45 but it relates to in the Intrepid.

THE COURT: Yes.

MR. KETCHMARK: Then I note that 46 talks about that and then determined if there was a use of fire and there is no

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reference to that as it ties to Count 8 of the superseding indictment. So I think, just so we're clear and the jury is clear, I think at some point because that is what Count 8 is, the proposed verdict director instruction we gave is, if you find that they used fire in the commission and you found them guilty of Count 7 and there is use of fire then you can find them guilty under Count 8 which is the 844 offense. And I just think that we need to flush that out because it is --it's not like an added element of Count 7. It is a separate distinct charge of the indictment. And I think to be clear, we need something in the instructions that sets out the equivalent that that is, basically, directing us to Count 8 of the superseding or the indictment.

MR. ROGERS: You think 46 needs to be separate? I agree with that.

MR. KETCHMARK: And the way we had, I can try to find what we proposed, Your Honor, instead of saying our language, it's on page 75 of our packet. But we set out as a separate verdict director the crime of using fire to commit a felony as charged in Count 8, basically, has two elements. It would be defendants use the fire to destroy the object and the defendant did so, with the intent to, basically, obstruct or impede the investigation. I just think we need a separate type of instruction so the jury understands these are the elements of the charges set forth in Count 8.

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THE COURT: Okay.

MR. KETCHMARK: And then the other question I had and on the verdict forms, I don't know, maybe I can defer to Mr. Rogers on this particular point. But I don't think it's necessary in the guilt phase that the jury signs all of the verdict forms.

THE COURT: I don't think that it is. I normally do that.

MR. KETCHMARK: Okay.

THE COURT: Just because I want them to be so firmly committed that they're willing to sign their name to the form.

MR. KETCHMARK: Okay.

THE COURT: And often times then parties waive the polling. I wouldn't expect that in this case but that's -

MR. KETCHMARK: I was just noting that we talked about that as to the guilt phase. I didn't want them to think, I think they need to not be confused from our voir dire process about signing the form that they are only looking at guilt here. They're not looking at any type of punishment and when we talked with them -

THE COURT: You'll see the same change in the face of

the instructions.

MR. KETCHMARK: Okay.

On the Count 8 issue, too, Judge, that would tailor into the verdict form as well as the director. If the Court is

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inclined to make that change, I think we, obviously, would have to have the separate --because I think right now, the director, I did not, at least I didn't recall seeing a specific director as it related to, it goes from 7 to 9 and it's just a special finding the Court has about using fire. And I think we need to, because it is a separate count, it would be more appropriate to leave a director or a verdict form for signatures as to Count 7 and then another verdict form specifically addressing Count 8.

THE COURT: Okay.

MR. KETCHMARK: Then the other ones are more just suggestions that the government would have about wording of specific verdict directors as relates to particular counts. I don't know if you want to hear from the government on that at this point or if you want -

THE COURT: Let's go and hear from John first.

MR. OSGOOD: I guess the first one would be 21, Your Honor, as relates to Count 3. I said the first one would be Instruction No. 21 as it ties to Count 3 of the indictment. I note Count 3 charges that Mr. McCay was actually shot with a firearm and count --and the verdict director would seem to talk about an attempt which is not charged. And there is no general attempt statute as I'm aware to cover this. There is no attempted instruction. So seems we can strike the word attempt from that.

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MR. KETCHMARK: And I have a problem with, from the government's perspective, taking that out. I don't think there's any dispute, Count 3, that Mr. McCay was hit as a result so -

THE COURT: So in the second element you propose to eliminate the phrase, or attempted? John, I'm sorry?

MR. OSGOOD: It should only say that he was shot.

MR. KETCHMARK: He's talking about the fifth element I believe, Your Honor.

MR. ROGERS: And also the second, no question being killed interferes with your --I think also that applies to both the second and the fifth elements, Your Honor.

THE COURT: You would have the second element then read, the defendant willfully injured.

MR. ROGERS: Intimidated or interfered with William McCay, semicolon.

THE COURT: Okay. Do you agree with that, David?

MR. KETCHMARK: Your Honor, I was talking with Mr. Gibson. I guess my thought would be that I would agree with it on Count 5 because there's no question there was a firearm that was used. I think that Count 2 or that the second

element goes to the defendant's actions at the time. And I think that the attempt language necessarily isn't inappropriate there because it could be, I know at the end of the day Mr. McCay ended up dead as a result of the conduct. And quite

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frankly, I hadn't thought about in the context of the second element. Mr. Osgood had just mentioned, or John, about the fifth and, obviously, I agreed at that point.

MR. ROGERS: In that regard, going back to Instruction 20, I think that it's correct to have the attempted in paragraph second. But with regard to paragraph fifth, is there any dispute about the attempt to use a deadly weapon?

MR. KETCHMARK: Again, on Instruction 20, Judge, yeah, I mean what Charlie is saying, I would agree on the fifth element on Instruction 20. We would take out the defendant used.

MR. ROGERS: Attempted.

MR. KETCHMARK: We would leave in the defendant used but take out the attempted to use.

THE COURT: In the fifth element?

MR. ROGERS: Of 20.

THE COURT: I agree it should come out of the fifth element on Instructions 20 and 21. And now we're back to the second element on those two instructions.

MR. KETCHMARK: And if I understand what, Charlie, you're proposing is that we leave the second element as it is

on Instruction 20 and then take out the or attempted to portion on the second element on Instruction 21?

MR. ROGERS: Right. And because we're not talking about, I realize we're not talking about attempting to use a

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dangerous weapon. We are talking about attempting to injure. And there is no question that there is an injury that took place. The guy got shot and is dead. About as injured as you can get.

THE COURT: What do you think, David?

MR. KETCHMARK: I'm asking Mr. Gibson because these are obviously the civil rights related counts. And I think that sounds appropriate to take out the attempt language of the fifth element. And then on 21 take out the second portion of the second element from the or attempted, on through the second William McCay reference.

THE COURT: All right. And then in No. 21?

MR. KETCHMARK: That was with -

THE COURT: That was 21?

MR. KETCHMARK: That was 21, Your Honor. I think modification on 20 would be, leave it as it is with the exception of the fifth element, the defendant used a dangerous weapon.

MR. OSGOOD: 24 would probably need to be modified to reflect that also.

THE COURT: Take out attempted to use or threatened

to use?

MR. OSGOOD: Yes.

MR. ROGERS: Also attempted to use the second time.

THE COURT: Does the government agree with that?

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MR. KETCHMARK: I think, Your Honor, that that, at this point, yeah, that sounds sufficient. I mean, can I reserve, if I think about it over the weekend and something strikes me?

THE COURT: What I'll do is take your comments and either blend them in or not and then give you another set and then you can make your final objections to them.

MR. OSGOOD: 23, I think, is the one we'll not agree on. 23 comes from the law established in the Bledsoe case many years ago out of this very courthouse, old courthouse, same district. Thank you. You'll recall that was Mr. Steve Harvey that was murdered up at the Liberty Memorial. He was a homosexual but he was also a black. And the defense in that case was they were attacking homosexuals as opposed to attacking blacks. The Eighth Circuit held essentially what this instruction reflects, which I do not agree is the law. And, unfortunately, Bledsoe is cited in 9th Circuit and a couple of other circuits as the law that I believe from a constitutional standpoint, I need to object to the instruction. And I want to request an instruction along the line, I don't have one to give you, but that the defendant's decision to act in a manner that he did had to be or that race had to be a primary focus or motive or however, you would say it. The primary reason why the action was taken. And something along that order.

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THE COURT: Harvey, was he a jazz musician?

MR. OSGOOD: He was, Your Honor.

MR. ROGERS: Guitar player.

THE COURT: I thought he played a brass instrument.

MR. ROGERS: Played the guitar.

MR. OSGOOD: Well, he was also a well known jazz

musician on the jazz circuit.

THE COURT: Let me ask you to give me what you want me to give in place of it. I'm going to follow the law of the circuit but I think -

MR. OSGOOD: To preserve my record.

THE COURT: I need to see the exact instruction.

MR. OSGOOD: Absolutely. I agree that instruction

reflects the law of the circuit. I just think it should be to

a higher standard and higher burden.

MR. ROGERS: I'll agree with Mr. Osgood.

MR. KETCHMARK: We'll agree with the Court and the

Circuit, that they're correct.

THE COURT: What else have you got, John?

MR. OSGOOD: I think that's about it, Your Honor.

Rest of them look pretty good to me.

THE COURT: Charlie?

MR. ROGERS: Let me do, first, the one that I think is most important.

MR. OSGOOD: Just a second. I'm sorry. Mr. Sandage

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was looking up an instruction on the grant of immunity.

MR. SANDAGE: I guess he's going to let me talk, Judge. Been a couple of days.

Instruction No. 18. Judge, the committee notes on this which is 4.404 talks about that if in a particular case a witness receives a different or additional promise from the government, there should be an appropriate modification of this instruction. I would tender to the Court that the Court consider some sort of tailoring or in addition to the proposed instruction to take into account the benefit Ms. Rios received from Jackson County.

THE COURT: I'm not sure --well, okay. Go ahead.

MR. SANDAGE: No, I mean that's -

THE COURT: All right. I'll consider it. But I'm going to ask you to prepare an instruction.

MR. SANDAGE: Yes, Your Honor.

MR. ROGERS: I want to turn to No. 47 which is the verdict director for Count 9.

THE COURT: 47? Okay.

MR. ROGERS: That is not date specific although the indictment, superseding indictment charges that this offense was committed on or about July 31, 2005, in Kansas City, Jackson County, Western District of Missouri. And I think that's necessary and extremely necessary in light of all the evidence we've heard today and other days, actually, about

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purported threats to Ms. Rios from Mr. Sandstrom, which we objected to. I think they're improper evidence and the objection has been overruled. And I can understand how it might tend to show guilty knowledge about conduct in general but having said that, they certainly have the --Mr. Sandstrom has not been charged with threatening Regennia Rios by trying to get Justin Buchanan to kill her. So certainly the jury needs to be instructed that that doesn't make a conviction.

MR. KETCHMARK: And I agree, Your Honor. That was an oversight on our part. The count is specific to that letter July 31, 2005. We do need that included.

THE COURT: I don't remember. Did we give an on or about instruction?

MR. KETCHMARK: There is not an on or about instruction.

THE COURT: I think if we're going to tell them it needs to be on or about the date of the indictment then we need to give the on or about instruction, it seems to me.

I agree with everyone.

MR. ROGERS: I don't know, Judge, if that needs to be also included in the general discussion of the counts which you don't talk about the dates with regard to the other counts. I'm talking about Instruction 13, I guess.

THE COURT: Yeah. That is a summary. And the reason for the summary is to avoid the detail we normally give.

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MR. ROGERS: But you do distinguish between 9th and Brighton and 9th and Spruce, which is also essential, I think, for anybody to understand what is going on here. Otherwise, charging the same thing six different ways, six different times. And I don't know whether that Count 9 needs to be -

THE COURT: Does the government care if I include the date in the summary?

MR. KETCHMARK: No, Your Honor.

MR. ROGERS: Okay.

THE COURT: July 31, I think you said, '05.

MR. KETCHMARK: July 31, '05 as it relates to Count 9, yes, Your Honor.

THE COURT: Okay.

MR. ROGERS: That was my main complaint. Fair statement, isn't it, Judge?

THE COURT: It pleases me very much, Charlie.

MR. ROGERS: I do have an issue and, obviously, this is not necessarily at this point to preserve the record but seems to me on Instruction No. 15 there is no real reason to

include the second paragraph because there's no issue of accident or mistake.

MR. OSGOOD: That's going to be modified to some extent probably by the specific intent instruction.

MR. ROGERS: I'm just talking about -

MR. OSGOOD: That's the knowingly.

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MR. ROGERS: Sandstrom --versus Montana, part of the instruction that just occurred to me.

THE COURT: I don't know. I'm not familiar with the case.

MR. ROGERS: That's the case that you could not require them to find somebody guilty beyond a reasonable doubt based upon natural and probable consequences. This instruction is tailored to but, well, are not required as part of the instruction.

MR. GIBSON: That's standard language, Your Honor.

THE COURT: It is but if it's not, I take it you want it in. We're taking out other standard language.

MR. GIBSON: Not as it relates to inferences that the jury can naturally draw from the evidence regarding that a person intends the natural and probable consequences of acts and that charge relates to the other counts as well, not just 1 and 3. That charge relates to all of the counts charged in the indictment.

MR. KETCHMARK: I think that's the important point, Your Honor. We're taking out the voluntarily and intentional in 1 and 3 but put in the willful. But there is intent language in 1512 which is Count 5, and I think that, obviously, I mean they're not going to get confused. And I think they need to have a definition in that pattern form as to basically

here's what you can consider when you're looking at this

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particular element.

THE COURT: I'm inclined to leave it as it is but the record will reflect your suggestion.

MR. ROGERS: Okay. And Instruction No. 33. In the language, there is another instruction talking about definition of premeditation and the other instruction is 38. The final sentence is, any interval of time between forming the intent to kill and acting on that intent which is long enough for the defendant to be fully conscience and mindful of what he intended and willfully set about to do is sufficient to justify the time--premeditation. I don't disagree with that as a proposition of law. I would add to that, but does not require such a finding.

Just because it seems sufficient to justify, has meaning to me as a lawyer but it --I think it is --more fairly apprises the jury of the law if you include the caveat, so to speak.

MR. OSGOOD: What was the suggestion?

MR. ROGERS: But does not require such a finding comma.

MR. OSGOOD: I don't like that. I do not. I think that shortens the time interval.

MR. ROGERS: No. Sufficient to justify but not, does not require --you would rather just have sufficient--thinking it is required to find premeditation if there is a little bit

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of time?

Any interval of time between the forming the intent to kill and-

Any interval of time between forming the intent to kill and acting on that intent which is long enough for the defendant to be fully conscience and mindful of what he intended and willfully set about to do is sufficient to justify the finding of premeditation. Comma. This is what I want, but does not require such a finding. In other words, any interval is sufficient, I want to qualify by, but does not require.

MR. OSGOOD: That's confusing to me and I'm a lawyer. That would suggest to me that there doesn't have to be any interval of time. I think that's dangerous. Put it somewhere else. But a tag like that, I don't care for it.

MR. KETCHMARK: From the government's point of view, Your Honor, we would agree we like the language in the Court's proposed, which I know is consistent with the pattern instruction 6181111A sub 2. I think it's clear. I think it's sufficient. It's not telling them they must find but it's suggesting that it would be sufficient for them to find. The whole notion is to give the jury more understanding. I agree with Mr. Osgood, to add anything to that would be more confusing than helpful.

THE COURT: I'll consider it, Charlie. My preference is to follow the model.

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MR. ROGERS: I believe that's, let me consult.

I'd let you talk, too.

MR. GROMOWSKY: No. Thank you.

MR. OSGOOD: Final thing I would like to ask, did the Court consider any kind of further instruction on what constitutes racism and use of these inflammatory words we have heard throughout this trial, Judge?

THE COURT: The short answer to that is, no. That doesn't mean that I wouldn't consider one if you want to submit one.

MR. OSGOOD: Okay.

MR. ROGERS: One other question, Judge, and I realize we're not here to talk about penalty phase instructions. I'm assuming without having been told to the best of my knowledge that every other defendant tried in a capital case in this district, you intend to use sequential penalty phases, assuming unlikely there is a conviction of more than one defendant of a capital count?

THE COURT: I can honestly tell you I haven't thought about that, Charlie. Let me think about it. Tell me exactly what it is.

MR. ROGERS: What I'm asking, what I am expecting and trying to confirm actually is that if both defendants are convicted of a capital count, you'll have first one defendant's penalty phase and the jury will deliberate and reach a verdict

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on that. Then you'll have the other defendant's penalty phase. That's the way it's been done. The very first case I tried in this district was Moore and Lightfoot. I mean, Moore and Wyrick then Peoples and Lightfoot. That's the way it was done. I'm sure that's the way it was done in Hinestroza and Sinisterra. Those people? I don't know if those are all the multi defendants.

MR. OSGOOD: You go, first.

MR. ROGERS: Actually what we did in Peoples and Lightfoot, even though Lightfoot was the No. 2 defendant, we agreed to go first but -

MR. KETCHMARK: Your Honor, from the government's point of view, we did put in, this is some of the pretrial litigation that we had spawned on at the time, trifurcation rather than bifurcation. We noticed in our response to that, constitutionally, I don't think it's mandated or dictated it has to be done separately. Has to be on motion by defendants for severance. We cited cases where that is not necessarily always the case. We put a footnote into that response indicating that we kind of operated under the assumption that was probably the likelihood, the Court would because of the all the cases in the district. I don't think it's required under the constitution. I know there's cases out there where they, in fact, have done one of the case --was three defendants and they're all done together by the trial court over the objection

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because the court found, basically, the victim impact evidence and all the evidence in aggravation was, basically, the same as to both. So, but the bottom line is I don't know that we have ever really had an understanding from our side. We kind of operated under a certain assumption but we didn't know if it was correct or not because we never saw a motion to sever the penalty phase.

THE COURT: Charlie, are you suggesting that we have the victim impact testimony twice or that it be done once and then we have two separate hearings with respect to the mitigators?

MR. ROGERS: That would work, if that's the issue. This is, frankly, first time I've had a case where there is any victim impact.

THE COURT: I really hate to ask -

MR. ROGERS: I don't have a problem with that. I don't want to put the decedent's family through any more than they've been through. But in terms of the jury's actually hearing and deciding, I think it is and I agree there have been cases, I'm not aware of any in the 8th Circuit. May have been some. I know there have been some in the 4th Circuit and 5th

th

Circuit and maybe in the 12.

MR. KETCHMARK: Case I'm referring to was out of the Northern District of Indiana. That's just what popped into my brain.

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MR. ROGERS: 7th Circuit, I guess.

THE COURT: What did they do in the 4th Circuit?

MR. ROGERS: They did it in a Richmond drug murder case.

THE COURT: They submitted -

MR. ROGERS: Had everybody at once.

THE COURT: Had them all at once. Let me -

MR. ROGERS: I don't think they're the circuit to emulate.

THE COURT: Let me give that some thought and we'll talk about it. We have plenty of time to give you an opportunity to react.

MR. KETCHMARK: I did have, I'm sorry. Steve, go ahead.

THE COURT: Okay. Well -

THE LAW CLERK: I get to talk.

The reason we took Count 8 and kind of put it in with Count 7 is the way we read it, Count 8 isn't an independent crime. It's just saying if you commit another crime and use fire there is an extra penalty. So it was a penalty provision as opposed to a crime. It doesn't contain any elements beyond use fire.

MR. KETCHMARK: I think the difference is that it's a separate statute.

THE LAW CLERK: It is but kind of like the separate

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statute on the drug cases that say if you have this amount of drugs then you --this is the statutory minimum. And so really all you do is take that statute and put that into the verdict form for you distribute how much drugs. That was the thinking. I'm not saying it's right. I was wondering.

MR. KETCHMARK: I guess my concern would be, quite candid, I'm not familiar enough with the 844 charge. But the charge in Count 7, the 1519 obstruction section of the code and then the use of the fire is the 844, which is in a different section of the code. And the difference I would say with respect to the drugs, you're looking at a kind of one type of thing. So what my concern would be, even if the director as to Count 8 says, if you have found the defendant guilty of Count 7, there, you know, Count 8 requires two elements. That you find the defendant guilty of Count 7 and then, additionally, similar to the 924C is, if you found the defendant committed the crime of violence as set forth in this count, then you next have to determine XYZ, same type of thing there. My concern would be to add it in as potential sentencing enhancement. It is separate, unlike the drug offense where the weight can dictate, it is a separate offense that can be convicted because it has separate and distinct elements. In terms, it's not like a greater offense of the 1519 if there is a use of fire. It is a separate actual charge that could result in a separate conviction. So to me it seems like we could tailor the

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director. However I just think we need to have it spliced out in its own set of directors and own verdict form so there is no ambiguity on the deliberations and the jury's understanding of basically what is required. I agree most of the evidence is going to be very similar to what they would use. But the question then becomes just from keeping the record clean as possible, better to have it parsed out. Again, that was my initial thought and it's kind of but -

THE LAW CLERK: I think it's a form over substance issue.

MR. KETCHMARK: I do, too, but I think it could be an important one.

THE LAW CLERK: No. Form is important, too.

MR. KETCHMARK: Judge, I also had a few other

suggestions. I don't know if the Court wants them. I know you have other matters. I'm happy to bring them up on Monday if the Court would just as soon do that.

THE COURT: Let's go ahead. We have a few minutes.

MR. KETCHMARK: Specifically, as it relates to Instruction 34, which is the verdict director instruction, the Court has tendered with respect to Count 5. And my concern is in the way the government has submitted it was about, there was some questioning in cross-examination of Ms. Rios, in particular, suggesting whether or not she was aware this was a federal hate crime. And that is not required. I don't think

that is what is required. And I think there needs to be language. And I would refer the Court back to our tendered instruction. And I think it more appropriately sets forth what is required. It's on page 60 and 61. And I would ask the Court to entertain putting back or putting in language suggesting about, you know, you're instructed the government need not prove the particular defendant prevented communication with specific law enforcement who the defendant knew to be federal or that a federal investigation was initiated or imminent, because I think that and we cited the Court or I can cite the Court where there is ample case law that we have that we could cite and file. I don't know if we incorporated that in the trial brief but I can provide the Court with language on that. I don't think there is any requirement that they knew it was a federal hate crime, that they were preventing. I mean the evidence and the jury could consider that their actions were motivated based on the fact of Mr. McCay's race. There is no requirement the defendant have specific knowledge that is a federal hate crime violation. And I think that it would be appropriate and is required.

And I also think the other thing, this dovetails into the other concern I had, Your Honor, which is Instruction 44, which also is an obstruction of justice count as it relates to Count 7. In the third element as the Court has it tendered, it talks about the defendant did so with the intent to impede,

obstruct or influence an investigation, a matter of which was within the jurisdiction of an agency of the United States, Federal Bureau of Investigation. The way we had proposed that instruction on page 72 of our packet is that or in relation to or contemplation of any such matter or case. And I think it's important that there not be a requirement that there actually be an investigation that was underway or necessarily was imminent. It's looking at the defendant's actions and what they're intending to do when they're killing Mr. McCay as a potential witness in this case, burning the vehicle, from stopping it to be available as evidence, potentially, against them. And so there's cases and I know we did put this in the trial brief, specifically, talking about the requirement and the timing and what was going on in the case. And I don't recall off the top of my head but it's in the trial brief. And it's a case talking about a Hobbs Act violation. I think Mr. Green is telling me it is the case we cited in the trial brief. But in Jefferson, the facts quite simply were there was a jewelry salesman who had a bunch of samples and he was, basically, the subject of an attempted robbery. The guy drives away and crashes into a tree and Jefferson goes up and puts a bullet in the back of his head and kills him as a potential witness is what he gets convicted of before he even takes the sample. Clearly there was no chance for that victim to ever report that or do anything of the nature. What the court found

in Jefferson is that is appropriate because you don't look at it from the standpoint of when the investigation is being initiated. You look at it from what was motivating the defendants in their actions at the time they took the action. So I think that is an important language because there is no question that as the Intrepid is being burned there is not a federal investigation underway. There is not any type of investigation underway. But if the obstructive conduct and actions are being taken because they're fearful that that is going to be the case, then that language needs to be in there. And if that's not in there, obviously, we can't establish at the time they light the Intrepid on fire and Mr. Paschetti is sleeping on the train that anyone was aware that car was linked to anything. So I think that we would urge the Court to reconsider incorporating language as such that we proposed in our instructions. Again, I'm happy to provide the Court, I know the Jefferson case is cited in our trial brief and I'm happy to give the Court any other cases that would be supportive of what our position is on the 1512 instruction as well.

THE COURT: Okay.

MR. ROGERS: I was --you know, need to hear argument against it? You're going to look at the instruction?

THE COURT: I will.

MR. ROGERS: Fair enough.

THE COURT: Okay. Folks. Thanks. See you Monday morning. I'll be here at 8 if you need me.
(End of session)

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)

)
Plaintiff,)

)
vs.) Case No. 05-00344-01/02-CR-W-ODS

)
GARY EYE and) Tuesday, April 22, 2008
STEVEN SANDSTROM,) Kansas City, Missouri
Defendants.)

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ORTRIE D. SMITH
UNITED STATES DISTRICT JUDGE

VOLUME 9 OF 17

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MAY 5, 2008 -DAY 9

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: We're still short a juror or two and we'll start as soon as they are all present.

I'd like to revisit something that we talked about on Friday and that is, should we get to the second phase, the procedure that we'll use when we get to that point, if we do.

Charlie, based on your comments Friday, I assume that you are urging that the jury be permitted to consider its decisions with respect to the defendants separately?

MR. ROGERS: That's correct, Your Honor.

THE COURT: And, John, I didn't hear from you on that issue. What is the position of Mr. Eye with respect to that?

MR. OSGOOD: Can I grab Mr. Sandage? He's doing the lion's share of that, frankly.
He says separate proceedings.

THE COURT: Both defendants are asking for separate proceedings and the United States, David, the position of the United States is that the jury should be permitted to deliberate on both defendants simultaneously?

MR. KETCHMARK: What I indicated, Judge, I understand other cases had been done in separate proceedings but from my standpoint, I don't necessarily see the need for that here, given the fact that the majority of the testimony as relates to

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the aggravating circumstances is factual information that is being presented in the guilt phase and that would cross over. The other evidence, I'm anticipating we would present, would be victim impact which would be duplicative as relates to both defendants.

The other thing I would note, too, it's not like there is a significant, one of these defendants has a prior murder conviction or prior robbery conviction with a gun or things of that nature where there is potentially a bleed over effect that would require departmentalization. So for judicial efficiency at the subsequent proceeding, and I don't think there would be a substantial risk of prejudice or harm to these defendants by doing that. And it would, basically, short circuit the need for this jury to have to deliberate and, obviously, they would be deliberating separately, assuming we're in the penalty phase, as relates to both defendants. But wouldn't require them to go through the complete presentation of duplicative evidence over and over again.

The bottom line is, Judge, I think I don't see the need to do it separately. I think we could do it together because most of the evidence that the government would have in its presentation would be duplicative as to both and I don't know that there's anything about their particular background or history that would have such a prejudicial impact on one versus

the other.

THE COURT: What I was listening for was a preference and what I'm hearing is the government's preference is to submit both defendants simultaneously.

MR. KETCHMARK: That's correct, Your Honor.

THE COURT: What if the defendants agreed that the government would present its aggravating evidence only once and then in turn each would submit mitigating evidence?

MR. KETCHMARK: And then have the jury go back and do one series of deliberations?

THE COURT: No. The jury would deliberate on one then the other. But the mitigating evidence, the victim impact evidence would only come in one time.

MR. KETCHMARK: Is it something I could think about and discuss and we could take up at the first morning break or lunch?

THE COURT: Yes.

MR. OSGOOD: That would mean they would actually deliberate Mr. Eye's case first, bring back the penalty then go out and deliberate?

THE COURT: Absent an agreement, that's the way we'll operate, yes, absent agreement to the contrary.

Okay. Let's bring the jury in.

(The following proceedings were had IN THE PRESENCE
AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Welcome back. Sorry to keep you waiting.

The operation of the trial is a little like the operation of a car. Lots of things happen under the hood that you don't really see. So some of these conversations necessarily take place outside of your hearing. Thank you for your patience.

And, Mr. Osgood, you may begin your cross-examination.

MR. OSGOOD: Thank you, Your Honor.

JUSTIN BUCHANAN, RESUMED

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Mr. Buchanan, you completed your direct examination testimony on Friday and now I have to cross-examine. One of the rules I like to explain to a witness in cross-examination, it's not my job to put words in your mouth. It's my job here to probe a little bit into your direct testimony. Do you understand?

A Yes, sir.

Q I do have a right to suggest an answer to you but if you don't agree with that, tell me you don't agree with that.

Secondly, --You understand that first?

A Yes.

Q And, secondly, if I should ask you a question that you do not understand, I certainly want you to say, I don't

understand that, and I'll try to rephrase it. I'm not all that good at not asking some times convoluted questions that people don't understand. So help me, if you would, please?

A All right.

Q Okay. How old are you, Mr. Buchanan?

A 25.

Q And you're presently in custody at Correctional Corporation of America as a result of your guilty plea, is that right?

A Yes, sir.

Q Now, let's go back. You were at the Crossroads Correctional Facility which is a state maximum security facility up in Cameron, Missouri, is that correct?

A Yes, sir.

Q And you were doing time on what up there?

A Receiving stolen property.

Q Okay.

A Stolen cars, tampering.

Q You had some prior convictions that you told us about on Friday. What were those again?

A Escape from custody, forgery, tampering with motor vehicle and receiving stolen property.

Q I assume your escape from custody got you locked up in a maximum security?

A It was attempt to escape.

Q But I mean, combination of those things?

A Max? No. I then went to a max.

Q Say that again.

A I was sent to a maximum security prison due to violations.

Q And that's when you began to write letters back and forth with your cousin, Mr. Buchanan, is that right? I mean, Mr. Sandstrom?

A Yes.

Q Now, what is the family relationship? I mean, who is married to who and who had kids by whom?

A My mother and Sandstrom's mother are sisters.

Q All right. And they both grew up in the same household here in Kansas City?

A Yes.

Q And what is the age difference between your mother and his mother?

A I couldn't say.

Q I mean, is it a big spread or were they close in years?

A That's something I never got off into.

Q How many family members were in that family, your aunts and uncles?

A My mom, her sister and two brothers.

Q Okay. Are the brothers older or younger than the sisters

or in between?

A I believe younger.

Q And did they, the sisters, live in the same neighborhood?

A Yeah.

Q Have your mom and his mom always been fairly close?

A So, so.

Q And growing up together, you two hung around together, cousins?

A Yes.

Q And played together?

A Yes.

Q How long were you together?

A For some years.

Q And did you go to the same school together?

A No.

Q Okay. Did you move away from the neighborhood at some point in time?

A Did I move away from the neighborhood?

Q Yes, sir.

A I lived with my grandma and grandpa for a short period of time.

Q Where were they? Up -A
Up north.

Q Would that be the period of time you weren't hanging around as closely as maybe you had previously with your cousin?

A Yes. Plus they lived in the country before, too, so -Q

All right. And you liked him?

A Yes.

Q And at some point at CCA you started getting these letters, is that correct?

A No. That's wrong.

Q I'm sorry. Not CCA. You're absolutely right. See, it's working. At Crossroads you began to get the letters?

A Yes, sir.

Q And you --we heard the letters. I'm not going to go over the letters again. The bottom line was at some point the FBI came up and confronted you with your conduct, didn't they?

A Yes.

Q At the time they confronted you, had you planned when you got out to kill these witnesses?

A Did I plan to?

Q Were you going to go kill them, if you could find them?

A At the time I couldn't say yes or no.

Q Didn't you plead guilty to that?

A Yes, I did.

Q You pled guilty to something you weren't guilty of?

A What, sir?

Q Did you plead guilty to something you're not guilty of?

A I already stated, I wanted to do it, yes. But would I

have done it or did I do it or could I have done it? Yes and no.

Q So you pled guilty to something that was to your benefit?

A No. I pled guilty to threatening a witness. I made a threat to a witness.

Q You were going to kill them?

A You could say that.

Q Well, were you or were you not going to kill them?

A I threatened a witness.

Q I guess from your answer you were going to kill them if you could get out and do it?

A The threat never said I was going to kill nobody, sir.

Q Well, I thought you said that was the way you testified, the letter wanted you to kill them?

A All right. But the letter I wrote didn't state I was going to kill nobody.

Q Okay. So it's just something you were thinking about, is that right?

A What? Killing them?

Q Yes, sir.

A Yes.

Q And were you going to shoot them or how were you going to do it?

A Nothing ever happened so I don't know.

Q I see. Well, let's move on a little bit. You get

confronted by the FBI, don't you?

A Yes, I do.

Q You're suppose to get out. Now, you're in a new case, is that right?

A Yes, sir.

Q And they arrest you and charge you with this crime?

A Yes.

Q And at that point they transport you to the United States Marshal's Office here?

A Yes.

Q Was that pretty much, in fact, I think you said at the expense of shocking maybe courtroom viewers or some of the ladies on the jury with which I apologize, you said, quote, paper trail is a mother fucker," didn't you?

A Yes.

Q So, meaning, they caught you with the letters, with your hand in the cookie jar?

A Basically.

Q So now, suddenly, you were suppose to get out and now, you're looking at another undetermined amount in the prison. You know you'll go to prison for something, some time, don't you?

A Yes.

Q And you're back in deep hot water, again. Is that a fair statement?

A Yes.

Q And I've never been in prison but I'm sure things are going through your mind at that point. My God, I was about to get out. Now, I'm going to do, I don't know how much more time?

A Yes.

Q And that was probably a depressing moment, wasn't it?

A Yes, it was.

Q And you're trying to figure out, what can I do to possibly --what kind of situation am I in now? How long had you served at Crossroads at that point?

A Altogether I've been locked up since August 6, 2002.

Q And this was '05?

A Yes.

Q So three years in prison. And that's a hard joint up there, isn't it?

A Yes.

Q Tell us what I mean by hard joint. I don't mean to talk slang.

A You're surrounded by killers.

Q And it's a lot of them are in 23 hours a day and out one hour, aren't they?

A Yeah.

Q You can't see daylight if you're locked up in there, can you?

A Well, you can and you can't.

Q But a lot of them can't?

A We all got windows in our cells whether we're in the hole or not.

Q The point is, it's not a country club prison, the way people think prison is?

A No.

Q It's a tough, tough, tough place?

A Yes.

Q And you're looking at going back. I mean, you were in your mind at that point?

A Yeah.

Q You had just been caught with this paper trail.

A Yes.

Q And you're looking at going back?

A Yes.

Q Not a pleasant thought, was it?

A No.

Q And so the marshals take custody of you after these two agents bring you down, don't they?

A Yes.

Q And they transport you to CCA, the confinement facility at Leavenworth, don't they?

A No. They transfer me from Crossroads to the federal courthouse. Then CCA transferred me to CCA.

Q And, again, thank you for correcting me. That's helpful. My point is, they bring you down to the marshal's office here. They book you in on your new federal charge. Then the marshals take you up or the CCA people take you up to CCA. Is that the way it happened?

A Yes.

Q You're put in what is called a pod up there, aren't you?

A Yes.

Q And let's back up a minute. The time you were at Crossroads, did you ever write a letter to Gary Eye?

A No.

Q Did you ever receive a letter from Gary Eye?

A No.

Q Did you ever talk to Gary Eye on a three-way phone hook up between some third party?

A No.

Q Did you even know who Gary Eye was?

A I heard of him.

Q That was it?

A Yes.

Q Okay. So you get up to CCA. Well, let's back up. He wasn't a party to these letters going back and forth between you and Mr. Sandstrom, was he?

A No.

Q He wasn't part of that agreement, was he?

A No.

Q So you get up to CCA and by just pure happenstance you meet Mr. Eye, don't you?

A Yes.

Q And at that point, through some conversation, you end up with his actual papers, don't you?

A Some of it, yes.

Q The police reports, the early police reports in this case? You had those, didn't you?

A Yes. I read it.

Q And so that gave you information about what the case was about, didn't it? Who said what and who was alleging what and when and where?

A Who was alleging what, yes.

Q So you've got that information at that point, don't you?

A Yes.

Q And your wheels are turning, aren't they, about how you're going to get yourself out of trouble again?

A No.

Q You're not?

A I'm getting myself out of trouble. This is something I've been doing all my life, sir. So I could handle it.

Q Let's put some dates on this. You get up there in November of '05, is that right? Would that be about

right?

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A Yes.

Q And then by February '06, you get a lawyer, don't you?
Mr. Martin?

A Yes.

Q The gentleman sitting in court back there on about the
third or fourth row?

A Yes.

Q And the government --Well, strike that.
Was he appointed soon as you were charged in the
federal case?

A I believe it was after.

Q After. Well, shortly after that?

A Shortly, yes.

Q And so at some point he works out for you what is called a
proffer letter?

A Do what now?

Q A proffer letter. Do you remember that term?

A It's well, after.

Q Well, in --February 9th of '06. Would it help if you saw
the letter?

A Yes.

Q Do you recognize that?

A Yes.

Q You have to speak up, Mr. Buchanan.

A Yes.

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THE COURT: What is the exhibit number?

MR. OSGOOD: It's not an exhibit, Your Honor. I

didn't mark it. Don't intend to offer it. Just to refresh his
recollection.

BY MR. OSGOOD:

Q

The gist of that letter was you could tell them what you
had to offer in the way of possible testimony against your
cousin and, potentially, Mr. Eye in exchange for a deal,
wasn't it?

A

Yes.

Q

And then you meet with the FBI?

A

Yes.

Q

And you give them a statement, don't you?

A
Yes.

Q
And you admit at that time you had Mr. Eye's paperwork,
didn't you?

A
Yes.

Q
And, of course, they had the paperwork, the letters
between you and your cousin?

A
Yes.

Q
And it's, basically, at this point that you tell them
Mr. Eye made certain admissions to you?

A
Yes.

Q
That are consistent with what is contained in the police

reports as a matter of fact, aren't they?

A That's what?

Q The admissions he supposedly made to you are consistent with what was in the police reports, same thing?

A Not exactly, no.

Q Pretty close. Well, the jury will decide that.

A That's what I was going to say.

Q And then you enter into a plea agreement with the government on the 14th day of February, 2007. Does that date ring a bell?

A Yes.

Q You do remember signing a plea agreement?

A Yes.

Q And the gist of that plea agreement was that if you come in here and cooperate and provide testimony consistent with what you told the FBI, that the government, if they felt you had substantially assisted in their investigation, they could file a motion with the court.

Is that right? Is that your understanding?

A Yes.

Q And they're the only ones that can file that motion, aren't they?

A Yes.

Q Even though the judge might believe you had done a truthful, fine job on the stand, you don't get your

sentence reduced unless they agree?

A Yes.

Q You have to please them, not the judge, don't you, to get the motion filed?

A I'm suppose to tell the truth.

Q Uh-huh. But they are the only ones who can file the motion?

A Yes.

Q By they, I mean the prosecution. And that, were you told by your lawyer in this district, normally, while it's no promise, kind of the rule of thumb is it kind of cuts your time down to half of what you might otherwise do?

A Yes.

Q That's what your lawyer told you?

A I've heard it before.

Q That's the standard rumor floating around up at CCA, isn't it?

A Yes.

Q What does it mean to jump on somebody's case, Mr. Sandstrom?

A My name is Buchanan.

Q I'm sorry. Mr. Buchanan?

A What does it mean jump on somebody's case?

Q You've heard that term at CCA and other institutions, haven't you?

A Yes.

1500

Q What --tell the jury what it means to jump on somebody's case?

A When somebody gets on somebody's case and testifies and lies against them.

Q And it also means, just generally, coming in and testifying and with the hopes of putting some information in front of a jury that is helpful to the government then you get your time cut?

A You tell me, if you're telling me about your case and I go and tell them and it's factual, it's true, then, yes.

Q Uh-huh. Okay. Now, that takes us through February of '07.

Do you know Terron Maples?

A Yes.

Q Who is Terron Maples?

A A black guy.

Q And do you know Diante Broadway?

A Yes.

Q And who is Diante Broadway?

A Black man. They was both my cellies.

Q And all right. At some point in time did you have a conversation with Terron Maples about selling him the case file on Mr. Eye so he could jump on Mr. Eye's case and you wanted \$1,500 for selling that case file to him?

A No. That's a lie.

1501

Q

And did you later have the same conversation with Diante Broadway, this other black inmate, that you would sell him Mr. Eye's files so he could jump on the case and you wanted \$1,500?

A

No. I'm in no need of any money.

Q

Pardon?

A

I'm in no need of any money.

Q Why is it those two individuals would state that and volunteer it as a matter of fact to the FBI?

MR. GREEN: Objection. Speculation as why somebody

else would do something.

MR. OSGOOD: I'll rephrase.

THE COURT: The objection is sustained.

BY MR. OSGOOD:

Q

You knew that something had happened because the FBI came up and interviewed you about that allegation, didn't they?

A

Yes.

Q

And when they interviewed you, you paused for a minute and they didn't tell you who it was who claimed you were trying to sell information, did they?

A

No.

Q

And they said, well, who do you think could have made this outrageous claim against you? And you said, Terron Maples and Diante Broadway?

A

Yes.

1502

Q

Because they had told the FBI, hadn't they? Two black fellows who knew what the case was about and were outraged enough that they went to the FBI and said that you were trying to sell them information so they could jump on this guy's case?

A

Something I said to them had absolutely nothing to do with the Gary Eye case or Steven Sandstrom case.

Q

That's all I have of you, Mr. Buchanan.

A Okay. Thank you, sir.

THE COURT: Cross-examination, Mr. Gromowsky?
CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q

Good morning, sir.

A

Morning.

Q I'm your cousin's attorney or one of them so I have a few questions for you as well.
You have known Stevie all his life?

A

Basically, yes.

Q

You're a couple, three years older than him, is that correct?

A

Yes, I am.

Q

You ran around together, growing up, all over the place, right?

A

Yes, sir.

Q

Some times you stayed over at his family's house, some

times he stayed at yours?

A Yes.

Q He also looked up to you and admired you?

A Yes.

Q You guys are like brothers?

A Yes.

Q You were the big brother, right?

A Yes.

Q And still like brothers, even here today?

A Yes.

Q He followed you around like a puppy dog, didn't he?

A Yes.

Q Did whatever you did, right?

A Yes.

Q Do you need a minute, sir?

A I'm cool.

Q Okay. Let me know if you need a break. All right?

So when ever you did something, he jumped right on board, didn't he?

A Yes.

Q Whatever you said, he said?

A Yes.

Q Like it, love it or leave it, that's yours, isn't it?

A Yes.

Q Learned that from you. So when he quotes you in letters,

that's you speaking, isn't it?

A Yes, it is.

Q You got him into marijuana when he was only 11 years old?

A I believe.

Q Caused some other trouble with him after that, probably even before that, didn't you?

A Yes.

Q When you're out on the street with him, you guys hung around with African-Americans, didn't you?

A Yes.

Q You did? He did?

A Yes.

Q Some of his best friends were African-American?

A Yes.

Q And because you hung out with them so much, some of your best friends are African-American, isn't that true?

A Yes.

Q When you get out on the street, you're still going to be hanging out with African-Americans?

A Yes.

Q Presumably when he gets out on the street, he will, too?

A Yes.

Q Because that's the way you guys are?

A Yes.

Q You ran around with him when he hung out with Kenneth

Robinson, also known as Tank?

A Yes.

Q And his cousin, Kevin Fisher?

A Yes.

Q Melvin Carter, before he got locked up?

A Yes.

Q All these guys are African-Americans?

A Yes.

Q True? All of them are your friends?

A Yes.

Q All of them were Stevie's friends?

A Yes.

Q Several others I haven't named also, right?

A Yes.

Q You have a history of mental illness, is that true?

A Mental illness?

Q Yes, sir.

A I've been known --they diagnosed me with bi-polar and ADHD.

Q Bi-polar disease and ADHD?

A Yes.

Q In case we don't know, what is that?

A I take meds to control my own feelings, thoughts and everything.

Q What is ADHD?

A --depression. ADHD, basically, you can tell me this and I go and do the opposite. That's from what I've heard.

Q Attention deficit disorder, hyper activity?

A Yes.

Q You say you're not on meds today when you're testifying?

A No. I haven't been on meds for awhile.

Q When you were taking meds, what were you taking?

A Seroquel, Klonopin, Risperdal. In my whole life?

Q Yes.

A Depakote, Prozac, lithium.

Q When did you stop taking these medicines?

A Last year.

Q When all this was going on and these letters were being exchanged, you were still on your meds, weren't they?

A They gave me meds then but I was refusing most of them.

Q You still had the opportunity to take them and you did, in fact, on some occasions take your meds. Is that true?

A Yes.

Q And Mr. Osgood was kind enough to stay away from the letters because really they don't deal with his client, they deal with mine, right?

A Yes.

Q I'm not going to do that. I'm going to go into the letters a little bit more than what the government did.

Okay?

1507

One of the letters that they pointed out had something about Stevie being in jail over at Jackson County Jail, is that correct?

A Yes.

MR. GREEN: Could we have an exhibit number?

MR. GROMOWSKY: I'm not talking about one right now.

I will when I get to it. Thanks.

BY MR. GROMOWSKY:

Q And you've been through the Jackson County Department of

Corrections as well, haven't you? The detention center?

A Yes.

Q Over here at 13th and Cherry?

A Yes.

Q

In your personal experience, you're well aware that several of the guards in there are Nigerian or other African descent, correct?

A

Yes.

Q

When Stevie is talking about African did this or African did that, he's talking about Africans, isn't he?

A

Yes.

Q

He's not talking about niggers or niggas. He's talking

about Africans, correct?

A

Yes.

Q

And, Mr. Sandstrom, or I'm sorry. When Mr. Sandstrom goes

into jail, he goes in with the same kind of warnings you

do when you first intake into the facility. He gets warned about the calls being monitored. Is that true?

A Yes.

Q Gets warned that his letters will be inspected. Is that true?

A Yes.

Q That's both ingoing and out, incoming and outgoing letters. Is that right?

A Yes.

Q So all you guys going to jail, you all learn that information day one, don't you?

A Yes.

Q So when Mr. Sandstrom, well, let's put it this way, spitting on guards, that's not favored, is it?

A No.

Q Kicking guards is not favored, is it?

A No.

Q Biting guards is not favored, is it?

A No.

Q All these types of things get you in trouble with the guards?

A Yes.

Q If you're going to strike out with a guard, you can't do it with things like that. But you can do it in a letter?

A Yes.

Q So when he writes I want this African to do something or this African to bring me my juice or soup or whatever it is, he's saying that, not to you, but he's saying it to the guards because he knows the guards are going to read it, isn't he?

A I couldn't tell you that.

Q Well, let's put it this way, when you write a letter out, you're talking about one of your COs and talking about what a punk he is or whatever, that's not for his benefit. That's for your benefit, isn't it? You're talking to the guard that's going to read your letter?

A No. I be directing to him, telling him what I'm going to do to this guard if I say it. That's just me.

Q Well, while we're on the topic of these letters being read, you know that at least one of your letters for sure from Stevie was intercepted, right?

A Yes.

Q And how did you know that?

A Because I received a confiscation slip.

Q And what does a confiscation slip tell you?

A It's letting me know what has been took from me or is being reviewed. And let's me know that we're investigating this letter.

Q And this letter that we're talking about right now, this

is one of the ones that the government showed you on

1510

Friday, wasn't it?

A Yes. Yes, it was.

Q What are they looking for when these facilities are starting to dig into the letters?

A What do they look for?

Q Yes, sir.

A For anything involving murder, anything illegal, basically. Escape. Anything to do with escapes or anything.

Q So once they look at a letter, they clear it, decide that it isn't something that they're going to be concerned about, then you get to have that letter. Is that correct?

A That the prison would be concerned about, yes.

Q So they ended up giving you this letter after they did their own investigation of it?

A Yes.

Q So they weren't concerned about the information. Is that true?

A I have no clue what they did with that letter. They could have sent it to somebody or anything, recorded it, copied it then given it back to me then dealt with it later. So I couldn't tell you exactly.

Q Fact of the matter is they gave it back to you. Is that true?

A Yes.

1511

Q So they, at least, weren't so concerned about it that they didn't want you to have it, right?

MR. GREEN: Speculation, what the prison was or wasn't concerned about.

THE COURT: Sustained.

BY MR. GROMOWSKY:

Q
When Mr. Sandstrom, and you also, when you write letters back and forth to each other, what do these smiley faces mean on the letters?

A
Smiley faces?

Q
Yes, sir.

A
Smiley faces, smiling.

Q
Joking around. You write a letter then put these little smiley faces after it?

A
Yes.

Q

Somebody might put ha-ha?

A

Yeah. It's a joke.

Q

Kind of indicates we're just goofing off here, is that right?

A

Yes.

Q

There is a lot of joking around going on in these letters from Stevie to you, isn't there?

A

Yes.

Q

Same way your letters to him, lot of joking from you back

to him?

A Yes.

Q So we see these smiling faces all throughout the letters, don't we?

A Yes.

Q And Stevie has always been a little bit immature, hasn't he?

A Yes.

Q Brought a smile to your face there, didn't it? Little chuckle?

A Yes.

Q Still remains immature, right?

A Yes, sir.

Q As he says in his letters, like to go out and act a fool, right?

A Yes.

Q Then in some of his letters he says something, then smiley face, I'm a fool. Things like that?

A Yes.

Q That's part of his being immature?

A Yes.

Q By the language we see in these letters he's being immature talking to you?

A Yes.

Q Talking to his brother, right?

A Yes.

1513

Q So like when he says something about wants to use racial language when he writes to your girl then puts a smile after it, and says he's just joking, he is joking, right?

A I believe.

Q You were -A

I said I'm not going to be writing stuff like that just joking around or playing around especially if I got a case like this going, you know, I wouldn't be.

Q Why is that? Because the guards read these things, right?

MR. GREEN: Your Honor, he's needs to ask the witness

one question.

THE COURT: Sustained.

BY MR. GROMOWSKY:

Q You testified on Friday, didn't you, that you warned him

that the guards know what kind of case he's got, right?

A Yes.

Q They were going to mistreat him or not treat him as well

because of it, right?

A I wouldn't say mistreat him. I never said that.

Q That was your concern, wasn't it?

A My concern was someone like these agents or FBI getting these letters where he's asking me to go and kill witnesses. Now it's put me out there and got me a case.

Q That's not what you testified on Friday, is it?

A What?

1514

Q On Friday you said you were concerned for him because these COs knew what kind of case he had.

MR. GREEN: Objection, Your Honor. I don't recall that testimony.

THE COURT: Well, the jury will recall the testimony. Overruled.

THE WITNESS: No. Said I was concerned about it due to him asking me to go and kill witnesses. So that's why I'm telling him, paper trail is a mother fucker. Quit writing me, asking me to do what needs to be done. I know what needs to be done. That was my concern. My concern was me, sir.

BY MR. GROMOWSKY:

Q Well, that raises -A
My freedom.

Q Okay. That raises another question about the paper trail.

If you're so concerned about the paper trail, why didn't you get rid of the letters?

A

Because if you flush this stuff down the stools where you're at, you'll get added time in the hole and I was trying to do good to get out of the hole, and it would flood the cells. They would come check the trap. All these letters in there built up. I'm getting six more months in the hole. I'm never thinking or worried about any FBI agents or anybody investigating me or bothering me

about any case.

Q So there's no trash cans in prison?

A No what?

Q Trash cans in prison?

A Yes.

Q Why didn't you throw them in the trash can?

A I wasn't thinking. I wasn't worried. Like I said, I'm not worried about nobody bothering me. I have not done nothing wrong.

Q But you're talking about a paper trail. You got someone who's supposedly writing you letters, asking you to do hits on someone. You're concerned about a paper trail but you're not concerned enough to drop them into a trash can, are you?

A I wasn't, I wasn't thinking.

Q The fact of the matter is you wanted to keep the letters, didn't you?

A What?

Q You wanted to keep the letters?

A Like evidence or something?

Q That's exactly what it's for.

A Never.

Q You know how the system works. You just talked about with Mr. Osgood jumping on cases?

A You're trying to say I was setting my cousin up or setting

somebody up here. Can you be specific on what you're

stating or alleging that I'm trying to do?

Q In the end isn't that exactly what you did?

A No. I didn't do nothing. I didn't turn no letters over or turn nothing over.

Q By keeping the letters?

A I wanted these letters to be found or I wanted to be sitting here today having to do this?

Q Yes.

A Never in life.

Q That's what your paper trail is all about, isn't it?

A Not my paper trail.

Q It becomes your paper trail when you're keeping it and putting it in your property, doesn't it?

A No.

Q If they don't have the letters that you wrote to him or he wrote to you, you're not sitting up here today, are you?

A I have nothing to hide. I had nothing to hide at the time.

Q Sir, the question is, if it wasn't for these letters that you saved, you wouldn't be sitting here today, would you?

A No.

Q So that's the paper trail you were concerned about, right?

A Yes.

Q And you kept the paper trail any way, your choice, right?

A Well, lot of these letters when I'm on suicide watch -

when I was on suicide watch, lot of these letters got to read them and give them right back to your people and some of your property goes to property. Some of the incriminating letters got to go back to my property.

Q You can request documents out of your property, correct?

A When you're in the hole? And on that to get stuff back and forth, no. They ain't giving you none of that.

Q But you didn't spend your entire time in the hole?

A I done all of my time in the hole. I did two years flat in the hole before I got indicted. So, yes, I did all my time in the hole. Every single day.

Q You get these letters, all right, and you give them back.

You say, can you drop this in the trash for me? They'll do that, right?

A I sent all my stuff to my property.

Q Right. Exactly right.

Sir, do you remember writing a letter to Mr. Ketchmark?

A Yes.

Q What was that letter about?

A What was the letter about?

Q Yes, sir.

A Letter was, basically, just saying, you know, I want to go home. I'll cooperate and do whatever, you know, tell you

guys whatever I know and do what ever I can do to go home.

Q Right. You wanted to do what ever you could do to go home. That's what you said in the letter?

A It don't contain as lying on nobody.

Q Do you remember saying, I'm not going to let you down at trial for the prosecution of Mr. Eye?

A That means I'm not going to be lying about nothing.

Q And you talked about, basically, even after you get Mr. Eye you still willing to go out on the streets and do more for them, aren't you?

A Whatever I got to do to go home, yes.

Q And you said that you could prove to them that you're not a threat to society, is that correct?

A Yes.

Q And how are you going to do that, sir?

A Pass the lie detector test.

Q You even gave them some proposed questions, didn't you?

A Yes.

Q One of those questions was, if you recall, did you ever truly tell anybody you would kill or harm any witness against Sandstrom or even due to the fact they were helping the FBI. Do you remember that?

MR. OSGOOD: May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. OSGOOD: I'm going to let the polygraph comment go. It's in. It's there and nothing we can do about it. I don't want an instruction. I'm afraid he's next going to say I passed a polygraph or whatever. That would be extremely damaging. Well, but I don't know how he handle that at this point. I don't want him saying what the result was of that polygraph. And he just volunteered the polygraph.

MR. GROMOWSKY: I have no knowledge they even gave him a polygraph. This is just his proposed question.

MR. GREEN: I don't believe he was given a polygraph.

MR. OSGOOD: I didn't know whether he had taken one or not.

MR. GREEN: Mr. Gromowsky is reading this from this letter. It's not in evidence. It's not marked as an exhibit, so.

MR. GROMOWSKY: I asked him if he remembered writing it.

THE COURT: If he denies that then he can show him the letter and use it to impeach him but otherwise it doesn't need to be marked.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q All right. So you remember giving him that proposed

question?

A You didn't finish.

Q You recall writing to Mr. Ketchmark, sitting over here at this table, right now, did you ever truly tell anybody you would kill or harm any witness against Sandstrom or even due to the fact that they are helping the FBI?

A Did I ever tell anybody?

Q Did you give that to Mr. Ketchmark as a proposed question for you?

A Yes.

Q And you knew that if they asked you a question like that, you would be able to tell them never, is that correct?

A Yes.

Q You never did intend to hurt anybody, did you?

A I never said I didn't intend or wouldn't or did hurt anybody. I just say I have never told anybody that I was.

Q And?

A Which I said I was in this and that and the other but I never said I was to nobody.

Q The fact of the matter was you sent a letter to Mr. Ketchmark in which you said, give me a lie detector test. I'll pass it. I'll prove I never intended to hurt anyone. Isn't that -MR.

GREEN: That's not what his testimony was, Your

Honor.

THE COURT: The jury will recall the testimony.

Overruled.

BY MR. GROMOWSKY:

Q Isn't that the gist of it?

A What? I wasn't going to hurt nobody?

Q Yes, sir.

A Yes.

Q And when Mr. Osgood was up here, you told him a minute ago you didn't care you were staying in prison. You have done that your whole adult life, haven't you?

A Yes.

Q Here you were a minute ago with me saying you were doing whatever you could to get out, right?

A Yes.

Q One of the reasons you want to get out, you've just been in too long?

A But he, Osgood was also talking about at that time. At that time, no, I wasn't worried about doing time.

Q But when you write this letter to Mr. Ketchmark, you, obviously, are worried about doing time?

A Yes.

Q You don't want to do any more?

A Especially for something I didn't have no involvement in.

Q Predating this letter to Mr. Ketchmark, you're writing to Mr. Sandstrom in jail saying that when you get out, you're going straight and narrow, aren't you?

A Yes.

Q Going to take care of your kids, right?

A Yes.

Q Get back with the baby's momma, stuff like that?

A Yes.

Q Your being in jail is killing your mama. You can't let that happen any more?

A Yes.

Q Earlier than this letter, you still didn't want to be in jail, right?

A No.

Q Now, let's talk about a couple comments, these so-called hits that were put out on witnesses. When you were about to get out of jail, you mailed yourself a "to do list" to yourself at home?

A A "to do list"?

Q Yes, sir.

A Yes, sir.

Q Had a list of everything you wanted to get accomplished as soon as you got out of jail, right?

A Yes.

Q And anywhere on this "to do list", does it talk about go and take care of Stevie's business?

A I can't recall.

Q Sir, I'm showing you the "to do list", what I believe it

is. Do you recognize that?

A Yes, I do.

Q And is that the "to do list" we're talking about?

A Yes.

Q Take a look at it real quick. Just read it to yourself, please. Let me know when you're done.

I'll ask the question again, sir. Anywhere on this list does it talk about going and taking care of Stevie's business?

A No.

Q Now, with regard to these witnesses, why is it that you think Stevie wanted them killed?

A Why is it?

Q Yes, sir.

A He said that they was going to be testifying against him.

Q And so the whole plan was to keep them from testifying, is that right?

A Yes.

Q And that's your understanding of why he's writing you these letters?

A Yes.

Q Are you a killer, sir?

A No, I'm not.

Q But supposedly Mr. Eye invited you to kill someone, right? Eye for an eye is what you testified on Friday?

A Yes.

Q And supposedly Mr. Sandstrom asked you to kill someone, right?

A Yes.

Q And you know Mr. Eye didn't really know you, did he?

A No.

Q Stevie has known you his whole life?

A Yes.

Q And you're not a killer so he knew that. Right?

A Yes.

Q Now, what was previously marked as Government's Exhibit 139 -And,

specifically, 139D, Mr. Green.

One of the things that was brought up on Friday in talking about this so-called plan to kill witnesses, is, said me and Gary has a good story to cover our ass.

We about shit when Regennia shot him. We was shocked.

Two eyewitnesses seen her do it. Me and Gary.

Do you remember being asked about that on Friday?

A Yes.

Q You have had experience in the criminal justice system, correct?

A Yes.

Q And when you have a trial, that's when witnesses testify.

Is that true?

A Yes.

Q Okay. So here they are in this plan when they supposedly are going to have this witness killed any way so they wouldn't have a need for trial if they did. She wouldn't be there, right?

A Yes.

Q And so when he's writing you this letter, at least he's thinking there is going to be a trial, right?

A What day is that day?

Q August 3, 2005?

A Right.

Q At this point he's thinking there is going to be a trial, right?

A Possibly.

Q And Regennia is going to be there, correct?

A Possibly.

Q If Regennia is going to be there then you'll either have failed in killing her or wasn't going to happen at all, was it?

A That's right.

Q Now, do you remember a letter that Stevie wrote you about Vincent Deleon when Vincent got popped for a murder?

A Yes.

Q And in that letter do you recall that he wrote to Mr. -or

said he was going to write to Vince and tell him how

fucking stupid he is. Is that right? Remember that?

A Yes.

Q And Vincent is one of the ones that you were suppose to go kill, wasn't he?

A Yes.

Q Put him on Southwest Airlines, group discount?

A Yes.

Q At this point he's not worried about Mr. Deleon's testimony, is he? He's talking about writing him a letter?

A No.

Q No, he's not worried about his testimony? Is that correct?

A I can't say what he --I can't tell you what that man is thinking.

Q Well, you did that all day Friday. All day Friday you told us exactly what he was thinking.

A Why do you think I asked?

MR. GREEN: Objection -THE

COURT: Just a moment. Objection sustained.

What exhibit are we talking about?

MR. GROMOWSKY: This one is not marked, Your Honor.

It's just one in the packet.

THE COURT: Is it dated?

MR. GROMOWSKY: Yes, sir. It's November 7, 2005.

1527

THE COURT: Thank you.

BY MR. GROMOWSKY:

Q Also in that letter, same one from November 2005?

A Can we get back to me answering that question, basically?

Q The objection was sustained, sir. I can't go back to it.

November letter also put in there, if you recall, I need to talk to my lawyer so I can see what's up. R, and R is Regennia Rios, right? R told a lot of people she lied on us and they're all going to come around and testify.

Isn't that what he said in the letter to you?

A Can you show me the letter?

Q Certainly. The highlighted portion right there. This wasn't an exhibit for the Court.

A Can I read it?

Q Yeah, you can read it.

So, sir, do you recall him writing you in this letter November 7, 2005 that when she testifies that he's not worried about it because other people are going to come in and refute her testimony?

A That's what he states.

Q So as of November 7, 2005, he still thinks she's coming to

testify?

MR. GREEN: Objection.

THE COURT: Sustained.

BY MR. GROMOWSKY:

Q One of the other things you were concerned about the other day, sir, was the fact when you got to CCA and Gary Eye showed you the discovery in the case, police reports and things like that, that that's the first time that you knew that Stevie Sandstrom was trying to cooperate with the government. Is that correct?

A That's correct.

Q Do you recall getting a letter in April just after he was arrested in this case in which he said that he was going to cooperate?

A Do I recall?

Q Do you recall that letter, sir?

A Can you show me that letter?

So you don't have no date on there?

Q No, sir.

So do you recall him, in a letter in April, writing you and saying that he was going to testify against Mr. Eye?

A Could you read that to these people and verify that he's saying it?

Q Well, sir, that's the question.

A It ain't saying he's going to testify. He's asking me in that letter, sir, for advice, what would I do. Because he's looking up to me. Basically, what would I do? What

would I want to do? What should he do? Do 30 years or go home? That's what he's saying. He's not saying he's going to tell a lie, this, that and the other. He's asking me what should he do, in that letter.

Q Sir, do you recall him writing J -MR.

GREEN: Your Honor, if Mr. Gromowsky wants to

offer the letter, he's going to start reading it.

MR. GROMOWSKY: I'm asking his recollection.

THE COURT: He looked at the letter. I assume his recollection is refreshed. I'll let you ask this question.

MR. GROMOWSKY: Thank you, Your Honor.

BY MR. GROMOWSKY:

Q It says, J, you know, singing ain't my style or in the blood. But this nigger got me fucked up. You can't expect me to do the ride, to ride that bit over him. And like I said, this is him, not me, that got his ass.

I can't read that part.

Mine, in this. So fuck, he wasn't thinking about me when he did it. I'm sure as fuck not going to think about him.

A You're not reading all that letter that's highlighted that you just had me read.

MR. OSGOOD: Could we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. OSGOOD: He already blurted out, one, a Bruton violation. He already blurted out once what I consider to be a Bruton, what Eye said that I can't cross-examine his client on and I think we just had another Bruton violation and we're getting close to it because Mr. Sandstrom wants to correctly read, I mean Mr. Buchanan wants to correctly read the letter, now. It's a mine field that I anticipated way back when and I'm concerned.

THE COURT: Your objection is you're concerned?

MR. OSGOOD: My objection is to the previous Bruton violation which I think, again, highlights a need for severance and a mistrial.

THE COURT: Motion for severance and mistrial is denied.

Anything else?

MR. OSGOOD: Well, I think we need to be concerned about what is going to happen next.

THE COURT: Where are we going here, John?

MR. GROMOWSKY: I'll move from this letter, Your Honor. He's correct. This is a mine field. I'm walking a fine line. If this, we were tried separately I would be putting this in evidence and reading from it. There's a lot of Bruton violations. But it's helpful to my client. If this were a separate trial, I would be putting the whole thing in.

But I mean I'll move on from here. But this is the line we're trying to walk here.

MR. GREEN: And I was letting Mr. Gromowsky go here but it does become self serving here, say on the part of Mr. Gromowsky's client when he's offering his own statements into evidence. Those aren't admissions of a party opponent. It's hearsay. And we, this isn't a letter that --we gave it to them in discovery but we didn't offer this letter. This isn't one of the letters already in evidence.

MR. OSGOOD: I agree with the government on this.

THE COURT: Wow.

MR. OSGOOD: Well, I do, Your Honor.

THE COURT: Let's move on. I think we've probably exhausted this letter.

MR. GROMOWSKY: We would renew our motion to sever at this time as well because, like we just discussed, I'm kind of hamstrung on full and fair cross-examination on behalf of my client.

THE COURT: Okay. Motion to sever is denied.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q Sir, do you recall a letter from Mr. Sandstrom of April 29

of 2005, again, just a couple weeks after he was arrested in this case, in which he told you he just called the

homicide unit and told the cops that questioned him the

1532

deal, that he wanted to go ahead and set things right?

That he reached out to the homicide unit?

A Can you show me a letter? In almost 3 years -

MR. GREEN: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. GREEN: It's Mr. Sandstrom's own statements. It's hearsay. It's self serving. He's trying to get his defense in, basically, through these letters to this witness.

MR. GROMOWSKY: He testified on Friday he was surprised when Mr. Sandstrom was cooperating. I'm allowed to impeach. He received letters from Mr. Sandstrom stating he was cooperating.

MR. OSGOOD: I join the government's objection. He's trying to exculpate himself and put it on Mr. Eye, a most blatant form of self serving hearsay imaginable and highly prejudicial to Mr. Eye. He's piling on and piling on. I object to any further reading of letters he originated with these self serving statements and I join the government in this.

THE COURT: The objection on the basis of hearsay is sustained.

MR. GREEN: Do we have more letters like this you're going to try to use?

1533

MR. GROMOWSKY: I have a couple more but I assume the objection is going to be sustained on that.

THE COURT: If the same objection is made, it will be sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. GROMOWSKY:

Q Just, finally, sir, little different topic but another one

of these letters that was sent to you. Do you recall receiving a letter from Mr. Sandstrom in which he expressed his surprise and upset that Carolyn Galyean gave his letters to her to Regennia Rios?

A Yes.

Q Do you recall receiving that letter?

A Yes, I do.

Q And he did, in fact, tell you he was surprised she got the

letters that he wrote to Carolyn?

MR. GREEN: Objection.

THE COURT: Sustained.

MR. GROMOWSKY: No further questions, Your Honor.

Thank you.

THE COURT: Redirect examination?

MR. GREEN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Buchanan, Mr. Gromowsky asked you questions about

1534

letters that came from your cousin Stevie Sandstrom to you in Cameron, in which he made these statements about you or about wanting you to kill witnesses. Do you recall those questions?

A
Yes.

Q
And you testified about this on Friday but didn't you also write letters back to your cousin telling him not to put these things in letters to you? Isn't this right?

A Yes, sir.
MR. GREEN: And, specifically, if you could display

for the jury what's already in evidence as Plaintiff's Exhibit

154A. And if you could blow up the second portion.

BY MR. GREEN:

Q And can you read that, Mr. Buchanan? I'll read along. You tell me, you also testified about this on Friday. You write, sounds good. Hopefully you'll not get railroaded. Feel me. Need you out there. Just stop talking so freely to these letters. That paper trail is a bitch in court. For real. Be smart, MF. Know you're a fool. Do you remember that?

A

Yes, I do.

Q

And are you telling him there to quit, at this point this letter was dated August 31 of 2005, right?

A

Yes, sir.

Q

And he had already written you letters in which he was

wanting you to kill witnesses when you got out?

A Yes.

Q Displaying for you what is in evidence already as Plaintiff's Exhibit 153A.

If you could display that for Mr. Buchanan.

The third portion, the portion at the bottom.

The third portion.

Do you see that, Mr. Buchanan?

A Yes.

Q And this is from a letter dated September 12th of 2005.

You write, Do what's right. Shit will always be good.

You know, I'm down. You stay off the pen. And you underline pen twice. Correct?

A Yes.

Q I don't need no more scribes about it. Feel me, bro?

A Yes, I do.

Q I told you before the paper trail is no joke. I hope they read this because Regennia Rios killed that McCay guy and you want to believe that bitch, stupid fucks?

A Yes.

Q Most of that paragraph you're telling your cousin to quit putting what he wants you to do in writing to you, correct?

A Yes, sir.

Q Mr. Gromowsky asked you about Mr. Sandstrom's habit in the

1536

letter putting smiley faces occasionally. Do you recall that?

A Yes.

Q It's true he did do that, correct?

A Yes.

Q You also would put smiley faces in some of the letters we

see here. Is that true?

A Yes, sir.

Q But I want to show you what's already in evidence as

Plaintiff's Exhibit 136C which was a September 24, 2005

letter.

If you could display 136C.

And the top portion. And blow that up.

It says, nobody can find R at all. She's in

hiding. Bitch. You can't hide forever. Bro, she's going

to get me, exclamation point. Do you see that?

A Yes, I do.

Q Is there a smiley face after that sentence?

A No.

MR. GREEN: Then if you would display what's in evidence as 135C. And the top portion.

Do you see that, Mr. Buchanan?

A Yes, I do.

Q And that's a letter dated October 7, 2005?

A Yes, it is.

1537

Q And the top portion says, I got a paid lawyer. He told me straight up what is going to fuck me, R. Other than that the case is weak, exclamation. If you can handle that problem, I'm A-OK. Feel me? You need to come see me asap. Do you see that?

A Yes.

Q Is there a smiley face after that?

A No, there isn't.

MR. GREEN: In the middle portion of the same 135C, the middle portion.

BY MR. GREEN:

Q It says, you know, R's mom runs the trailer park where I

used to live. Either or will open eyes. Feel me. A demonstration never hurt, exclamation point. Just let's people know it's real. Do you see that?

A Yes.

Q Do you see a smiley face after that?

A No, sir, I do not.

Q Now, you were asked a question, you explained why you

didn't --the letters that your cousin wrote to you, why didn't, you didn't just flush them down the toilet. Do you recall that?

A Yes.

Q And your answer was, again, explain why you didn't just

flush them down the toilet?

A If the toilets get flooded, you know what I'm saying, they check the trap and anything clogged up, up in there, shows we've done it. We get 6 more months in the hole. That's another violation. They don't play in those institutions. Everything, pretty much 30, 60, 90 on up.

Q And you were then asked why you didn't just throw these in the trash can, correct?

A Yes.

Q This is based on your personal knowledge of being in this prison, the trash can, something thrown in the trash can is emptied by other people, isn't it?

A Yes, it is.

Q Something thrown in the trash can, can be found by somebody else, correct?

A It could be, yes.

Q And it is true that you sent yourself a "to do list" when you got out of prison?

A Yes, I did.

Q It is true in this "to do list" which was something put in writing, that you didn't put that you had planned to kill witnesses in writing, correct?

A No.

Q You were asked by Mr. Osgood some questions and I want to go back to your guilty plea for threatening a federal

witness, stemmed from a letter you wrote to your cousin in

1539

which you made threats against Vincent Deleon, correct?

A That's correct, sir.

MR. GREEN: And if you could show the witness what is already in evidence as Plaintiff's Exhibit 152A. And if you could blow that up, please?

BY MR. GREEN:

Q Now in this passage from the first page, you're saying

that you're going to do your best, you're going to get put in the same cell block with Vincent and knock his block off, real decent, fuck that rat. You wrote that, correct?

A Yes, I did.

Q This is the letter you pled guilty to, correct?

A Yes, it is.

Q And it's dated November 10, 2005, correct?

A Yes.

Q And in this letter you tell your cousin that it was your

plan to get put in the same cell with Vincent Deleon so

you could beat him up, right?

A Yes, that's correct.

Q When you were sent to CCA, Mr. Sandstrom -A Buchanan.

Q I'm sorry. I just did that. Mr. Buchanan. When you were put in CCA, Mr. Buchanan, you were put in one particular

pod, correct?

A Yes.

1540

Q Isn't it correct the reason you got moved to the other pod is because you got into a dispute with a female guard, correct?

A Yes, it is.

Q So you were moved to the second pod against your will, correct?

A Yes.

Q And as far as you know, the FBI or the United States Attorney's Office had nothing to do with you getting moved to the second pot, correct?

A That's correct, sir.

Q And you then found out that Gary Eye was in the second pod because one day another inmate who was a cellmate of Mr. Eye's discovered you were there and yelled out that you were a rat, correct?

A That's correct.

Q Was that person Ed Branch?

A Yes, it was.

Q And you were very concerned when you heard Mr. Branch yell out that you were a rat?

MR. OSGOOD: Objection to the leading nature of

these.

THE COURT: Sustained.

BY MR. GREEN:

Q Were you concerned when you heard Mr. Branch call out that

1541

you were a rat?

A Yes, sir.

Q And did you want to take steps to assure people in this

pod that you were now in, that you were not a rat?

A Yes, sir.

Q And was one of those people you wanted to -

MR. OSGOOD: Objection, leading.

THE COURT: Sustained.

BY MR. GREEN:

Q Mr. Eye, did Mr. Eye send you copies of his, some of his

criminal discovery?

A Yes, sir.

Q Was that his choice?

A Yes.

Q Did you in any way make Mr. Eye send you that paper work?

A No, I didn't. Can I -Q

Yes. Do you want to explain?

MR. OSGOOD: Objection. Non responsive. He wants to explain.

THE COURT: Sustained.

BY MR. GREEN:

Q Let me ask you this. Did you have a conversation with

Mr. Eye about him sending his paperwork to you?
A Yes.

MR. OSGOOD: Objection. Beyond the scope of

1542

cross-examination. I didn't ask anything about the conversation.

MR. GREEN: Your Honor, may we approach?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: He covered the conversations on direct. I asked not a single question about what was said. I merely attacked his credibility.

MR. GREEN: No. Your cross-examination was pointed to the fact that you kept saying he ended up with Gary Eye's paperwork, like there was some kind of skullduggery, him ending up with the paperwork.

MR. OSGOOD: That's not my objection. And I don't want him saying once again what I said. I did not cross-examine at all on what he said, not a single question.

MR. GREEN: The reason even I'm leading through, we're getting to the topic where we don't want him blurting out something to Mr. Eye being possibly charged with other murders. That's the reason I'm leading him in this area.

MR. OSGOOD: Where are you going?

MR. GREEN: He's going to testify, I anticipate that he had Gary Eye send him this stuff so Gary Eye would, then they started exchanging letters and conversations. So that Gary Eye did not think that Mr. Buchanan was a snitch, was working for the government, at which time, which he was not.

He was not working for the government at this time. And this goes to counter Mr. Osgood's cross-examination that Mr. Buchanan was working for the government at this time and he was some kind of, basically, plot or plan to get Mr. Eye to send these things to him when it was just these two inmates wanting to show each other that they weren't snitches.

MR. OSGOOD: I made it very clear he was not a snitch. He was not working for the government at the time because I brought up the date of the proffer letter and that he was not a cooperating witness when he got Mr. Eye's paperwork. He got Mr. Eye's paperwork and he read it. That was my point.

MR. GREEN: The implication of your cross-examination was that he was a plant or that he was working for the government at the time that this paperwork came to him.

MR. OSGOOD: I never suggested that at all, Your Honor.

THE COURT: Let's avoid --why don't we avoid the conversations with Eye because I think that's a mine field.

And just ask him if he was working for the government.

MR. GREEN: All right.

THE COURT: When the conversations took place.

MR. GREEN: Or when the paperwork from --Gary Eye

sent him his paperwork?

THE COURT: Okay.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

1544

BY MR. GREEN:

Q

Mr. Buchanan, I want you to listen closely to my question and just answer my question. When Gary Eye sent you his paperwork related to his case, were you cooperating with the government at that time?

A

No, sir.

Q

When --I'm not going to go back into the substance today but you testified on Friday to some conversations you had with Mr. Eye. Do you remember those?

A

Yes.

Q

When you had those conversations with Mr. Eye, and, again, just listen to my question and answer my question. When you had those conversations with Mr. Eye, were you working for the government at that time?

A

No.

Q

And you also had sent Mr. Eye your paperwork, is that correct?

A That's correct.

MR. GREEN: May I have one moment, Your Honor?

BY MR. GREEN:

Q

Mr. Buchanan, and I'm not, I'll have this just displayed, 152B. What is in evidence as 152B? Do you see that, Mr. Buchanan?

A

Yes, I do.

Q

You had written on there, on my stomach it says, no love,

1545

LUV, for, the number 4, rats. Do you see that?

A Yes, I do.

Q I'm not wanting you to show the jury but, in fact, is that

tattoo on your stomach?

A Yes, it is.

MR. GREEN: Your Honor, that's all I have.

THE COURT: Recross?

RE CROSS-EXAMINATION

BY MR. OSGOOD:

Q You said, I believe, sir, you spent all of your time in

the hole at CCA? I mean at Crossroads?

A Yes, I did.

Q And that's 23 hours in and one hour to go out into a small

exercise area that's concrete where you can just look up

and see the sky?

A Yes.

Q You can't even look out a window and see the sky, can you?

A Say that again?

Q You can't even look out the window?

A You can go out in the dog cage. They call them the dog cage.

Q
You get an hour a day or hour a week?

A
Hour a day, if you're on good behavior. That's while you're in segregation.

Q

And now you're at CCA, aren't you?

A Yes.

Q You get to play basketball outside if you want to, don't you?

A Yes.

Q You get to run and jog if you want to, don't you?

A Yes.

Q You get to go to the library if you want to, don't you?

A Yes.

Q There's T.V., isn't there?

A Yes.

Q There are movies, aren't there?

A Yes.

Q There are all kinds of privileges that you didn't have before you became a cooperating witness, aren't there? Yes or no?

A Say that again?

Q There's all kind of privileges you're enjoying at CCA that you did not enjoy at Crossroads, aren't there?

A You're going to have to say that again. You're trying to boost me. I'm not going to let it happen.

Q I would not want to do that. I'll slow down. There are all kinds of privileges that you have available at CCA now, today, that you did not have at Crossroads, aren't there?

A Due to my behavior at Crossroads, yes.

1547

Q Yeah. Your behavior as a witness. Thank you.

A That didn't make no sense.

RECROSS-EXAMINATION

BY MR. GROMOWSKY:

Q Sir, bottom line on this paper trail issue, fact of the matter is, could have gotten rid of those letters if you wanted to, right?

A If I wanted to keep getting in trouble, yes.

Q So you could have put them in the trash can, correct?

Even though somebody could have read them, could have put them in the trash can, right?

A Possibly, yes.

Q You could have even torn them up into little tiny pieces and put them in the trash can if you were so concerned about people reading them, right?

A Yes.

Q Mr. Green asked you whether or not you put on your "to do list" your willingness to hurt someone. Do you remember him asking you that a moment ago?

A Yes, sir.

Q You didn't put that on your "to do list"?

A No.

Q But by the time you had sent the "to do list" to yourself, you'd already written this 11-10-2005 letter in 152A, in

which you specifically put in writing that you were going

to get yourself thrown in jail so you could hurt Vincent, correct?

A Yes.

Q And the November 10, 2005 letter came after you received the November 7, 2005 letter from Mr. Sandstrom, didn't it?

A Yes.

Q That's the letter where he said Vince has got himself in trouble and I'm going to write him a letter to jail, correct?

A Yes.

Q In response to that, that he's going to reach out to Vincent. You say, fuck little Vincent and go put yourself in jail with him, correct?

A Yes.

Q Now, this, no love 4 rats tattoo you have on your belly?

A Yes.

Q You got that in prison, didn't you?

A Yes.

Q You didn't have that when you were running around with Stevie out on the street before you got locked up, right?

A No.

MR. GROMOWSKY: No further questions. Thank you.

THE COURT: Mr. Buchanan, you may step down.

MR. GREEN: May this witness be excused?

THE COURT: Without objection, Mr. Buchanan is

1549

excused.

(Witness excused.)

THE COURT: Government may call its next witness.

MR. KETCHMARK: Call Detective Blehm to the stand,

Your Honor.

ROBERT BLEHM, GOVERNMENT'S WITNESS, SWORN
DIRECT EXAMINATION
BY MR. KETCHMARK:

Q Sir, would you please introduce yourself to the ladies and gentlemen of the jury and spell your name for the court reporter?

A My name is Robert Blehm. I'm a detective with the Kansas City, Missouri Police Department. Spelling of my last name, B-L-E-H-M.

Q And, Detective Blehm, can you move the mike just a little bit so we can pick you up better?

How long have you been employed with the Kansas City, Missouri Police Department?

A I started my employment with Kansas City in September of 1994.

Q And what is your current assignment?

A I'm a homicide detective in 1010 squad.

Q How long have you been employed in that capacity?

A Approximately 8 years.

Q So would it be correct to state that back in March of 2005

you had been working as a homicide detective?

A Yes.

Q In fact, are you familiar with a homicide that occurred on March 9th of 2005 at 9th and Brighton, the victim being William McCay?

A Yes.

Q Were you one of the detectives that was assigned to that particular case?

A Yes.

Q And we had a little bit of explanation from Detective Williams, but can you explain to the ladies and gentlemen of jury, generally, how the homicide unit goes about investigating a particular death?

A Sure. The homicide unit is arranged into three different squads then we rotate on a 28-day rotation. The first 28-day rotation, you're on days and you, generally, handle incoming dead bodies that could be homicides. But there has to be a known suspect.

Second rotation is PM shift. Basically, same thing. Hours are 3 to 11.

The third shift is what we call murder squad.

And it's a 28-day rotation where you catch all the incoming homicides where there is not a known suspect.

Q And is there a particular detective that is assigned as

the lead detective on a particular investigation?

1551

A

Not particularly. The sergeant who's in charge makes that determination upon arrival at the scene.

Q

In this particular case involving the death of William McCay, do you know was there a particular detective that would have taken the point or lead on that particular investigation?

A

Yes. That was myself.

Q

At some point in time, Detective Blehm, is there an interview that is done with the gentleman by the name of Steven Sandstrom?

A Yes.

Q And would that first interview have occurred on March 18th of 2005?

A Yes.

MR. OSGOOD: Your Honor, could we approach a minute?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: This is the point where we're going to read the objection under Bruton. I do not believe that the pronouns they have put in here sufficiently point to the possibility of it being anyone other than Mr. Eye. I believe it's a Bruton violation and it would be grounds for a mistrial if we read this statement. The Court has previously looked at the statement.

THE COURT: Yes, I have. And your motion is denied and the anticipated motion from Mr. Eye is likewise denied.

MR. OSGOOD: We have no problem with the procedure of reading but we feel the substance is prejudicial.

MR. ROGERS: My understanding, this statement has already been -

MR. KETCHMARK: But for continuity he was present when the first interview was done. I'm going to have him explain the investigation continued and there was a need to re-interview Mr. Sandstrom and did. That occurred. And we'll lay the foundation on the second statement, April 11th.

MR. OSGOOD: It's the second statement.

MR. ROGERS: I wanted to make sure so I didn't have to run back up here.

THE COURT: We'll show your objection, Charlie.

MR. ROGERS: It's his objection, Bruton objection.

MR. KETCHMARK: One other thing, since we're here. I informed Mr. Osgood that it is my intention with the detective to get into just this aspect. I also indicated I have no opposition if they wanted to expand the cross outside the scope, if there were other --to avoid a need to recall the detective. It's their call.

MR. OSGOOD: Simply because I'm afraid it will pollute this issue right now. I'll evaluate later if I want to recall him for specific impeachment on other witnesses.

1553

MR. KETCHMARK: I'm providing that for Mr. Rogers' benefit because -MR.

ROGERS: I'll do it now, not recall out of laziness.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q

And, Detective Blehm, my question was that first interview with Mr. Sandstrom occurred on March 18 of 2005. Does that sound correct?

A

Yes.

Q

And would you have participated with Detective Williams in conducting that interview?

A

Yes.

Q

Now, following that interview on March 18 of 2005, would it be accurate to say that the investigation wasn't concluded at that point?

A

That's right.

Q

And did you and the other detectives on your particular squad continue to do investigation, including interviewing additional witnesses and running down additional leads?

A

We did.

Q

And as a result of that, detective, did you come to a conclusion that there was a need to sit down and interview Mr. Sandstrom again?

A

We did.

1554

Q And, again, without getting into specifics of what happened, would it be accurate to characterize that the information suggested Mr. Sandstrom wasn't 100 percent truthful during that first interview on March 18th?

A That's correct.

Q As a result of that decision, was a pickup order issued for Mr. Sandstrom on March 31 of 2005?

A That's correct.

Q And just so the jury understands, is that, basically, a request with arrest authority attached to it, asking if somebody be located that they be brought in for questioning?

A Yes, sir, it is.

MR. KETCHMARK: Ms. Marko, if you could, Government's Exhibit 63.

BY MR. KETCHMARK:

Q

When you, at some point in time is Mr. Sandstrom located pursuant to that pickup order?

A

He was.

Q

And did you and other detectives as well as Special Agent Gothard take steps to sit down and interview Mr. Sandstrom?

A

Yes, sir, we did.

Q

And what day would that have been on, Detective Blehm?

A

That was on 4-11 of 2005.

1555

Q April 11, 2005?

A Yes, sir.

Q Now, prior to meeting with and interviewing Mr. Sandstrom on April 11 of 2005, did you take steps to advise him of his rights pursuant to --giving him the Miranda warning, in essence?

A Yes, sir, we did.

Q I direct your attention to the screen in front of you. And do you see what is displayed there as Government's Exhibit No. 63?

A Yes, sir, I do.

Q And do you recognize what is contained in Government's Exhibit 63?

A Yes, sir, I do.

Q And can, let me ask you this. Is Government's Exhibit 63 a photocopy of the front and back of the advisement of rights form you would have used with Steven Sandstrom on April 11 of 2005?

A Yes, sir, it is.

MR. KETCHMARK: Your Honor, at this time I move the

admission of Government's Exhibit 63 and request leave to publish it to the jury.

THE COURT: Without objection, Government's Exhibit 63 is admitted and may be published.

MR. KETCHMARK: Ms. Marko, if you could please pull

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up on the left side, the portion of where it says Kansas City,

Missouri Police Department Miranda Waiver, that box.

BY MR. KETCHMARK:

Q

And, Detective Blehm, do you see the highlighted portion there where it indicates Kansas City, Missouri Police Department Miranda Waiver?

A

Yes, sir, I do.

Q

And in that, does it read as follows: Before being asked any questions I have been told of my rights to remain silent, that anything I say can and will be used against me in court, that I have the right to talk with a lawyer and to have a lawyer with me during questioning. I have been told if I cannot afford a lawyer, one will be appointed to me at no cost to me before I am questioned. I have also been told I can stop talking at any time. And in the line below that says, I understand all these rights and I am willing to talk to you. Did I read that correctly?

A

Yes, sir.

Q

And there also appears before the beginning of the paragraph and end of the paragraph a little X mark. Do you see what I'm referring to?

A

Yes, sir.

Q

Can you tell the ladies and gentlemen of the jury what

that X mark at the beginning and end of the paragraphs

signifies?

A Certainly. Those are X marks I place on the form. As I'm explaining it to the person I'm going to talk to, I place an X right before the B in before and the X after the time, X where I say, I understand all these rights. I'm willing to talk to you, where the person is instructed to sign. I instruct them to read those rights to me out loud between the Xs and then read the line that says, I understand all the rights. I'm willing to talk to you.

Sign by the X.

Q Did you, in fact, do that with Mr. Sandstrom in this case? Have him read that paragraph out loud to you in your presence.

A Yes, sir, I did.

Q Detective Blehm, when you begin speaking to Mr. Sandstrom, before you get into the substance of what you want to talk about with him, is this one of the first things that you would do is go over this advisement of rights?

A Absolutely.

Q And, obviously, if the person or Mr. Sandstrom had indicated that he didn't want to speak with you, would you have continued to interview?

A Absolutely not.

Q Additionally, detective, do you take steps to try to insure that the perpetrator that you're dealing with, in

this case Mr. Sandstrom, was not under the influence of any drugs or alcohol to the point that he didn't understand what was going on?

A Yes, sir, we do.

Q And have you had occasion, over your course in your career with the Kansas City Police Department, to come into contact with people who are so out of it from drugs or alcohol that you're not in a position to interview them?

A Numerous times.

Q Did Mr. Sandstrom exhibit any signs or symptoms to suggest to you that he was in that condition when you checked him out and spoke with him on April 11th?

A No, sir, he was not.

Q Were his responses and his words slurred in any way?

A Not that I recall.

Q Was there anything about his speech or his affect that led you to believe that he was under the influence of drugs or alcohol when you were speaking to him?

A No, sir.

Q And similarly, detective, had you noted either of those, that he was under the influence of drugs or alcohol to the point he was impaired, would you have continued to interview him?

A Absolutely not.

MR. KETCHMARK: Ms. Marko, if you could go back to

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the portion containing the signature blocks below what was referenced, and highlight that.

BY MR. KETCHMARK:

Q As I understand, you talked briefly, detective, about the X. Is that the X you placed next to the signature of the person being questioned by?

A Yes, it is.

Q Whose signature is reflected in that particular box?

A Steven Sandstrom.

Q Would that have been signed in your presence?

A Yes, sir, it would.

Q Then the date and time the warning was given appears to be April 11, '05 at 1642. Is that correct?

A 1632.

Q 1632. I'm sorry. Is that correct?

A Yes, sir.

Q Then it also indicates that the date and time the waiver was signed was also 4-11-05 at 1632.

A Yes, sir. That's correct.

Q And then the signature or the notations of the officers below it notes Blehm, which I'm assuming is you?

A Yes.

Q Is then Gothard, is that Special Agent Arch Gothard from the FBI?

A Yes, sir, it is.

Q Again, going over to the right side of that page.

Ms. Marko, if you could blow up the top portion to see what is contained there. That will be sufficient.

Again, on the top portion of Government's Exhibit 63 it indicates the person being questioned is, in fact, Steven Sandstrom, correct?

A Yes, sir.

Q There is a line on requesting attorney and no is checked. Is that accurate?

A Yes, sir.

Q Had Mr. Sandstrom at any point requested to speak to counsel, would that box have been checked yes and the time noted?

A Yes.

Q And so, am I correct in assuming at no point in time during your interview with Mr. Sandstrom did he request counsel?

A That's correct.

Q It also indicates the date and time he was taken into custody as being April 11, '05, at looks like 10:00, is that correct?

A Yes, sir. 1000 hour.

Q 10:00 a.m. You also appear to note the educational level. Is that something that would be reported by Mr. Sandstrom

to you?

A Yes, sir.

Q And that, additionally, it indicates the type of offense of being questioned is the murder and it references the McCay murder of March 9th of '05, is that correct?

A Yes, sir.

Q And then the other dates and times reflected when the questioning would have begun and the date and time the questioning ended, correct?

A Yes, sir.

Q And, obviously, Detective Blehm, Mr. Sandstrom does then submit to being re-interviewed on April 11 of 2005, correct?

A Yes, sir.

Q And was there a report of that interview that would have been generated by yourself to memorialize the information contained therein?

A Yes, sir.

Q Do you have a copy of that report with you?

A Yes, sir, I do.

MR. KETCHMARK: And if I could have a moment, Your

Honor, to verify-

What I would propose at this time, if there is no objection to, is to allow Detective Blehm to summarize, read in the summary that was generated as it relates to the interview of Mr. Sandstrom on April 11, 2005.

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MR. ROGERS: May we approach, Your Honor? I have no objection to this procedure but something else.
(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. ROGERS: For the record, Your Honor, I am objecting, based upon the grounds set forth in the motion to suppress which has already been overruled. I'd like to have a continuing objection throughout the testimony of this witness concerning this statement to that.

THE COURT: Show your objection as made and overruled and continuing throughout the statement.

MR. ROGERS: Thank you.

MR. OSGOOD: Again, Your Honor, I don't think the pronouns in this are neutral. For example, at the bottom of the page says, other person and Rios got out of the Intrepid. To be neutral, it should say everyone got out of the Intrepid. On the second page it says the person followed the Jeep while he drove the Intrepid and the other person lit the Intrepid on fire. I think it should say someone else lit the Intrepid on fire. These neutral pronouns are not neutral. They point directly to Mr. Eye.

MR. KETCHMARK: And, Your Honor, this is the subject of the suppression motion that was filed way back when with Judge Larsen's report and recommendation. I think it's already

been addressed by the Court. I think it's sufficient. I don't

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think we need to redact Ms. Rios' statement. It's not a

confrontation issue as relates to her.

THE COURT: Objection overruled. Proceed.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q

Detective Blehm, if you could, can you read the summary that was generated on April --following the April 11, '05 interview of Mr. Sandstrom?

A On 4-11-2005, at approximately 1640 hours, Special Agent Arch Gothard, FBI, and I contacted Steven Sandstrom on the second floor of police headquarters interview room No. 1. Sandstrom had been arrested earlier in a pickup issued by the homicide unit.

Sandstrom was then advised of his Miranda Rights at which time he signed a waiver of his rights and agreed to speak with us in reference to the offense. For additional information see Miranda Waiver.

I asked Sandstrom to direct his attention back to the morning of March 9, 2005. And then asked him to describe his whereabouts.

Sandstrom stated in the early morning hours around sunrise, he was at his girlfriend's, Kristina Chirino, who lives in the area of Van Brunt between Smart and Anderson. He advised someone called the residence and

requested that Sandstrom meet him in the area of 11th and

Ewing to help him get rid of a car.

Sandstrom stated he then got into a stolen black or purple Jeep and drove over to the area of 11th and Ewing where he met the caller. He advised upon his arrival he followed the person to the area of 23rd and Manchester at which time he helped the other person start a fire in a red Dodge Intrepid.

He advised after they burned the car then they then drove to Christina Stanley's house located on 16th Terrace.

He advised after dropping the person off, he drove back to Chirino's house where he stayed the rest of the afternoon.

I then asked Sandstrom if he had spoken with the other person since that person had been charged with murder at which time he advised he spoke to him once on the phone. He stated the person told him he was not sure what was going on. He could not understand why he got charged with murder. He stated the other person asked him if he had told the police anything. Sandstrom advised he did not have a chance to answer because the phone cut off.

Sandstrom was then confronted with several inconsistencies with his recollection of the events that occurred on the morning of March 9th. At that time

Sandstrom admitted to being in the car, the red Dodge

Intrepid, with the other person at the time of the murder. Sandstrom stated that he, Regennia Rios, and the other person, were all driving around in the red Intrepid in the early morning hours of March 9th. He stated some time in the morning he was driving in the area of 9th and Brighton. He stated the other person was the front passenger of the vehicle and Regennia Rios was in the back seat. He stated periodically during the morning the other person had been playing, quote, Wild West, unquote, with Sandstrom's chrome plated revolver. He stated the gun the person was playing with belonged to him, Sandstrom. He had had the gun for approximately four months. He stated the gun was a .22 caliber revolver.

Sandstrom stated that in the area of 9th and Brighton, I'm sorry, Sandstrom stated that in the area of 9th and Brighton. He stated at that point the other person got out of the vehicle and moments after that Sandstrom heard several shots. He stated he did not see where the shots were coming from or who was shot. He advised moments after that, the person who got out of the car returned to the vehicle and stated, get out of here. We need to get rid of the car. Sandstrom stated the person later said he had shot someone.

Sandstrom advised they then drove to the area of

11th and Ewing to retrieve a stolen, dark color Jeep

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Cherokee which Sandstrom had parked at that location earlier the day before. Sandstrom stated upon arriving at 11th and Ewing the other person and Rios got out of the red Intrepid and into the Jeep. He advised the person followed him in the Jeep while he drove the Intrepid to the area of 23rd and Manchester where both he and the other person lit the Intrepid on fire. He advised they then all got into the Jeep and drove to Christina Stanley's house on 16th Terrace.

Sandstrom was asked if he recalled anyone in the vehicle playing a game called, quote, nigger, nigger, nigger, unquote, prior to the shooting at which time he stated no.

Sandstrom was asked why the person shot the victim and he stated he was not sure.

Sandstrom was asked if the other person had issues with black people and he advised no.

Sandstrom was asked what happened to the weapon that was used in the homicide and he advised the last time he saw it was when he had left the gun on the air duct in the basement of Kristina Chirino's residence. He advised when he returned after speaking with the detective, Chirino or someone advised him it had been taken care of and not to worry about it. When confronted about this,

Sandstrom advised that he called his sister, Stephanie

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Sandstrom, after his first interview and told her to go to Chirino's house and get rid of what he left there and get rid of it. She later told him she had taken care of it.

I asked Sandstrom what that meant. And he

advised that his sister had disposed of the weapon, most

likely she threw it in the river.

Sandstrom was asked where she would have

logically thrown it in the river. He stated she would

throw it off the east side of the Chouteau Bridge from the

northbound lane. Sandstrom stated that was the only

logical place she could have disposed of it. I asked

Sandstrom if he knew for sure that's where it was and he

stated no.

It should be noted that Sandstrom is currently

intimately involved with Chirino. It should also be noted that Sandstrom was asked to provide a video at the same time in reference to this offense at which time he refused. At approximately 1910 hours which is 7:10 p.m., the interview with Sandstrom was concluded and he was returned to the detention unit.

BY MR. KETCHMARK:

Q

In addition, Detective Blehm, to interviewing Steven Sandstrom, did you also have an occasion to obtain a court order from a Jackson County judge relating to obtaining a

buccal swab from Gary Eye?

A Yes, sir.

Q And can you explain for the ladies and gentlemen of the jury what is a buccal swab or buckle swab?

A Basically, a buccal swab is, we take it out of a person's mouth. I guess takes their buccal cells off the inside of the cheek. We recover those on, basically, two long

Q-Tips similar to what a doctor sticks in your mouth. We take two of them. Rub them on the inside of the cheek. Place them into a small plastic vial. Seal it and forward it on to regional crime lab for analysis.

Q If I could direct your attention to the monitor -- Ms. Marko, if you could display for the witness and the parties, Government's Exhibit 76.

BY MR. KETCHMARK:

Q Do you see what's been marked as Government's Exhibit 76

on the monitor in front of you, Detective Blehm?

A Yes, sir, I do.

Q Does this appear to be a copy of the court order that you

would have obtained?

A Yes, sir, it is.

MR. KETCHMARK: Your Honor, at this time I move the admission of Government's Exhibit 76 and ask it be displayed to the jury.

MR. OSGOOD: No objection.

THE COURT: 76 is admitted without objection. It may

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be displayed.

MR. KETCHMARK: And, again, if you could blow up the portion, order for defendant's oral swab, Ms. Marko, down to the Judge's signature.

BY MR. KETCHMARK:

Q Does this indicate, am I reading correctly on Government's Exhibit 76, it says, Order for Defendant's Oral Swab. The Court having been presented with a motion to obtain oral swab sample of the Defendant Gary Eye in the above entitled cause and it appearing to the Court that such samples are necessary in the prosecution of said cause, it is hereby ordered and directed by the Court that the Defendant Gary Eye be available for the state to obtain the above mentioned samples on or before the 24th day of June, 2005.

It is further ordered that such samples shall be taken and preserved by the crime scene investigation unit of the Kansas City, Missouri Police Department.

And appears to have a judge's signature with the date of May 3 of 2005?

A Yes, sir.

Q Upon obtaining that order, Detective Blehm, can you explain to the ladies and gentlemen of the jury what you would have done?

A Sure. After receiving the order on 5-3, I was also told

that the defense attorney wanted to be present when that was, we executed that order. So on 5-11 I met a State Public Defender at the Jackson County Jail on Cherry and we responded inside to execute the order.

Q And by executing the order, what do you mean?

A He was taken to a --he was brought down to a cell. We responded in that cell. At that time I advised him I had a court order for a buccal swab and what that was going to entail. I needed him to open his mouth and sit there and he complied. At which time I took the two Q-Tips, stuck them in his mouth, rubbed it on his cheeks and put it in a vial.

Q And by him, are you referring to Gary Eye?

A Yes, I am.

Q Had you, prior to this occasion, taken buccal swabs from other individuals?

A Numerous time.

Q After you would have obtained the buccal swab samples from Mr. Eye what would you have done with them?

A They're placed into a small plastic tube with some sort of tablets that keep them, the humidity right. You then screw the cap on, place some markings on the outside of the tube, place them into an envelope. Either hand carry it or forward it to the lab for analysis.

Q In this case would the motion of the court have been -

were you aware that there was some genetic material that had been recovered from under Mr. McCay's fingernails at the time of his autopsy?

A
Yes.

Q
Was that the motivating factor behind going to the judge in Jackson County and obtaining this court order to get Mr. Eye to submit a sample of his DNA?

A That's correct.
MR. KETCHMARK: One moment, Your Honor.
That's all I have at this time, Your Honor.
THE COURT: Cross-examination?

CROSS-EXAMINATION
BY MR. OSGOOD:

Q How you doing, detective?

A Fine, sir.

Q I don't believe we have ever met. I'm John Osgood. I represent Mr. Eye.

A Yes, sir.

Q Now, you mentioned he had counsel over in state court.

That was the Public Defender?

A Yes, sir.

Q Then he was brought over here and Mr. Sandage and I were appointed to represent him over here. Were you aware of that?

A

No, sir.

Q When did you find out it came over here?

A I don't recall the exact date.

Q Now, let me ask you this. At the time that you took this swab, he had been arrested and charged with murder in state court, is that right?

A Yes, sir.

Q Was represented by a State Public Defender?

A Yes, sir.

Q And there was no resistance to providing this DNA swab by him, was there?

A Not that I recall.

Q Didn't have to fight him or hold him down or put him in restraints or anything like that?

A No, sir.

Q And how soon afterward did you get results back?

A I don't recall getting the results.

Q Okay. Were you told later that the results were positive for his DNA under the fingernails of the deceased?

A I believe I saw a report that said that, yes.

Q Did you ultimately testify before the grand jury in this case?

A Yes.

Q And based on your years of investigation did you conclude anything by the fact that his DNA was under the

fingernails of the deceased?

A It's just a piece of evidence.

Q Wouldn't it indicate to you there was an altercation sufficient for Mr. McCay to claw him or fight with him?

A It indicates that he has Mr. McCay's DNA under his fingernails.

Q In past experience, how do you get someone's DNA under your fingernails?

A Well, altercation is one way that can happen.

Q It would require some kind of physical contact with the person, wouldn't it.

A Yes, sir.

Q With their skin?

A Yes, sir.

Q So putting your arm around them like this and nothing further would not very well account for DNA under the fingernails, would it?

A I'm not a DNA expert, sir.

Q All right. Well, would you agree with me though based on your prior experience that what you're looking at are particles of skin or surface areas off of someone's skin to leave these particles under the fingernails, isn't it?

A Yes. That's one way it can happen.

Q Have you been present when the lab has collected these?

A Yes.

Q There isn't any question this is Mr. Eye's DNA, is there,

as far as I know?

A As far as I know, yes.

Q Indicating some kind of physical altercation?

A Indicating he has his DNA under his fingernails.

Q Now, do you remember a Mr. McDaniels that you interviewed, McDaniel, who was an eyewitness to this, to the crime?

A Not specifically.

Q If you saw your report, would it refresh your memory?

A Yes.

Q Would you read this, please, for a few moments, detective?

And kind of, I know it's been 3 years or 5 years, whatever it's been, but maybe that will help you refresh your memory.

A I remember this now.

Q You do?

A Yes, sir.

Q What is it Mr. McDaniel told you?

A Basically, he had called into the police department and got transferred to my phone because he said he saw, had seen something on the news and he wanted to call and let the police know what he had seen.

He said that shortly after 6 in the morning he was on his way to work. He was driving through the intersection there where this occurred and he saw a black

male struggling with someone. He then stated that he

couldn't --he didn't get an ID or he couldn't recognize people as fighting but he wanted to make sure we knew. Then continued on to work.

Q Did he say he heard something?

A I don't recall that.

Q Look at your statement, again, please.

A Yeah. He said he recalled hearing what he thought was possibly a single gunshot.

Q After he passed through the intersection and after he had seen the fight?

A Yes, sir.

Q Meaning the shot came after the fight?

A He recalled after going through the intersection, seeing him struggle, after he was clear of the intersection he remembers hearing what he thought was a single gunshot.

Q How long have you been a detective?

A I was assigned to the investigation bureau in 1999 so roughly 9 years.

Q Were you a patrolman before that?

A Yes.

Q So how long have you been a policeman?

A Since September of 1994.

Q Would you agree with me that one of the things you learn in practice is accuracy in reports?

A Yes, sir.

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Q Do you do your very best, particularly in a homicide case, to be absolutely accurate, don't you, sir?

A Best I can.

Q Are you comfortable this is what this man told you what he saw and heard?

A Yes.

Q Thank you, detective.

THE COURT: We're going to take a break now.

All right. Let's go ahead and take our morning

break. 15 minutes. Don't discuss the case. Keep an open mind. We'll be back at 10:45. We're in recess.

(Witness temporarily excused.)

(Recess)

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Rogers, you may cross-examine.

MR. ROGERS: Thank you, Your Honor.

ROBERT BLEHM, RESUMED

CROSS-EXAMINATION

BY MR. ROGERS:

Q Detective Blehm, you were, I believe you told us, one of

the original detectives assigned to this case, is that correct?

A Yes, sir.

Q You were the lead detective assigned on March 9 of 2005?

A Yes, sir.

Q And when you went there to the vicinity of 9th and Brighton on March 9th, what time did you get there?

A About 7:55 in the morning.

Q Okay. Almost 8:00?

A Yes, sir.

Q And did you make a note of the outside temperature at that time?

A I did.

Q And it was 27 degrees Fahrenheit?

A Yes, sir.

Q What time was this incident first reported to the police?

A I don't have -Q

Shortly after 6 in the morning? Is that a fair statement?

A Yes, sir.

Q And so it would have been colder then than it was 2 hours later when you got there?

A Hard to say.

Q Okay. Now, did you also take part in the interview of Regennia Rios on April 1 of 2005?

A I believe so, yes.

Q And that was an interview which ultimately resulted in a videotape of her statement, is that a fair statement?

A Yes, I believe that's correct.

Q But you also wrote a report about things you and she had talked about before the videotaped statement was made that didn't end up in a video, correct?

A That didn't end up in the video?

Q Right.

A Basically, explaining how we came in contact, stuff like that.

Q But you also did a supplemental report you entitled pre-statement interview?

A Yes, sir.

Q Was that report done by you or done by Detective Williams?

A I believe Detective Williams completed that report.

Q But you were present during the pre-statement interview, correct?

A Yes.

Q And isn't it true that at that interview Ms. Rios told you and Detective Williams that she did not think that Gary Eye was a racist?

A I recall her stating that, yes, in the report.

Q And then in referring to the word nigga, she said that Mr. Eye and Mr. Sandstrom called everybody that, correct?

A I believe that's what she stated.

Q And, in fact, she also said, herself -MR.

OSGOOD: Your Honor, could we approach just a

moment?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. OSGOOD: There's a potential argument that Mr. Rogers just opened the door to something that was not going to be asked in this case. I want an objection because I didn't want to open the door. I don't want it coming back to bite my client on the rear.

MR. KETCHMARK: Your Honor, I was going to note that the question was already out but, obviously, we've been very delicate in staying away from the issue whether or not they believe somebody to be a racist. Mr. Rogers, by his question, clearly stepped over what the Court set forth were the ground rules.

MR. OSGOOD: While I like the answer, I would like to have an instruction it's to be disregarded by the jury.

THE COURT: The question is, what do I do with you, Charlie? I mean, the order in limine clearly says that we're not going to have any opinion testimony about whether they are or are not racists. And you deliberately asked the question.

MR. ROGERS: I don't know what you're going to do with me. It just --I was doing it to put in context her explanation of the word nigga, which we did ask her about.

THE COURT: And that question is fine.

MR. ROGERS: I understand that. And I just did not

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realize that her expressed opinion that they weren't racist would trample on the Court's order. Although, now, that you pointed it out, I see that it does.

THE COURT: Yes, it does.

MR. ROGERS: I guess I'll have to attempt to say no more, is about all I can tell you, Judge.

MR. KETCHMARK: I would just add on, this isn't the first time this has happened. I mean, the blatant information in voir dire about the number of people wrongfully accused on death row, I mean, this is a situation where he is repeatedly getting stuff in front of the jury that shouldn't be in front of the jury. And I think it impacts the ability to have a fair trial. If we play by the rules, they need to play by the rules.

THE COURT: Yeah. I mean, it's hard to quarrel with that, isn't it?

MR. ROGERS: This case, I'm a lot more shamed face than I was in the voir dire because there wasn't an order in limine that had to do with that. But having said -

THE COURT: Well, you're taking a license, Charlie, to run something up the flag pole to see if there is an objection or to see if I'll call you down on it. I want you to stop that. I mean, you can assert a vigorous and aggressive defense within the rules and within the orders in limine.

You're too good to be doing what you're doing. So I want it to

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stop.

MR. KETCHMARK: Another thing I would suggest, Your Honor, I was going to give him latitude by allowing him the courtesy so he didn't have to recall the detective. But in light of this, I'm going to ask his cross-examination become curtailed to what I brought out on direct. Anything beyond that I'll object to as being beyond. If he wants to call the detective back and do a direct without using leading questions, he can. It's not fair to us.

THE COURT: In all likelihood I would allow him to lead.

MR. KETCHMARK: The point I'm going --to latitude and license for them to come back and stick a knife in my back.

THE COURT: Well, Charlie, don't do that any more.

MR. ROGERS: I won't.

In response to Mr. Ketchmark's deal, the only thing I was going to ask him about this interview was this last comment which I think I was in the middle of asking about Rios' comment, I'm not going to take a case for those niggas, in that she was referring to Eye and Sandstrom and obviously not African-Americans.

MR. KETCHMARK: I think that's fine. You can ask

that.

MR. OSGOOD: I'm concerned. I guess the Court's

ruling the door is not opened as far as my client is concerned

to ask questions.

MR. KETCHMARK: I'm not going to go down that road,
Your Honor, with respect to the court's order.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: Ladies and gentlemen of the jury, I have previously ruled in this case that opinion testimony concerning whether someone is or is not a racist is not admissible and is to be excluded. Notwithstanding that the witness has acknowledged that Ms. Rios' statement contained a remark or opinion about whether or not Mr. Eye was a racist. I instruct you to disregard that opinion. It is not evidence and is not to be considered by you.

Mr. Rogers.

BY MR. ROGERS:

Q At the conclusion of the pre-statement interview,

detective, didn't Ms. Rios say something to the effect of,

I'm not going to take a case for those niggas?

A Yes.

Q And she was referring at that point to Mr. Eye and

Mr. Sandstrom, correct?

A I believe so.

Q And Mr. Eye and Mr. Sandstrom are obviously not

African-American?

A That's correct.

Q Now, let's turn to April 11, 2005, which is when you were

involved in the interrogation of Mr. Sandstrom, is that correct?

A Yes.

Q And first of all, calling your attention to Government's Exhibit 76, please.

I don't mean 76. I mean, Exhibit 63 is what I mean. I'm sorry.

Is that the front and back of what is called the Miranda form?

A Yes, sir.

Q That indicates a date and time taken into custody, is that correct?

A That's correct.

Q And what does that indicate the date and time was?

A 4-11-2005 at 1000 hours.

Q Okay. At that time did you have a copy of the original report showing that Mr. Sandstrom was arrested at his parents' home that morning?

A I don't recall if I had the report at that time or not. I had knowledge that he had been arrested.

Q Would it surprise you to know he was not arrested at 10:00 but at 8:00?

A No.

Q Okay. And then you didn't start questioning him until

about 4:30 that evening, is that correct?

A Correct. 1635 hours.

Q And before that you had him read and sign the waiver form, Exhibit 63, right?

A Correct, at 1632.

Q Okay. Now, where had he been between whatever time he showed up at the police department after being arrested and the time that you started questioning him at 4:30 something in the evening? Or that afternoon I should say. Had he been sitting there in the holding area?

A Yes.

Q Okay. So he had been continually in custody for some 8 and a half hours?

A Roughly.

Q And by the way what hours were you working? What shift were you working that day?

A During murder squad we're on, work 9 in the morning until 5 at night.

Q So you had been doing other things in the investigation and coming there at the end of the day then?

A Well, actually, by this time we had, I believe, rotated back to the day shift so our hours would have been 7 to 3.

Q So you're still staying late to go talk to Mr. Sandstrom?

A Yes, sir.

Q And you talked to him for some two and a half hours all told?

A Approximately, yes.

Q And that entire interview was summarized in a two-page report that you wrote?

A Yes.

Q And during that interview Mr. Sandstrom described to you the revolver that he said was being carried by somebody else at the time of the incident?

A Yes.

Q And how did he describe it?

A He said it was chrome plated.

Q Directing your attention, sir, to Government's Exhibit 47B, you would agree, would you not, that that is not chrome plated?

A I can't tell from here. It could have possibly been but at this time it appears no.

Q Okay. Now, calling your attention to Exhibit 76 this time, which is the order for the DNA samples?

A Yes, sir.

Q What is the caption of that case in that order? What is the caption of that case?

A State of Missouri.

Q Versus Gary Eye?

A Yes, sir.

Q Okay. And that was a case in the Circuit Court of Jackson County, Missouri?

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A Yes, sir.

Q And that was a case in which Mr. Eye was charged in state

court in Jackson County with the murder of William McCay?

MR. KETCHMARK: Your Honor, may we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. KETCHMARK: I mean, I think he can pull up the document. I don't know what the relevance is. And I'm concerned we're going to go down the road we went down. I want to do an anticipatory objection if this is where we're going because I don't know what the relevance is. I mean, he can clearly establish what the document is. I would object.

MR. ROGERS: I thought Mr. Osgood already asked this without objection on his cross-examination of this witness in terms of what Mr. Eye was charged with in state court. Am I wrong about that?

THE COURT: I don't know.

MR. ROGERS: Okay.

THE COURT: I truly don't remember, Charlie, but I don't see it as relevant. Sustained.

MR. ROGERS: Here's what I was going to ask. After this, which was after the interview on April 11, was Mr. Sandstrom charged with a crime. And the answer, I believe,

would be yes. And where was he charged? And the answer would

be Circuit Court of Jackson County. I'll ask it in a leading way. What was that crime? Knowingly burning or destruction of evidence or something like that. So Mr. Sandstrom was not charged with murder in state court?

THE COURT: Why is that relevant?

MR. ROGERS: This is the detective who signed the statement of probable cause that led to the filing of charges.

MR. OSGOOD: I would object to that myself. Puts into question his assessment and decision making process and it's just like a grand jury indictment. It's evidence of nothing. What he thought subjectively is irrelevant to whether or not -

MR. KETCHMARK: I would object to that, Your Honor, because the whole point is the investigation was unfolding. There is a whole lot more done since April 11. I think then we get into a can of worms that we don't need to go into. I don't think it's relevant and I would object.

THE COURT: The relevance objection is sustained.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. ROGERS:

Q During your two-and-a-half hour interview of Steven

Sandstrom on April 11 of 2005, he never once during that

interview used the word nigger, did he?

A Not that I recall.

Q In fact, you used the word nigger in asking him about the

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supposed game, nigger, nigger, nigger? I think you put it

in quotes?

A I did.

Q You were quoting yourself and not Mr. Sandstrom, right?

A I was quoting information I had received. I wasn't

quoting myself.

Q You're the one who said it during that interview?

A Yes.

Q Thank you.

THE COURT: Redirect examination?

REDIRECT EXAMINATION

BY MR. KETCHMARK:

Q Did you at the conclusion of the interview offer

Mr. Sandstrom the ability to make a video statement?

A Yes.

Q Did he take you up on that offer?

A No.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Recross-examination.

MR. OSGOOD: No, Your Honor.

MR. ROGERS: No, Your Honor.

THE COURT: You may step down.

MR. KETCHMARK: May he be finally excused?

MR. OSGOOD: If he's not leaving town, there's

something I might want to ask him.

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THE COURT: Detective Blehm will remain subject to the subpoena.

MR. KETCHMARK: Just for the record, the summary that he read from we have marked as Government's Exhibit 303. We're not offering it but just for record purposes we would note that was marked as such.

THE COURT: Thank you.

(Witness excused.)

MR. GIBSON: Government calls Thomas Mahoney.

THOMAS MAHONEY, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

MR. GIBSON: May I please?

THE COURT: You may.

MR. GIBSON: Thank you.

BY MR. GIBSON:

Q Good morning, sir.

A Good morning.

Q Sir, could you tell the ladies and gentlemen of the jury how you are currently employed?

A With the Kansas City, Missouri Police Department.

Q And what is your current rank?

A Detective.

Q And how long have you been a detective, sir?

A About six months.

Q Prior to becoming a detective for the Kansas City Police

Department in what capacity did you serve?

A Patrolman.

Q And how long were you a patrolman?

A Little over 24 years.

Q And is that consistently with the Kansas City Police Department?

A Yes.

Q Now, sir, I'd like to direct your attention specifically to March 10 of 2005. Were you working as a patrolman for the Kansas City Police Department on that date?

A Yes, I was.

Q And were you working a daytime tour of duty?

A Yes, I was.

Q Did you report for roll call that morning?

A Yes, I did.

Q Can you tell the ladies and gentlemen what do I mean by roll call?

A Roll call is where prior to your shift your sergeant gives you information, other people pass information on what is going on in the area at the time.

Q And at the time that you reported for roll call, were you given any information regarding a potential stolen vehicle that was wanted in connection with a homicide or that was being sought for in connection with a homicide?

A Yes. I was informed that the homicide had occurred and to

be on the look out for a Jeep or SUV type vehicle.

Q And as a result of the information that you received from roll call, some time that morning around 11:00 a.m., did you go to a specific location?

A Yes, I did.

Q What was that location, sir?

A Parking lot behind 1001 Bennington.

Q And is that in Kansas City?

A Yes, it is.

Q Is that in the northeast side of Kansas City?

A Yes, it is.

Q When you got to that location, what, if anything, did you find?

A I observed a Jeep, kind of a purple color Jeep parked back in the back parking lot, had a windshield broken out or window.

Q Did this match the description of the vehicle you were looking for?

A As far as the Jeep, yeah.

Q Were you looking for other vehicles as well?

A Just any type of vehicle like that, like an SUV Jeep type.

Q Now, with respect to this particular Jeep, did you notice anything about the vehicle or note any damage to the vehicle?

A I noticed that it had kind of a strange little tow package

or some type of thing on the front bumper of it like where you could mount a bicycle or something. I don't know what it was. And I noticed that the ignition had been pulled out on it.

Q Was there any damage to the driver's side door?

A There was a little ding on it but no major damage.

Q Can I show the witness what has been previously marked and moved into evidence as 73B?

Do you recognize that, sir?

A Yes. That's the Jeep that I recovered. Or it looks like the Jeep I recovered.

Q Could I show the detective what was previously moved and entered as 73N?

Do you recall that, sir?

A Yes, I do.

Q Is that the same Jeep?

A That's the door lock that's been pried out.

Q As a result of what you found, what, if anything, did you do with respect to the vehicle? Did you call anyone or contact anyone?

A I checked the VIN on the vehicle and responded back as a stolen auto. At which time I notified the detectives that I had located the stolen auto there.

Q At the time that you located this Jeep on Bennington, were

you familiar with where Steven Sandstrom was living at

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that time.

A Yes, I was.

Q Approximately, how far from where Steven Sandstrom was

living did you find the Jeep?

A About two city blocks.

MR. ROGERS: What?

THE WITNESS: About two city blocks.

BY MR. GIBSON:

Q Thank you, sir.

THE COURT: Cross-examination?

MR. OSGOOD: I don't have any questions, Your Honor.

CROSS-EXAMINATION

BY MR. ROGERS:

Q You have known Mr. Sandstrom's family for a long time,

haven't you, sir?

A Yes, I have.

Q And they have lived there at 11th and Ewing for how many

years?

A I've known them to stay at that house, it's been several years there.

Q You've also known them to live in other homes in the same

general geographic part of the city?

A Yes, I have.

Q You have known them to live on Drury?

A Yes.

Q North of St. John?

A Yeah, North Drury.

Q And other places?

A Yes.

Q Have you seen African-Americans in or around the Sandstrom home or the various Sandstrom homes you've known about?

A Not that I can remember.

Q Have you seen a guy named Kenneth Robinson, Tank?

A I'm sorry.

Q Do you know a guy named Kenneth Robinson, called Tank?

A Yes.

Q Have you seen him there at the Sandstrom house?

A I can't remember, specifically, him being there but he's known in the area.

Q Okay. Have you known him actually to have lived with the Sandstrom family for awhile?

A No.

Q Okay. And do you know his cousin --I can't remember the first name --Mr. Fisher?

A Kevin Fisher?

Q Kevin Fisher. Obviously, you do know Mr. Fisher. Have you seen him hanging around the Sandstroms, including Steve?

A I can't remember a specific time but, yes, they are in the same area.

Q Okay. Let me put it in cop terms. Are they known to associate?

A I've never stopped or had any contact with them when they're together that I can remember.

Q And by the way, both Mr. Robinson and Mr. Fisher are African-American, correct?

A Correct.

Q Now, you testified earlier I believe that at the roll call on March 10 you were told the homicide had occurred, is that correct?

A I believe so.

Q But you actually knew it had happened the morning before, on the 9th, the morning it happened, right?

A Correct.

Q Because you were part of the group of officers that cordoned off the area of 9th and Brighton, right?

A I believe it was our sector but I wasn't down there blocking off the area.

Q Were you down there making sure that the traffic didn't go south on 9th Street or south on Brighton from 8th Street to 9th?

A I could have been.

Q Okay.

May I have just a moment, Your Honor?

THE COURT: Yes.

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MR. ROGERS: Those are all the questions I have.
Thank you.

THE COURT: Recross-examination?

MR. GIBSON: No, Your Honor. Thank you.

THE COURT: Thank you, detective. You may step down.

MR. GIBSON: May he be excused?

THE COURT: Without objection, Detective Mahoney may
be excused.

(Witness excused.)

MR. KETCHMARK: We call Jonnie Renee Chrisp to the
stand.

JONNIE RENEE CHRISP, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q Ma'am, would you, please, introduce yourself to the ladies

and gentlemen of the jury and spell your name for the

court reporter?

A Jonnie Chrisp. J-O-N-N-I-E, C-H-R-I-S-P.

Q And do you have a middle name, Ms. Chrisp?

A Renee, R-E-N-E-E.

Q How old are you?

A 25.

Q And what part of Kansas City did you grow up in?

A Northeast Kansas City.

Q Northeast? You might need to move up a little bit so we

can hear you. I think you indicated you grew up in the northeast?

A Yes.

Q Have you lived in the northeast section of Kansas City your whole life?

A Yes, sir.

Q And back in March of 2005 do you remember what house you would have been residing at?

A 3412 Garner.

Q G-A-R-N-E-R?

A Yes.

Q Ms. Chrisp, do you have a cousin by the name of Regennia Rios?

A Yes, I do.

Q Might sound like a silly question but how long have you known Ms. Rios?

A My whole life.

Q Now, back in March of 2005 were and Ms. Rios on speaking terms?

A No.

Q Had you had a falling out?

A Uh-huh.

Q Is that a yes?

A Yes. I'm sorry.

Q In addition to Ms. Rios, ma'am, did you know or do you

know an individual by the name of Vincent Deleon?

A Yes, sir.

Q And how do you know Mr. Deleon?

A Through Regennia.

Q And by Regennia are we talking about your cousin, Ms. Rios?

A Yes.

Q Again, we're, obviously, going to talk about events occurring back in March of 2005. What I would like to know is back in March of 2005 how long had you known Mr. Deleon?

A Probably not even a year. I've known of him but I only knew him for a year, if that.

Q What about a gentleman by the name of Gary Eye? Did you know Mr. Eye?

A Not that long. Not even a year. I met him through Regennia and Vincent, also.

Q So I guess the answer to my question is you do know somebody by the name of Gary Eye?

A Yes.

Q You met him through Ms. Rios, your cousin, as well as Vincent Deleon?

A Yes.

Q Do you see Mr. Eye present in the courtroom?

A Yes.

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Q Could you, please, describe an article of clothing he's

wearing?

A Blue tie with a white square.

Q The gentleman standing up?

A Yes.

MR. KETCHMARK: Your Honor, I ask the record reflect she has identified the Defendant Gary Eye.

THE COURT: The record will so reflect.

BY MR. KETCHMARK:

Q Again, Ms. Chrisp, directing your attention back to March

of 2005, how long would you say you had known Mr. Eye at

that point?

A Probably a couple months. I mean, not a year.

Q Not very long?

A Yes.

Q Had you met him through Mr. Deleon and your cousin,

Ms. Rios?

A Yes.

Q Did you also know a gentleman by the name of Steven

Sandstrom?

A Yes.

Q Do you see Mr. Sandstrom present in the courtroom?

A Yes.

Q Could you, please, point him out and describe an article

of clothing he's wearing?

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A The plaid shirt over there.

Q Is he the gentleman standing up?

A Yes.

MR. KETCHMARK: Your Honor, ask the record reflect
she identified the Defendant Steven Sandstrom.

THE COURT: The record will so reflect.

BY MR. KETCHMARK:

Q

Do you recall Ms. Chrisp how you came to know of Steven Sandstrom?

A

Just through the same neighborhood. I mean, I knew his cousins.

Q

By his cousins who are you referring to?

A

Justin and Robert Buchanan.

Q

If you don't mind, ma'am, sit forward a little bit.

You're kind of soft spoken. Okay?

A
Sorry.

Q
Back again in March of 2005 can you tell the jury how long

you would have known of Mr. Sandstrom?

A
Probably about four years.

Q
And how long would you have had actual contact with him?

A
Within that past year.

Q
So about a year from 2005 back?

A
Just the year that, you know, I guess everybody and their

addiction, I guess that was it. But I've known him for

about four years.

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Q When you say everybody and their addiction, what are you referring to, ma'am?

A The meth.

Q Methamphetamine?

A Uh-huh.

Q Is that a yes?

A Yes.

Q If I could direct your attention back to, obviously, I've been referencing March of 2005 but I'd like to talk to you about March 8 of 2005. Okay?

A Uh-huh.

Q Is that a yes?

A Yes.

Q It's okay. On March 8 of 2005, do you remember what house, what your street address would have been?

A 3412 Garner.

Q And on that date of March 8th of 2005 did you have contact with Vincent Deleon?

A Yes, sir.

Q Do you remember where you would have had contact with him at?

A At my residence, 3412 Garner.

Q And tell the ladies and gentlemen of the jury why Mr. Deleon would have come over to your house there at

3412 Garner?

A Because I was his meth supplier.

Q You were supplying methamphetamine to Mr. Deleon at the time?

A Yes.

Q And, Ms. Chrisp, when you say Mr. Deleon had come over to your house to get meth on March 8th, did he, in fact, was he successful in getting methamphetamine from you?

A Yes, sir.

Q And did he use it at your house?

A Yes.

Q And did you use it with him?

A Yes.

Q And, Ms. Chrisp, would it be accurate that back in, well, in or around this time as you sit here today you have prior felony convictions, do you not?

A Yes.

Q In fact, you have convictions that are drug-related that are felonies out of both Johnson County, Kansas, as well as Jackson County, Missouri, is that correct?

A Yes, sir.

Q And in addition to convictions of a felony nature for drugs, do you also have a felony conviction that you received for tampering with a motor vehicle?

A Yes, sir.

Q With respect to all of those convictions, ma'am, were you

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sentenced to probation?

A Yes.

Q And have you, are you still currently under the supervision of some probation as it relates to -A One.

Q Of one of those?

A I have completed the Johnson County probation.

Q So you successfully completed probation in Johnson County, Kansas?

A Yes.

Q You're still completing out probation on your Missouri case?

A I have three months left.

Q You also, ma'am, remember --obviously, this isn't the first time that you and I have talked, is that correct?

A Correct.

Q And, in fact, on a couple of occasions we have met with Agent Arch Gothard and Agent Heith Janke of the FBI, have we not?

A Yes.

Q Obviously, in those meetings we told you that we wanted to talk about the events back in March of 2005?

A Yes.

Q And you agreed to speak with the agents previously about that?

A Yes.

Q And you, in fact, also appeared in front of a federal grand jury in connection with the matters that we talked about, is that correct?

A Yes.

Q And in those discussions did I represent to you that this was not a drug investigation?

A Yes.

Q And did I tell you that in order to paint a picture of what was happening, we had to talk about the drug activity?

A Yes.

Q And with that understanding was that, basically, the understanding that we gave you when you started to tell us about your drug involvement and activity in the days that we're going to talk about?

A Yes.

Q And you understand, ma'am, as you sit here today that's still my representation to you, correct?

A Correct.

Q Now, you talked about March 8th of 2005 and Mr. Deleon coming over to your house to obtain methamphetamine, correct?

A Yes.

Q At any point, Ms. Chrisp, does Mr. Deleon leave your

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house?

A Yes.

Q And do you remember approximately what time? Was it day, night, morning?

A It was night.

Q It was evening or night?

A Yes, it was evening, late evening.

Q Late evening?

A Yes.

Q And do you remember how Mr. Deleon leaves your house?

A With Gary and Stevie.

Q By Gary and Stevie are you referring to Defendant Eye and Defendant Sandstrom?

A Yes.

Q Now, you talked about your --the fact that you hadn't known these two defendants very long back in March of '05, is that correct?

A Right.

Q You mentioned that you were supplying methamphetamine to Mr. Deleon. Were you also supplying these two defendants with meth back in March of '05?

A Yes.

Q And would you characterize these two individuals, Mr. Eye and Mr. Sandstrom, as your friends back then?

A Everybody was, if they had money.

Q So was it more of a business relationship?

A Yes.

Q When they come to pick up Mr. Deleon, do you remember if they come into the house?

A They did, yes.

Q And by they, did you at some point learn that somebody was with them?

A Yes.

Q And tell the ladies and gentlemen of the jury about that?

A We was, of course, smoking meth. And they asked if it was okay if she could come in. I said who? They said Regennia. I said, oh, no. You guys got to go.

Q So at that point Ms. Rios was not welcome inside your house?

A No.

Q So do they, meaning Mr. Eye and Mr. Sandstrom and Mr. Deleon, leave your house?

A Yes. They respected it and left.

Q Do you, yourself, stay at your house at that point?

A I stayed.

Q At some point does Mr. Deleon return to your house?

A Yes.

Q And do you recall approximately how long he would have been gone? Was it brief? Was it -A

It wasn't brief, no.

Q Was it in the neighborhood of an hour and a half, somewhere along that line? Or 5 hours?

A It wasn't 5 hours.

Q Was it still evening when he came back to your house?

A No. It was late that night.

Q Late that night?

A Yes.

Q And when Mr. Deleon returns, is he by himself?

A Yes.

Q So Mr. Eye and Mr. Sandstrom were no longer with him?

A No.

Q At this time back in March of 2005, Ms. Chrisp, did you also know a female by the name of Christina Stanley?

A Yes.

Q And how did you know Ms. Stanley?

A I don't know how I met her. I don't really recall how I met her. Probably through Regennia, too, but I don't really remember right now.

Q Back in March of 2005 was Ms. Stanley dating Mr. Deleon?

A Yes, she was.

Q And at any point when Mr. Deleon is at your house on March 8th of 2005, is Ms. Stanley there with him?

A She was with him, yeah. And then she stayed there after he left.

Q So from the time that he leaves when these defendants pick

him up, it's your memory that she stays there at your home?

A Right.

Q Now, when Mr. Deleon returns, is he --does he come in and stay at your house for a period of time?

A Not for a period. We leave when he gets back.

Q When you say we, who are you referring to?

A Myself, his sister Nessa and Christina Stanley.

Q So the four of you?

A Yes.

Q Now, you mentioned Nessa, when --how did Nessa --when was she at your house?

A She was there with her.

Q By her, are you referring to Christina Stanley?

A Uh-huh.

Q When the four of you leave, Ms. Chrisp, where do you go?

A Kansas.

Q And was there a particular place or destination you had in going to Kansas?

A All I know is Christina.

Q I'm sorry?

A All I know is Christina's house.

Q House of somebody named Christina?

A Yes.

Q Who was Christina or how was it that you all decided to

leave your house and head to Christina's house?

A Associate of Vincent's.

Q So it was somebody Mr. Deleon knew?

A Yes.

Q And when you go over to Kansas, do you remember, do you actually arrive at Christina's house?

A Yes.

Q Do you guys stay there for a period of time?

A Yes.

Q And, again, what was the purpose in going over to Christina's house, if you know?

A The meth.

Q Meth related?

A Uh-huh.

Q Is that a yes?

A Yes.

Q At some point do you, Mr. Deleon, Ms. Stanley and Nessa Deleon leave Kansas and head back toward Missouri?

A Yes.

Q Tell the ladies and gentlemen of the jury what you remember about the return trip from Kansas back toward Missouri?

A We was in a stolen Jeep. Vincent was driving crazy. I had just gotten into an accident prior to that and rolled

five times. He was almost out of gas. And I was getting

very aggressive, was not wanting to be in the car.

Q And did you let him know that you were concerned with the manner he was driving? That you were concerned?

A Yes, I let him know.

Q Was he aware you had been in a serious car accident before?

A Yes, sir.

Q And do you have scars from that accident?

A Yes.

Q At some point, Ms. Chrisp, do you get out of the stolen Jeep that you're in?

A Yes.

Q Do you know, do you recall where that was at?

A 8th and Prospect.

Q And is there a particular business located there at 8th and Prospect?

A It's a gas station.

Q Do you remember the name of it?

A I think it's Inner City Oil.

Q And, again, it might be obvious but what is your point or purpose and why are you getting out of the Jeep at that gas station?

A I mean, if he had stopped earlier, I would have got out a long time ago. But this was the first time we stopped. I

was on the phone with Gary and Stevie the whole time for

them to pick me up wherever we did stop.

Q And so by Gary and Stevie you're referring to Defendant Eye and Defendant Sandstrom. You were on the phone with them?

A Yes.

Q What was your purpose in calling them?

A Because I knew they was awake and they would get me home and not wreck me before I got home. I mean, they had a little bit more, I don't know, little bit calmer than Vincent was at the time.

Q So when you get out of the vehicle, do you ask Gary and Stevie, these defendants, to come pick you up?

A Before I got out?

Q Well, at some point do you ask them to come get you?

A Yes.

Q Do they agree to do that?

A Yes.

Q And do they actually arrive at the gas station to pick you up?

A Yes.

Q At this time, Ms. Chrisp, is it just the two of them? Just Defendant Eye and Defendant Sandstrom?

A No. Also Regennia.

Q And by Regennia are you referring to your cousin,

Ms. Rios?

A Yes.

Q Do you get into the vehicle with the three of them?

A Yes.

Q Who do you remember to be --where were the people at in the car to the best of your recollection?

A Gary was driving. Stevie was in the passenger side. And Regennia was in the back passenger side.

Q Where were you?

A Behind the driver.

Q So you remember being behind Mr. Eye?

A Right.

Q And do they leave the gas station and begin heading toward your home there on Garner?

A Yes.

Q As you're driving to your home on Garner, Ms. Chrisp, do you get concerned that they're not going to make the turn?

A As I was, as we was coming up to Indiana.

Q By Indiana, are you referring to Indiana Avenue or Indiana Street? And is that the route you would take to your house from 8th and Prospect?

A Yes.

Q As they're approaching, explain to the jury what is going on as they're approaching the Indiana turn?

A I'm like, hey, turn right here. They was kind of easing

up like they really wasn't going to turn and --Want me to

keep going?

Q At that point do you stress that you want to go home?

A Yes, very much so. This is my street. I want to go home.

Q And do either of them make a statement to you at that point?

A Yes.

Q Who?

A Stevie.

Q And by Stevie are you referring to the Defendant Sandstrom?

A Yes.

Q And do you remember what he said?

A Shit, you're about to witness a homicide.

Q And when Mr. Sandstrom makes the statement about, shit, you're about to witness a homicide, what do you do?

A I told him, shit, take me home and drop me off. My kids, it's almost time for them to get up. I got to go home.

I --I'm the mom. I got stuff to do.

Q Now, at this point when he makes the statement, you're in the back seat?

A Uh-huh.

Q You're next to Ms. Rios?

A Yes.

Q And where is Mr. Eye?

A Driving.

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Q

Do you at any point, well, is the statement made loud enough that you can hear it in the back?

A

Yes.

Q

Is the radio going?

A

It is.

Q

Is it loud to the point that you can't understand what is being said?

A

No. No.

Q

Is there any doubt in your mind that that's the statement Mr. Sandstrom made, shit, you're about to witness a homicide?

A

There's no doubt.

Q

And at that point, ma'am, do you at any point, well, what's Mr. Eye's reaction from where you're sitting?

A I mean, I guess it would be automatically just eye contact. He didn't say anything or do anything.

MR. SANDAGE: Objection. Calls for speculation.

MR. KETCHMARK: I asked what his reaction was and

she's describing it from the back.

THE COURT: Objection overruled.

BY MR. KETCHMARK:

Q

And my question, Ms. Chrisp, is as Mr. Sandstrom is making the statement, shit, you're about to witness a homicide, what is Mr. Eye's reaction, if you recall?

A

He just made eye contact with me and kept driving but he

continued to turn on my street though, Indiana.

Q Do they take you to your house there on Garner?

A Yes.

Q Tell the ladies and gentlemen of the jury what happens when they get to your house there on Garner?

A I get out of the car and go inside to calm myself down before my kids wake up.

Q Let me ask you this, Ms. Chrisp. Before you go inside when you get out of the car, do you make a statement to anybody in the vehicle?

A Yes.

Q Who?

A Regennia, my cousin.

Q And what do you tell Ms. Rios?

A I told her, I love her. Be careful.

Q Is that a statement you directed towards her?

A Towards her.

Q At any point from this trip at Inner City Oil, the gas station there at 8th and Prospect to your home on Garner, do you see any weapon or gun in the vehicle?

A I did.

Q Tell the ladies and gentlemen of the jury about that.

A When he said it, he held it up.

Q And when you're saying he?

A When Stevie said, shit, you're about to witness a

homicide, that's when I seen the weapon.

Q Where was the weapon?

A It had to have been on his lap because it just -Q

But you're doing --For the court reporter, you're lifting up with your hand?

A He didn't go like this or out from anywhere. I mean, he just like, you know, let me know it was there and that he had it very available.

Q Can you describe what the weapon looked like? Do you remember?

A It had a chamber or whatever.

Q You were doing a circle with your hand?

A Barrel or whatever it is. I can't think.

Q Are you familiar with the difference between a pistol and a revolver?

A Yeah. Pistol is locked at the bottom and revolver, it's the spinner.

Q And by spinner, you're drawing with your hand, has the cylinder that rotates with the shot being fired?

A Uh-huh.

Q Is that a yes?

A Yes.

Q Was the gun that you saw Mr. Sandstrom with in the vehicle a pistol or a revolver, if you remember?

A Revolver.

Q And do you remember did it have a long barrel, a short barrel, a medium barrel?

A It was a longer barrel.

Q Now, going back to your house and after you make the statement to Ms. Rios about being careful, what did you do?

A I got out and went inside.

Q And when you get inside, what do you do?

A I try to lay down before my kids wake up.

Q Do you remember, approximately, what time?

A It was day break. I know, my kids wake up as early as 7, you know, so.

Q So at this point it's going from night to morning. It's daybreak?

A Uh-huh.

Q Is that a yes?

A Yes.

Q At some point, well, let me ask you this, Ms. Chrisp. We talked briefly about you meeting with Special Agent Gothard and Special Agent Janke, correct?

A Yes.

Q And would it be correct or do you have any reason to dispute that you would have met with them the first time on August 11 of 2005? Does that sound about right?

A Yes.

Q And at that point was it your memory that you were locked up in Jackson County on March 8th because you, in fact, get locked up at 5:30 on March 9th?

A Yes. And being I stayed up, it probably just ran in, I thought it was the same day.

Q But when Special Agent Gothard checked with the jail and is able to confirm that you weren't locked up until 5:30 on March 9th, is it at that point you started to remember some of the events we're talking about?

A Yes.

Q On August 11th you start telling these agents that information?

A Yes.

Q And at some point is that interview cut short because you had a doctor's appointment for one of your children?

A I was pregnant.

Q But it was for your expected child?

A Yes.

Q Now, back to your house, ma'am, while you're inside, laying down on the morning of March 9th of 2005, do you at some point receive a phone call?

A Yes.

Q And do you remember who that call was from?

A Vince Deleon.

Q Mr. Deleon?

A Uh-huh.

Q Is that a yes?

A Yes.

Q Do you remember what Mr. Deleon was telling you in the call?

A Open the backdoor so can we come in. And a rush like, I don't know, just scared kind of voice like they want to come in. And I thought the cops were chasing them.

Q Okay. When you're talking about them, when you get the phone call, it's from Vince, right?

A Yes.

Q And at some point does somebody show up at your house?

A Yes.

Q Who?

A Vincent, Gary, Stevie and Regennia.

Q Those four?

A Yes.

Q And just so we're clear when they dropped you off, Mr. Deleon was not with them, correct?

A Correct.

Q So this phone call you get from Vince asking, can we come in, and you describe Mr. Deleon as being hushed or?

A Frantic.

Q Frantic?

A Yeah.

Q What did you do after you got this phone call?

A I went upstairs to look out the window to see if they was running from the police.

Q Because that's what you thought, based on how he was talking to you on the phone?

A Yes.

Q And did you see any police cars chasing them?

A No.

Q Do you actually allow them to come into your house?

A Yes.

Q And was there a particular part of the house that they, typically, would come into?

A The basement in the back, through the back.

Q Is that how you let them into the house this morning?

A Yes.

Q As they enter into your home on the morning of March 9th through the basement door, what do you remember the four of them doing?

A Vincent and Regennia come in casually and sit on the bed. Gary and Stevie go to the T.V., amped up like they're still running, turn it on. Vincent and Regennia want to smoke.

Q By smoke, what do you mean?

A Meth.

Q And Mr. Eye and Mr. Sandstrom go where?

A To where it would be like the front room. I have the front room and the bed right there, which is where the T.V. is.

Q Is that still in the basement area?

A Yes.

Q And what do they do when they get to the front room area?

A They turn on the T.V.

Q Are you in a position to overhear what they're saying to each other?

A That he shouldn't have walked out in front of me and this -Q

Let me ask you this, Ms. Chrisp. As they go in do they actually turn the T.V. on?

A They do turn it on, yes.

Q Are they talking amongst themselves, Mr. Eye and Mr. Sandstrom?

A Yes. Crazy talking.

Q And were you in a position to overhear bits and pieces of what they were saying?

A Yes.

Q And do you remember as you sit here today the specific statements that you recall overhearing them say as they were talking?

A Just pieces of --that I got that one off. You got that

one off. Fuck that, whatever.

Q I'm sorry?

A I didn't want to say it. Fuck him.

Q Well, let me ask you this. The statement you got that one off, I got that one off, is that as best you remember the exact words that they were saying?

A I mean, I really wasn't trying to pay attention. I was thinking it was a bunch of tweaker talk. I just heard that I got that one off. I got that one. I looked at the T.V. and it's got caution tape on it.

Q Let me ask you this. You brought up a couple of terms. You said tweaker talk? What do you mean by tweaker?

A Really fast and really loud.

Q Somebody --is that something a word to describe somebody who's under the influence of meth?

A Yes.

Q Somebody who is tweaking?

A Yes.

Q And so as they're talking, you do remember them saying, one of them, do you know who said it, about I got that one off, you got this one off?

A No, I don't.

Q But it was a conversation that only these two defendants were having?

A Yes.

Q In addition you indicated that you overheard something

about, I think you said, fuck that?

A Uh-huh.

Q Then you stopped. Did you hear the word nigger used in your basement that morning?

A Yes, I did that morning.

Q And tell the ladies and gentlemen of the jury what you remember, how that word was brought up?

A Just like, fuck that nigger.

Q Was that also a statement that was made by these two defendants?

A Yes.

Q As they're having that conversation?

A Yes.

Q You talked about Ms. Rios and Mr. Deleon, are they in a position where they might possibly have overheard this conversation as well?

A Yeah.

Q Well, let me ask you this, does Ms. Rios make any statements as these two defendants are talking as they're watching the T.V.?

A Your mouths are going to get you in trouble.

Q Your mouths are going to get you in trouble?

A Uh-huh.

Q Is that a yes?

A Yes.

Q Does Mr. Deleon make any statements that you remember?

A No.

Q Is he talking in this conversation?

A No.

Q What is his priority at that point?

A Smoking meth.

Q And you mentioned as these statements are going on and you're thinking it's tweaker talk that, I think you described it as turning and looking at the T.V. and you see caution tape?

A Yes. I'm putting it altogether.

Q And you're putting it altogether?

A After, you know, I look and see the T.V.

Q What was the story being reported on the news, if you remember?

A I don't remember hearing the story. I remember seeing the body beyond the caution tape and them talking what they were and that's when they had to go, they had to leave.

Q You're saying they had to go, they had to leave. What did you do?

A I told them they had to leave. They can't be here. I don't know what they did but apparently, you know, there's a reason they come turn my T.V. on. They can't be coming to my house, running from some shit like that.

Q And do they, at that point, respect your wishes and leave

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your house?

A
Yes.

Q
And we already alluded to it, Ms. Chrisp, but later that day on March 9th of 2005, were you picked up on charges?

A
At my residence.

Q
At your residence?

A
Uh-huh.

Q
Was that at 5:30 in the evening?

A
Yes.

Q
Were you locked up?

A

Yes.

Q

And how long were you locked up on March 9, 2005? Do you remember how long you would have been locked up for?

A About a month, then I made bond.

MR. KETCHMARK: One moment, if I could, Your Honor.

That's all I have, Judge.

THE COURT: Cross-examination?

MR. SANDAGE: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SANDAGE:

Q

Hi, Ms. Chrisp.

A

Hi.

Q

My name is Lance Sandage. And I, along with John Osgood, represent Gary Eye. You and I have never met, have we?

A

No.

Q Have you ever been contacted by an investigator working for Mr. Osgood and I by the name of Mark Reeder?

A I don't remember. I don't recall the name but, yes, I was contacted by somebody.

Q Did you actually speak with Mr. Reeder?

A No.

Q You mentioned the word tweaking to us this morning. Can you explain that in a little more detail, what tweaking is?

A Going full speed. Drug that gets you going. Adrenaline. Everything, you just go fast. Your mind, your body, everything. Tweaking.

Q We've heard testimony from other witnesses or witness that some times you'll hallucinate while tweaking? Is that true?

A People do hallucinate, yes.

Q Have you ever hallucinated while doing it?

A No.

Q On March 8th, March 9th, which is what Mr. Ketchmark has been focused on this morning, you indicated you had been high on meth that day and into March 9th, is that true?

A Yes.

Q How long had you been on meth up to that point, continuously?

A I've never stayed up more than a day because I have kids

that I take care of every day. Even though I was, my addiction, I did do it. I never stayed up more than a day because that's what will happen. You will see things.

Q How many hours of sleep would you get a night?

A At night?

Q How many hours a day did you sleep?

A I would probably stay up one night then I would sleep. I would probably get sleeping pills to go to sleep but I would make sure I did.

Q On this night you were up all night, right?

A Yes.

Q Had you slept the night before?

A Yes.

Q Had you smoked all day before?

A Probably.

Q What about March 7th, two days before March 9th, had you been smoking that day?

A I was pretty deep in my addiction, yes, I was probably smoking every day.

Q What about March 6th?

A Probably.

Q Fifth?

A Maybe so.

Q How much would you --go ahead, ma'am. I'm sorry?

A I had just gotten into a car wreck in 2004. I was doing a

lot of things.

Q How much would you smoke a day?

A I don't know. A lot.

Q Well, I don't know what a lot is. I mean compared to -A
An 8-ball.

Q Explain to the --Okay. You sell methamphetamine or you
sold methamphetamine back then, right?

A Yes.

Q What would an average customer purchase from you for
personal use?

A For their personal use?

Q Yeah.

A Quarters.

Q Is an 8th larger than a quarter?

A 8-ball, yes.

Q How much more?

A More than ten times.

Q So you're using more than ten times a day of
methamphetamine?

A Not by myself. I smoked with anybody in my room or
anybody in my house, too.

Q So you would share your meth?

A Yes.

Q March 8th of 2005, you said that at some point in time

Vince arrives over at your house, is that correct?

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A Correct.

Q And that you had been smoking, is that correct?

A Yes.

Q And then at some point that Gary Eye and Steven Sandstrom come to your house, is that correct?

A Yes.

Q Is it your testimony that the two of them actually entered your house?

A Yes.

Q If other witnesses said that they never came in the house and they stayed outside, would they be incorrect?

MR. KETCHMARK: Objection, Your Honor. Shouldn't

have --she doesn't have the benefit of knowing what other

witnesses testified to.

THE COURT: Sustained.

BY MR. SANDAGE:

Q

When Mr. Sandstrom and Mr. Eye came in your house, did

they smoke at that time?

A

Yes.

Q

You had said that --how much contact did you have with

Mr. Eye before March 8, 2005?

A

Just what he made with them. I never really made contact with him. He just came with Regennia or Vincent. I didn't know Gary.

Q

So how many times had Mr. Eye been to your house before

1630

March 8th of 2005?

A I couldn't tell.

Q Ever?

A Huh?

Q Had he ever been over there before?

A Yeah. Couple times with Regennia and Vincent.

Q How long had you been on the outs with Ms. Rios before March 8th of 2005?

A Not too long. I mean, we just fell out like a month before that maybe.

Q How good, how good of friend was Mr. Eye to you?

A He wasn't my friend.

Q Why would he give you his telephone number then?

A Because of the association with the meth.

Q How many times, what is your testimony as to the number of times he purchased methamphetamine from you?

A How many times?

Q Yes.

A Himself?

Q Yes.

A None.

Q Excuse me?

A None.

Q So he's never bought methamphetamine from you then?

A No.

Q Then you testified at some point Mr. Eye and Mr. Sandstrom leave, is that correct?

A Yes.

Q And then at some point Mr. Deleon comes back and you get in the car with him and you go over to somewhere in Kansas City, Kansas?

A Right.

Q And what was the purpose of going to Kansas City, Kansas?

A Meth also.

Q To purchase some?

A No.

Q To smoke some?

A Get rid of some.

Q You were going to sell some?

A Vincent was, but I guess, of course, you could say me.

Q Excuse me?

A You could say me, I guess.

Q Why is that?

A I was the one selling it. It was mine. He was getting rid of it.

Q Mr. Deleon was like the go between for that transaction?

A Yes.

Q Did that transaction occur?

A Yes.

Q Have you ever been charged with distribution of

methamphetamine?

A No.

Q Mr. --at some point you say that Mr. Deleon and you and who were the other people in the car when you head back from Kansas City, Kansas?

A Nessa and Christina Stanley.

Q And you testified that Mr. Deleon is driving crazy?

A Yes.

Q And it's your testimony that he went, that you tried to call Mr. Eye and Mr. Sandstrom to get picked up?

A Yes.

Q And whose telephone were you trying to call?

A I don't know. I really don't know.

Q Could you have been trying to call Ms. Rios?

A No.

Q Do you remember what Mr. Eye's telephone number was?

A I don't.

Q Do you remember what Mr. Sandstrom's telephone number was?

A No.

Q You arrive at the Inner City Oil, is that correct?

A Yes.

Q It's your testimony that you never went home. You went from Kansas City, Kansas right to 8th and Prospect at Inner City Oil?

A Yes. Then home.

Q And then at some point you got out of the vehicle?

A Yes, at that point.

Q Oh, I forgot to ask. When you were in Kansas City, Kansas did you smoke then?

A Yes.

Q Did you smoke in the car on the way over?

A No.

Q What about --why would you not smoke in the car on the way over?

A I mean, I wouldn't smoke in the car any way. It's just a chance of me getting busted or whatever. But I couldn't even hold myself still let alone hold smoke still because of the way he was driving.

Q Then you're at the Inner City Oil, is that correct?

A Yes.

Q At some point you say Mr. Eye and Mr. Sandstrom come and pick you up, is that correct?

A Yes.

Q And you testified on direct examination that you and Ms. Rios were having an out, right?

A Right.

Q In fact, you wouldn't even let her come in your house?

A Yes.

Q And you made Mr. Sandstrom and Mr. Eye leave immediately

when you found out Mrs. Rios was there, is that correct?

A Correct.

Q Yet Ms. Rios is in the car with Mr. Sandstrom and Mr. Eye.
Is that your testimony?

A Yes.

Q And you're willing to get in the car with her even though
you wouldn't even let her in your house a few hours
earlier, is that correct?

A Because I was just --she don't mean nothing to me. She's
the one who tried to set me up. It's not going to make me
not want to get in the car after I could die from him
flipping or whatever. I mean, I'm not going to, oh, she's
in the car, I'm going to run.

Q It's your testimony with --who pulled --the car pulls up
and who's driving?

A Gary.

Q It's your testimony Mr. Eye was driving the vehicle?

A Yes.

Q And they pick you up. And it's your testimony they agree
to take you home, is that correct?

A Home, yes.

Q So there's four people in the car, right?

A Right.

Q What time of day is this at?

A It's just breaking day, if breaking day.

Q Still dark outside then?

A Yes.

Q And it's your testimony that Mr. Eye was driving, correct?

A Yes.

Q And you're sitting behind Mr. Eye?

A Yes.

Q And the music was on, is that correct?

A Correct.

Q And is it fair to say that all four of you, all are tweaking?

A Very much so. Yeah, probably.

Q I think you testified that you talk a lot when you tweak, is that right?

A Yeah.

Q I mean, everybody does, not just you. But anybody that's tweaking just kind of rambles, is that correct?

A Correct.

Q So there is a lot of conversations going on at the same time, is that correct?

A I don't think at that point.

Q And is your testimony that at some point you look in the rear view mirror and see Mr. Eye's eyes or something like that? Is that your testimony?

A I made eye contact after what was said.

Q In the rear view mirror, is that correct?

A Correct.

Q It's dark outside, is that correct?

A No. It's just breaking day I said.

Q Okay. I thought you just testified it was dark outside.

So it was light enough from the dawn coming up in the east sky that you could see into the car?

A From the outside? Yes. I mean, it was just breaking day.

Q And there's music playing, people talking, is that correct?

A Correct.

Q But yet you're able to discern this one comment from Mr. Sandstrom, is that your testimony? That you heard Mr. Sandstrom make a comment, is that your testimony?

A Yeah. I told him, turn right here. There is where I need to go, down this street, home.

Q And at some point where do they let you out?

A At my house.

Q What time of day is this at?

A I couldn't say the exact time.

Q How close do you live to 8th and Spruce, ma'am? I mean, 8th and Prospect?

A Within ten blocks, probably. Not that far.

Q Back at the Inner City Oil, was there a lot of people at the Inner City Oil that morning, other people, other than yourself, Mr. Eye, Mr. Sandstrom and Ms. Rios?

A No. They was getting gas. I hopped out of their Jeep and

got in their car. I don't really remember seeing anybody else around.

Q So it took about less than 5 minutes to get you home then, is that correct?

A Correct.

Q And then you said you go to sleep?

A No. I tried to, you know, come back down from the craziness. I freaked out. I already got into a car wreck and flipped five times and I thought I was going to then. Of course, it could have been the drugs intensifying it, but you know what I mean. I had to come back down before my kids woke up. I couldn't be that way.

Q So this car wreck from 2004 is what I think you stated, so this car wreck, it shook you up pretty bad, obviously, is that correct?

A Yeah.

Q And then the way Vince was driving, it shook you up even more, is that right?

A Yes.

Q So that coupled with tweaking, you were kind of a mess. Is that fair to say?

A Yes.

Q And it's your testimony at some point Mr. Deleon calls you and asks to come over?

A After I went home, yes.

Q And how long after you went home to unwind before your kids woke did Mr. Deleon call?

A My kids wasn't up yet.

Q How long until you arrived home --I'm just trying to get at how long before Mr. Deleon called you on the phone?

A An hour, if that. Maybe a little more. I don't really know that. But I know my kids wasn't up yet.

Q Then at some point you let who into the house? Who all comes in?

A Gary, Stevie, Regennia and Vincent.

Q And you go to your basement, right?

A Yes. I let them in the basement.

Q And you smoke there?

A Yes. I fired a bowl up for Regennia and Vincent who was -Q

It's your testimony that after they arrived that someone turned on the T.V. Is that your recollection?

A Yes.

Q Now, when the T.V. is on, are you over with Mr. Deleon and Ms. Rios smoking a bowl?

A Yes.

Q How long does this whole event in the basement take? How long are they over there?

A Not, I mean, it was just like a flash. They come in, turn

the T.V. on. She wanted to smoke a bowl. She wanted a

sweater. I lit the bowl up. Heard them talking and the T.V. and they had to go.

Q Less than 5 minutes?

A No. I mean, but it wasn't more than 20 minutes probably.

Q And then they leave?

A Yes.

Q And then you're arrested later that day on unrelated charges to this, correct?

A Right.

Q When is the next time you hear from Ms. Rios after you're arrested?

A She had called me one time from her dad's house and I told her that the detectives were looking for me. And I told her the name of the detectives. She said, yep, that's the one over all that stuff that went down. Because I mean it was big talk about it when I got out of jail, telling her, you know, they were looking for me. I had ran into them. And she said, yeah, those are the ones. And that was the last time I talked to her before she went to jail.

Q Before when?

A Before she went to jail. I mean, I haven't talked to her since then.

Q Mr. Ketchmark asked you about your grand jury testimony. Do you remember that? I mean, you remember the questions

he asked you that you appeared before a grand jury?

A Yes.

Q You remember, I think, the questions Mr. Ketchmark was asking you in relation to that this wasn't a drug investigation so you could feel like you could talk freely and voluntarily, is that correct?

A Correct.

Q Now, you previously pled guilty to possession, simple possession, is that correct?

A Yes.

Q Do you know, is possession with intent to distribute or distribution of methamphetamine a more serious charge than simple possession of methamphetamine?

A Yes.

Q Have you ever been charged with that?

A I think that was one of my charges. I'm not sure.

Q It was?

A I'm not sure because I got caught with money also.

Q And where did you get caught with money in Missouri or Kansas?

A Johnson County.

Q And you did not do any prison time in Johnson County or Jackson County?

A No. I had a --it was a 40-month back up.

MR. SANDAGE: May I have a moment, Your Honor?

THE COURT: Yes.

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MR. SANDAGE: Nothing further, Your Honor.

THE COURT: Mr. Gromowsky?

CROSS-EXAMINATION

BY MR. GROMOWSKY:

Q

Ma'am, I'm just going to back up and walk you through the story, again, if you don't mind. First of all, flipping through my notes here, when all this was going on when you were talking to the detectives as part of this investigation, that's during the same time, wasn't it, you were being investigated on this Jackson County case and Johnson County case. Is that true?

A

Yes.

Q

In fact, the FBI agents actually came out to Johnson County where you were being detained at one point and spoke to you over there at the jail, didn't they?

A

The second time I went to jail.

Q

So when you're talking to the cops, that's this time frame? You've got cases against you, right?

A
Yes.

Q
I'm going to skip forward through your story until you're
over there in Kansas. Now, you testified that earlier you
had been smoking methamphetamine, is that correct?

A
Correct.

Q
And that was with Vincent Deleon, Christina Stanley and
maybe Nessa at some point came over, too?

A She come there with them.

Q And you smoked with them?

A Yes.

Q And I believe you told Mr. Sandage you smoked before they ever got there, too?

A Yes.

Q You went to Kansas and smoked over there in Kansas, is that correct?

A Yes.

Q And when you came back from Kansas did you smoke any with the defendants and Ms. Rios?

A No. I got dropped off.

Q You just went, got dropped off. Did you smoke any more then or did you just lay down to get rested up?

A No. No. I laid down. I got dropped off by myself and -Q
So you were less high when they came to your house the second time later that morning?

A Yes.

Q Than when you were in the car with them. Is that true?

A Yes.

Q And so if you were tweaking then, like you told Mr. Sandage, then you were also tweaking when you were in the car with them. Is that true?

A True.

Q When Mr. Eye picked you up and he was, in fact, driving,

is that correct?

A Correct.

Q And I think at some point during one of your interviews with the police you told them you specifically remember Mr. Eye was wearing a blue hat, is that correct?

A I couldn't tell you now. I mean, they all wore hats just sitting on the rim of their heads.

Q I'm going to show you a proffer memoranda drafted by the FBI after talking to you. Read the highlighted portion.

Does that refresh your recollection about what you told the police?

A Yeah, I mean.

Q Did you tell the police that Mr. Eye was wearing a blue hat?

A Yes, I did.

Q Now, I'm just trying to lock down a little better what time it was when they picked you up from Inner City Oil.

Do you know what time it was?

A I don't know what time it was.

Q But -A

I know, I know it was breaking day light and I had to get home an hour maybe two hours to rest up before my kids woke up.

Q When you say breaking day light, the sun was coming up.

Is that true?

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A

Not coming up. I mean, it looked like it does right now.

MR. GROMOWSKY: I don't know how to describe that for the court reporter, Your Honor.

BY MR. GROMOWSKY:

Q

Okay. Well, it is 12:10 on a summer day right now and -

A

There's shades on those windows.

Q

Okay. There's some blinds out there. That's true. But you can see the light coming through, is that correct?

A

Yes.

Q

There is a city building all the way down on the other end of the square outside this courthouse. Can you see that building from here?

A

I can't see it. I'm looking at the top windows.

Q Let me move over a little bit. I see what you're saying.

Your Honor, may I have her step down to come over here?

THE COURT: Yes.

BY MR. GROMOWSKY:

Q

Ma'am, would you mind coming over here?

A

(Witness complies.)

Q

From here, ma'am, can you look through the door windows or windows over the top and see a city building a block away?

A

Yes.

Q

Can you see that very clearly?

A

Yes.

Q What color is the sky up there through the blinds?

A Gray.

Q Plenty of light outside?

A Yes.

Q That's the way it was when you were in the car with the defendants and Ms. Rios on that morning?

A Probably not that light. I mean, it was just now light out. I don't know what time it was. I mean, it wasn't sun light, I mean.

Q Well, you already described it. You described it as being like it was out there. Is that correct?

A It wasn't as bright as out there but, yeah, by the time I got dropped off, yeah, it was almost just like that.

Q Okay. So plenty of light to see at that point, is that true?

A Yes.

Q That's how it was when you got dropped off at your house?

A Yes.

Q Because it was just a very short trip from Inner City Oil to your house, that's the way it was when you got picked up at Inner City Oil, too? You didn't stop at the grocery store or anything -A

No, we didn't.

Q --when you were in the car. And what was it you heard

Mr. Sandstrom say?

A This is my street, turn here. He said, shit, you're about to witness a homicide.

Q And you're positive that was Mr. Sandstrom?

A Yes.

Q When you originally spoke to law enforcement didn't you tell them that you didn't know who made that statement?

A I mean, say a lot of things when you don't know really what's going on and you don't really want to be brought into it.

Q Did you or did you not or do you or do you not recall telling law enforcement that you didn't know which one of them said it?

A Yes. I'm sorry.

Q And when whoever said that in the car said it, you have already told us at that point you were tweaking, is that true?

A That's true.

Q And when you told the grand jury about this story, you didn't tell them that Mr. Sandstrom started waving a gun around?

A He didn't wave it. He held it up.

Q You didn't even tell the grand jury that, did you?

A I don't remember. I told them that he did have the gun and that's what I seen. I do remember saying that.

Q Do you recall being asked at the grand jury whether or not

you saw any guns or knives or anything like that in the car and you said, on his lap he had a gun. Do you recall giving that testimony?

A Yes, I do.

Q That testimony, like today's, was under oath. Is that true?

A Yes.

Q You swore to tell the truth at that time, is that correct?

A Correct.

Q Followed it up with which one? Do you remember? And it was Stevie, correct?

A Correct.

Q You never told them at that point under oath that he raised this gun up for you to see, did you?

A I don't remember.

Q And you were, in fact, in the back seat. Is that true?

A That's true.

Q And you were behind Mr. Eye who was the driver of the vehicle?

A Correct.

Q Mr. Sandstrom was over on the other side of the car in the front seat? Is that true?

A Yes.

Q He wasn't sitting next to you, was he?

A No.

Q You were able to see through the back of the car seat in front of you and through Mr. Sandstrom and see a gun on his lap. Is that your testimony?

A He picked it up, I mean, he didn't pull it out from nowhere else. He just picked it up from his lap and held it up.

Q So when you specifically told the grand jury under oath that you saw it on his lap he had a gun, that's not correct?

A He had --didn't have it in his hands. He pulled it up like that. It had to be in his lap.

Q Ma'am, please answer my question.

A Yes. Yes, I said that.

Q You said that at the grand jury, is that correct?

A Yes.

Q Now, I'm still confused about your relationship with Ms. Rios. When she was there earlier in the evening when she came by with the defendants and the defendants came in, and Mr. Rios stayed out in the car. She was not welcome in your house at that time, is that true?

A That's true.

Q But like you said when you needed a ride, you didn't care about getting in next to Ms. Rios, did you?

A No.

Q And when you got out of the car and you told her you loved

her and be careful, is that true?

A Yes.

Q Despite the problems you had with her, is that correct?

A That's correct.

Q Then later when you thought the police were in tow, coming to your house, you let her into your house then, didn't you?

A Yes.

Q So the only time you don't let her around is when she's doing absolutely nothing, is that correct?

A No. Regardless of how grimy she is, I'm not like that. Okay? So if she was running from the police, I may have let them all in. I don't know. I was high, too. So I couldn't say if I wouldn't or would let them in if they were running from the case. She's my cousin. I do still have love for her because she is my cousin.

Q You haven't talked to her since that time, correct?

A No.

Q Didn't you say you talked to her?

A We talked one time. That's when I told her that the detectives come by here or went by my house looking for me. I told her the names. And that was the last time I talked to her.

Q And at least to some extent you talked about the case

because she's telling you who these detective are?

A We didn't talk about the case at all. I told her that's bull shit for them to come by my house because I didn't have nothing to do with it. I didn't know nothing. And I was going to ask her what they said but.

Q Ma'am, you indicated earlier with regard to Mr. Sandstrom that you knew about him for about four years before all this came down. Is that true?

A That's true.

Q You knew him through Justin Buchanan and his brother?

A And being from the same neighborhood.

Q Right. But you didn't actually know him, personally, up until a year before all this?

A Right. I didn't associate with him until then.

Q But you've been in his company several times during that year?

A He's been in my company, oh, that year?

Q Yes.

A Yes.

Q You guys smoked meth together, right?

A Yes.

Q In this neighborhood, you know, there's the old stereotype African-Americans do crack and white people do meth. Are you aware of that stereotype?

A Yes.

Q But in this neighborhood, the northeast, African-Americans

are doing meth, too, is that correct?

A Yes.

Q You have had African-Americans at your house smoking meth?

A That's correct.

Q In fact, some of those occasions when you had African-Americans at your house smoking meth, Stevie was there smoking meth, too. Is that true?

A That's true.

Q And do you recall telling detectives that during an interview of September 1, 2005 or actually special agents, that in all this time you knew Mr. Sandstrom you never heard him use the word nigger. Is that correct?

A That's correct.

Q So when you talk about somebody in your basement that day saying something about a nigger, it wasn't Mr. Sandstrom was it?

A No. I couldn't tell you that.

Q Well, this interview took place well after the events of March 9th, isn't that correct?

A I'm sorry. Would you say that again?

Q The interview took place September 1, 2005, is that true?

A True.

Q The events you're discussing here today took place March of 2005, is that correct?

A Correct.

1652

Q I'm also correct, am I not, that September comes after March?

A Correct.

Q When you talked to the agents of the FBI and you told them on September 1, 2005 that you had never heard Mr. Sandstrom say nigger, that includes all dates prior to September 2005, does it not?

A It does.

Q During this conversation that was going on in the basement, I just want to make clear, again, you were, in fact, tweaking when all this was going on?

A Yes.

Q In fact, you were tweaking so bad when you talked to the grand jury you specifically told them that you were having problems keeping up with the conversation, isn't that true?

A Yes.

Q And during this conversation you look in the background, see the television on, it's one of these live reports, isn't it?

A Yes.

Q Got a newsperson at the scene standing there in front of the yellow tape, is that correct?

A I saw the tape.

Q You saw the tape. They were, obviously, there live, is

that correct?

A Right.

Q And by this time is later in the day so when they're doing a live report, the sun is out even more than it was before?

A Yes.

Q So there's plenty of light for you to see beyond the yellow tape and see what's back there, is that correct?

A Yes.

Q You testified during your direct examination that you saw the body lying back there behind the yellow tape. Is that true?

A Yes.

Q And what time was it now that they had come to visit with you in the basement?

A Time? I have no clue what time it was. All I can say is the news was on. Time was all irrelevant when you was tweaking.

Q We know it's before your kids woke up at 8, is that correct?

A Yes.

Q After you kicked them out after 20 minutes, how much longer did you have before you kids got up?

A I went straight up and my kids were getting up. I fed them breakfast.

Q So this was close to 8:00 then when you saw this live news report?

A I'd say they wake up about 7 at the earliest. 7 to 8.

Q When your kids woke up did you have to take them to school or anything?

A No.

Q Did you have to get them ready for school or day care or anything like that?

A They wasn't old enough yet.

Q They were just going to hang out there all day long?

A Yes.

Q Did you look at a clock at that point to see what time it was?

A No.

Q Did you remember thinking to yourself that these kids sure are up early this morning?

A No. I mean, you get up and do your job.

Q I understand. But as a parent, some times you look at the kids. They wake up, kind of surprised they're up that early or they're sleeping in that late?

A No.

Q You never had that experience?

A Some times I wish they would go back to bed so I could but if they're up, you're up. I don't look at the time and

say, man, I wish I had more time to tweak.

Q But in any event the folks that came to your basement that night, we've heard testimony they already went over to Mr. Sandstrom's house. They already disposed of the car, went somewhere to pick up Mr. Deleon then came back to your house so?

A I don't know.

Q Is that basically your rough understanding?

A I don't know what they did then.

Q The bottom line, I guess, my question is, did the ambulance bring the body back from the hospital in time for you to watch it on the news?

MR. KETCHMARK: Objection, Your Honor. It's

argumentative. He can ask her what her recollection is.

THE COURT: Sustained.

BY MR. GROMOWSKY:

Q Body was there behind the yellow tape?

MR. KETCHMARK: Asked and answered.

THE COURT: Sustained.

MR. GROMOWSKY: No further questions.

REDIRECT EXAMINATION

BY MR. KETCHMARK:

Q Ms. Chrisp, is time something real important to you when

you're having this experience and going to these places with these defendants? Are you focusing on your watch?

Are you trying to keep notes?

1656

A
No.

Q
Are you keeping a journal as you're sitting there saying, now, it's now 12:30, I'm getting ready to be examined again by Mr. Ketchmark. Is this something you're writing down as it's happening?

A
No, not then.

Q And as this is going on and these defendants are coming in your basement and watching the T.V. and having this conversation, is there any doubt in your mind what you heard?

MR. SANDAGE: Objection, leading, Your Honor.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. KETCHMARK:

Q
So by tweaking is the meth effecting you so much you're not certain what you're hearing them talk about?

A
No.

Q

And this discussion about, with Mr. Gromowsky, and this notion of seeing the gun and trying to suggest that you're lying to the grand jury, did you tell the grand jury that you saw the gun or you believe the gun you saw was -

A

I believe it was in his lap.

Q

When you're here telling this jury and you're saying that, he's making the statement and lifting it up, does he

appear to be lifting it from his lap?

A Yes.

Q He's not reaching behind his neck and pulling it out, is he? Or lifting up a sock and pulling it out?

A No.

Q It's coming from his mid-section.

A Yes.

Q Did you lie to the grand jury about that?

A No.

Q And this discussion about your prior convictions that Mr. Sandage brought up about Johnson County and Mr. Gromowsky hit you up with, this is all going on at the time you're talking to and I think he kept referring to detectives. But you never talked to detectives, did you?

A Never.

Q You talked to special agents with the FBI?

A That's the only people I have ever talked to.

Q If he's referring to them as detectives, he's wrong?

A Yes.

Q But my question is, as you're talking to these agents the matters that are going on with Johnson County and Jackson County, those are matters that you're dealing with, correct?

A Right.

Q Did we ever or have we ever, being the government, done anything on your behalf in Jackson County, Johnson County,

1658

any of the counties that you have pending matters?

A

No. I've done my time. I've done my house arrest, my color code probation. I've done it all myself.

Q

Did you ask us to do anything on your behalf?

A

No. I didn't say nothing about me either.

Q

Is this fun for you?

A

No, it's not.

Q

Do you want to be here?

A

No, I don't want to be here.

Q

You're here under subpoena, correct?

A

Correct.

Q

And what you're telling the jury, is that what you remember happening to the best of your ability?

A

Yes.

Q

Is it the truth?

A It's the truth.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Recross?

RE CROSS-EXAMINATION

BY MR. SANDAGE:

Q

Ms. Chrisp, just a couple questions. Mr. Ketchmark asked you a series of questions regarding, have they done anything for you and you talked about how you walked down your time yourself, is that correct?

A

That's correct.

1659

Q

When you met with special agents from the FBI and when you met with Mr. Ketchmark and when you testified in grand jury, you spoke about distributing methamphetamine to at least Vincent Deleon, didn't you?

A

Yes.

Q

Did you ever get prosecuted for distributing methamphetamine to Vincent Deleon?

A

No.

Q All right. Thank you.

THE COURT: Mr. Gromowsky?

RECROSS-EXAMINATION

BY MR. GROMOWSKY:

Q

I just want to go over again where this gun was you saw. Do you recall telling the grand jury the gun was on Mr. Sandstrom's lap.

A

I do.

Q

You did not tell the grand jury that he held it up, is that true?

A

I don't remember.

Q

Ma'am, this is from your grand jury transcript of the 27th day of September 2005. Do you remember going before the grand jury?

A

Yes.

Q

And do you recall you were placed under oath just like you

were when you walked into the courtroom here today?

1660

A Yes.

Q When you were placed under oath, you were sworn to tell the truth as you recalled it at the time, is that correct?

A That's right.

Q Ma'am, I'm going to direct you down here, page 21, line 24 of the transcript. Were you asked this question and then I'll follow up with your response and ask you to make sure I do this correctly. Okay?

Were you asked this question and did you give this answer? As you were driving to the house from Inner City Oil to your home on Garner, do you see any weapons in the vehicle? Do you see any guns or any knives or anything like that?

"ANSWER: On his lap he had a gun.

"QUESTION: When you're saying he, do you remember which one?

Stevie.

Stevie?

Yeah."

Did I read that correctly, ma'am?

A Yes.

Q Were you asked those questions and did you give that answer?

A Yes.

Q And nowhere in there does it say that he picked up the gun

1661

and held it up and you just assumed it came from his lap, correct?

A

I mean, I wasn't saying anything else but what they were asking me. Okay? I mean, if they had asked me if he had waved the gun around or anything. They got deeper. They wanted to know everything. I told them everything.

Q

Did you or did you not say that you saw the gun in his

lap?

A Yes.

Q Thank you, ma'am.

THE COURT: May this witness be excused?

MR. KETCHMARK: No objection from the government.

THE COURT: All right. Ms. Chrisp, you are excused.

Thank you.

Let's eat lunch. Don't discuss the case. Keep an open mind. We'll see you back here about 1:30. We're in recess.

(Witness excused.)

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: We're in recess.

(Noon Recess)

(The following proceedings were had IN THE PRESENCE
AND HEARING OF THE JURY:)

THE COURT: Please be seated.

1662

The United States may call its next witness.

MR. KETCHMARK: We call Special Agent Arch Gothard again.

ARCH GOTHARD, RECALLED

DIRECT EXAMINATION

BY MR. KETCHMARK:

Q

Special Agent Gothard, do you understand you're still under oath?

A

Yes, sir.

Q

And, obviously, Special Agent, based on being one of the co-case agents in this matter, you're aware of, are you not, the various locations that are being, have been the subject of much of the testimony over the last week?

A

Yes, sir, I am.

Q

And in particular the testimony regarding a location of an alleyway between 8th and 9th Street and Kensington and Spruce?

A

Yes, sir.

Q

And did you, at our request, obtain some aerial photographs that depict this area?

A

I did.

Q

And is it your belief in obtaining these pictures it was the thought process that it might be beneficial to the jury to orientate them and to get a better reference point

as to the locations that were discussed in the testimony

1663

that happened previously in the week?

A Yes, sir.

MR. KETCHMARK: Ms. Marko, if I could just for the agent and counsel, display Exhibit 300.

BY MR. KETCHMARK:

Q Special Agent Gothard, do you see on the screen in front

of you what has been marked as Plaintiff's Exhibit 300?

A Yes, sir, I do.

Q And is this an aerial photograph of the location I was

just discussing between 8th and 9th Street and Kensington

and Spruce?

A It is.

Q And just so we're clear and the Court and jury is clear,

this picture would have been taken at some point earlier

in 2008, is that correct?

A Yes, sir.

Q Is there any reason that you know of that the photograph

is substantially different from how this area would have appeared back in March of 2005?

A Not that I'm aware of.

MR. KETCHMARK: Your Honor, at this time I move the

admission of Government's Exhibit 300 into evidence.

THE COURT: Without objection 300 is admitted.

MR. KETCHMARK: Ask it be allowed to be published to

the jury.

THE COURT: You may publish.
BY MR. KETCHMARK:

Q Special Agent Gothard, can you orientate the jury, I think if you just touch the screen when I ask you about specific locations, it will appear. But can you touch on the screen what is 9th Street?

A It's, basically, right there.

Q You're making a blue, or I'm sorry, a purple dot?

A Yes.

Q And the location that you indicated there, would 9th Street be the street that's running through the picture in terms of left to right?

A I'll draw a line on it if I can. That's, basically, 9th Street. It runs east and west.

Q What is the cross street that is running north and south there in the photograph?

A That would be Spruce.

Q The street that would be further down in the diagram below 9th Street that's also running parallel with 9th Street, would that be 8th Street?

A Yes. 8th Street would be right down here.

MR. KETCHMARK: It might be easier, Your Honor, may

he step down and just step to the display?

THE COURT: Yes.

BY MR. KETCHMARK:

1665

Q I think that might be easier, Special Agent Gothard, rather than trying to do it with the monitor.

A Can they clear that?

Q I will.

Again, show the jury what is reflective of 9th Street?

A 9th Street is right here.

Q Can you all see?

What did I ask you to identify by way of 8th Street?

A 8th Street is this street right here.

Q And, Special Agent Gothard, what is the street that's running here between 9th Street and 8th Street?

A This is a leg of Spruce.

Q And you see an area up here where there is a series of vehicles next to a building, do you see where I'm referring to on Government's Exhibit 300?

A I do.

Q Do you know what that business is?

A That's Leon's Auto.

Q So when the testimony was about coming down 8th Street by Ms. Rios and about to turn on to Spruce, heading toward Leon's, is that, basically, approximately, in this area where the car would have been?

A That's my understanding, yes.

1666

Q

There is also reflective, is there not, a building here in the upper corner of Government's Exhibit 300. Do you know what that building is?

A

This is the G & E Cafe right here.

Q

And then the alley that was the subject of some discussion in testimony, is the alley reflected in Government's Exhibit 300?

A

It is --this would be the alley located between Spruce and Kensington at the 9th Street end of the alley.

Q

So when you're saying this is Spruce, for the jury's reference, which street is Kensington?

A

Kensington is this north south block right here.

Q

There is also a rather peculiar shaped building, I'll describe it as kind of pie shape, that appears be between the alley and Spruce. Do you see the building I'm referring to?

A
Yes.

Q
And do you know what that is?

A That's the Island Liquor Store, I think.
MR. KETCHMARK: Ms. Marko, if you could please

Exhibit for the Special Agent and counsel Government's Exhibit

301.
BY MR. KETCHMARK:
Q Special Agent Gothard, do you see what is displayed as

Government's Exhibit 301?

1667

A

I do.

Q

And is Government's Exhibit 301 a view looking at the same location but coming from a south view looking north?

A

Yes. So the perspective of the person taking the photograph here would be from the south and the picture is being taken towards the north.

Q

Again, Special Agent, is this photograph substantially the same in terms of the condition of this location as it would have appeared back in March the 9th of 2005?

A I don't have any reason to believe it's significantly different.

MR. KETCHMARK: Your Honor, at this time I move the

admission of Government's Exhibit 301.

MR. OSGOOD: No objection.

THE COURT: 301 is admitted.

MR. KETCHMARK: May that also be published to the

jury.

THE COURT: You may.

BY MR. KETCHMARK:

Q

Again, Special Agent Gothard, if you could, could you step down and orientate the jury to the locations that we previously discussed in Government's Exhibit 300?

A

Okay. This would be Spruce, right here. Kensington, 9th Street, 8th Street. The alley between Spruce and

Kensington at the 9th Street end. The Island Liquor

Store. And the G & E Cafe and Leon's Auto.

Q Thank you, Special Agent.

Ms. Marko, if you could, please, display
Government's Exhibit 302.

Special Agent, do you see what is depicted in
the Government's Exhibit 302?

A Yes, I do.

Q What is reflected in Government's Exhibit 302?

A That's a picture taken from the east side, back towards
the west. And 9th Street is running right down the middle
of the picture there, basically.

Q Again, would this be a larger pull out aerial view that
would capture the location of 9th and Brighton as well as
the location we just have discussed regarding up the
street between 9th and Spruce and 9th and Kensington?

A Yes, sir, it does.

Q And would this also have been taken at the same time as
the other aerial photographs that were taken and
previously admitted as Government's Exhibit 300 and 301?

A It was.

Q Is it your belief that this photograph would help to
orientate the jury with respect to some of the locations
that were the subject of testimony?

A Yes.

Q And is it your belief or do you have any reason to dispute

1669

that this photograph is substantially --is different than

as this area would have appeared back in March the 9th of

2005?

A I don't have any reason to believe it's substantially different.

MR. KETCHMARK: Your Honor, at this time I move the

admission of Government's Exhibit 302.

MR. OSGOOD: May I voir dire, briefly?

THE COURT: You may.

MR. OSGOOD: Agent, would you agree with me that this has some degree of distortion in it in that the buildings depicted down at the bottom are larger than the buildings depicted at the top, which is typical of any photo that shoots a great distance?

THE WITNESS: The buildings at the bottom do appear larger than the ones at the top but I don't know that means it's distorted.

MR. OSGOOD: Well, but it's the natural consequence of a photo that when you shoot something, the part of it that is close in the photo is going to appear to be greater distance between the buildings than the part that's far away. There's

some distortion to the photo. It's not a true depiction of the distance from the top to the bottom of the photo, is it?

THE WITNESS: I'm not sure I know the answer to that,

Mr. Osgood.

1670

MR. OSGOOD: Well, let me, for the engineers in the audience, it's not linear. It's not a true linear depiction of the distance, is it? Do you know what I mean by that?

THE WITNESS: No.

MR. OSGOOD: If you took a microscope and you measured the distance between two buildings at the top of the photo and it gave you a certain microscopic millimeter measurement. You measure the distance between the buildings at the bottom, it would be a greater microscopic millimeter measurement, wouldn't it? Just by the nature of the photo?

THE WITNESS: I'll have to take your word for that.

MR. OSGOOD: Well, you can see it just from the photo, can't you? The buildings at the top appear to be much closer together than the buildings at the bottom by the nature of the photo? That's all.

THE WITNESS: Yeah, I'd say that's true.

MR. OSGOOD: Okay. Thank you.

MR. KETCHMARK: With that, I would renew my offer of admission of Exhibit 302.

MR. OSGOOD: Subject to the understanding that it's not a true linear depiction.

THE COURT: 302 is admitted.

MR. KETCHMARK: And may that be published to the jury?

THE COURT: Yes.

1671

BY MR. KETCHMARK:

Q Agent Gothard, could you step down close to the monitor close to the jury.

Can you, please, orientate the ladies and gentlemen of the jury what they're seeing in this aerial photograph, Exhibit 302?

A Starting back with the area we were discussing before, the G & E Cafe is right here.

Q Do you also see the pie-shaped building that is the liquor store you referenced?

A Yes. The Island Liquor Store, right there.

Q What is the street, again, running almost diagonally through that photograph?

A This is 9th Street right along here.

Q And the street that would be running parallel to 9th Street was 8th Street?

A That's correct.

Q And that, again, just so the jury understands, G & E Cafe and this liquor store are at the top portion of this photograph?

A Yes.

Q Now, as you come down into the bottom portion of the photograph do you see the location of 9th and Brighton as it would be reflected in this photo?

A Yes. 9th and Brighton intersection is right here.

Q And just so the jury can understand or when they're viewing, there's two red buildings as well as a white house, generally, from that location?

A Yes.

Q And whose residence, if you know, was the white house?

A At the time that belonged to the Lugos.

Q Is that the Lugos who came in and testified here in court?

A Yes, sir.

Q As you come further down into the photograph there is a building that is down here at the end of 9th Street as the picture ends. Do you see the building I'm referring to?

A Yes, right here.

Q Do you know what type of business is located down there?

A That's Aeroform.

Q Additionally, as 9th Street goes, does 9th Street end at the bottom of the photograph or would it continue down underneath the railroad tracks, the bridge that's reflective of crossing 9th Street?

A It continues east.

Q Thank you, sir.

Again, if I could display, Ms. Marko, for the agent and for defense counsel Government's Exhibit 256. And do you recognize what is contained in Government's Exhibit 256?

A I do.

1673

Q And what is contained in Government's Exhibit 256?

A That's a Google map image of the same area we were just discussing.

Q

And, again, is this a Google map image with certain items referenced and locations referenced as we have discussed and have been the subject of testimony over the last week plus?

A

It is.

Q

Again, Special Agent, is it your belief this would aid the jury in referencing particular locations that were the subject of testimony during the government's case in this matter?

A Yes.

MR. KETCHMARK: Your Honor, at this time I move

admission of Government's Exhibit 256 into evidence.

MR. OSGOOD: No objection on that one, Your Honor.

MR. ROGERS: May we approach, Your Honor?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. ROGERS: I'm only objecting to the labeling on it which is I think based upon hearsay. It's improper bolstering of testimony of certain witnesses to the exclusion of others. I'm speaking, specifically, of the No. 2 which is where it says

alley, first shooting. And I think that's really a matter in

dispute whether anything happened at that alley. I think it's improper to have that.

THE COURT: I'll allow you to cross-examine about that. I think we probably need some more foundation with respect to the labeling but once you do that I'll admit the photograph.

MR. KETCHMARK: Just for defense counsel's information, I have two more that have other similar locations that I'm going to go to next in terms of the Inner City Oil, the Sandstrom residence, the Chirino residence, the location of the burning of the vehicle.

MR. ROGERS: And locations of things that are not in dispute, I don't really have a problem. There's no question where the residence is. I'm not objecting to the Lugo house being the Lugo house.

MR. KETCHMARK: I'm just bringing that up. Sounds like those probably won't be an issue. But I wanted to advise the Court since we're here.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q Special Agent Gothard, with respect to Government's

Exhibit 256 and the notations of various locations that are on there, are those locations noted based in large part upon testimony that was the subject of witnesses

called on behalf of the government?

1675

A Yes.

Q And in particular with respect to one of the locations that is noted, is it a notation of an alleyway and is it the alleyway that you just testified to about the aerial photographs, that alleyway being on 9th Street between Spruce and Kensington?

A Yes, sir, it is.

Q And is that based in large part upon testimony from Ms. Rios who was called and testified last week?

A Yes.

MR. KETCHMARK: Your Honor, with that additional

clarification I would move the admission again of Exhibit 256.

THE COURT: 256 will be admitted over Defendant Sandstrom's objection and may be displayed.

BY MR. KETCHMARK:

Q And, again, Special Agent Gothard, if you might step

down. And, again, if you could, again, by just orientating the ladies and gentlemen of the jury to the location of what they're seeing in Government's Exhibit 256 and if it's helpful to you some of the buildings we had noted?

A Starting where we did before, the G & E Cafe that is

marked No. 3 right here.

Q Do you see the triangle pie shaped liquor store?

A Right here.

1676

Q Do you see a reflection of the alleyway?

A Yes. The alleyway would be right here between Spruce and Kensington on 9th Street.

Q And, again, following down 9th Street through the photograph do you see the location that we have labeled as a homicide location of William McCay?

A Yes. This would be 9th and Brighton.

Q Is the Lugo house also reflected on this diagram as well with a marker?

A Yes, sir. It's right here.

Q It says Lugo house next to it?

A It does.

Q Thank you, Special Agent.

Again, Ms. Marko, if we could display for just the agent as well as for defense counsel Government's Exhibit 257.

Special Agent Gothard, do you see displayed Government's Exhibit 257?

A Yes, I do.

Q And is Government's 257 also a Google earth map of a wider area of this area in the northeast section of Kansas City?

A Yes, sir, it is.

Q And does it also have additional markers of reference points that were the subject of discussion by witnesses

who testified during the trial this past week?

1677

A
It does.

Q
Does it reflect the Inner City Oil location at 8th and Prospect?

A
Yes, it does.

Q
Does it also reflect the Aeroform location that you

previously had testified as being the business there at the end of 9th Street?

A Yes, it does.

MR. KETCHMARK: Your Honor, at this time I move the

admission of Government's Exhibit 257.

MR. ROGERS: No additional objection.

THE COURT: 257 is admitted. And may be displayed.

BY MR. KETCHMARK:

Q
Special Agent Gothard, if you could, again, step down. And, again, please, orientate the ladies and gentlemen of the jury to what they're seeing in 257?

A

Okay. This, again, is the area we were discussing on the previous exhibits. So you have the G & E Cafe. The alley between Spruce and Kensington. The 9th and Brighton location. And Aeroform. And the main thing that's added to this map is Inner City Oil, that's on the east side of 8th and Prospect, or excuse me, yeah, 8th and Prospect.

Q

And, again, in this exhibit, in Government's Exhibit 257 do we also see where 9th Street as we talked about

continues underneath the railroad trestle that kind of

1678

dissects through the photograph of 257?

A Yes.

Q Did we also ask you at some point, Special Agent Gothard, to drive in your vehicle and clock the distance from the scene of the homicide at 9th and Brighton and how far distance-wise on your odometer it was from that location to the location of the alleyway there on 9th Street?

A Yes. It was roughly 4 tenths of a mile.

Q 4 tenths of a mile?

A Yes, sir.

MR. KETCHMARK: Again, Ms. Marko, if we could display

just for this Special Agent and defense counsel Government's Exhibit 258.

BY MR. KETCHMARK:

Q Do you recognize what is contained in Government's Exhibit

258, Special Agent?

A I do.

Q What is contained in Government's 258?

A It's another Google map image.

Q Is this, again, a further out or even further out image of

Google maps with the additional locations that were the subject of testimony also marked for reference in this matter?

A It is.

Q And is it your belief that these additional locations

1679

would aid the jury in orientating themselves to the areas and locations that were the subject of testimony during this past week in the presentation of the government's case?

A Yes, sir, I think that it would.

MR. KETCHMARK: Your Honor, at this time I move admission of Government's Exhibit 258 into evidence.

THE COURT: 258 is admitted and may be displayed.
BY MR. KETCHMARK:

Q Special Agent, one more time.

And, again, if you could orientate the ladies and gentlemen of the jury for what they're seeing as depicted in Government's Exhibit 258?

A Okay. The 9th Street stretch that we started with is right here and, again, the G & E Cafe in close proximity to the alleyway between Spruce and Kensington. 9th and Brighton is right here. Then Aeroform is right here.

Q And in the last photograph that we did there was also Inner City Oil depicted here, correct?

A Yes.

Q What are the additional locations that have been added in this particular Government's Exhibit?

A This is Jonnie Renee Chrisp's home at the time that we've been discussing in this case.

Q Was that 3412 Garner?

1680

A Yes.

Q And what else has been added to this?

A The Sandstrom house, 1106 Ewing.

Q And what is reflected in the bubble No. 10 that is labeled, bridge?

A That is the 17th Street Bridge where the handgun was recovered.

Q And, again, as we see kind of meandering through this portion of the photograph, what is that, that I'm kind of tracing with my pen?

A The Little Blue River.

Q There is also a notation reflected with a bubble marked No. 7 and it says, burning car. Do you see that notation?

A I do. That would be the 23rd Street Bridge over Manchester Trafficway.

Q And is that the location where the red Intrepid was found burning on the morning of March 9, 2005?

A It is.

Q And then, lastly, there is also a reference in the middle with the number 8 in it that says Stanley house. Do you see that?

A Yes. That is off of East 16th Terrace.

Q Is that the location where there's been some testimony about Mr. Deleon was at and he was picked up after?

MR. OSGOOD: Your Honor, objection to the summary of

1681

testimony.

THE COURT: Overruled.

BY MR. KETCHMARK:

Q Is that the location that Mr. Deleon had indicated he was

at when he was picked up by these two defendants and

Ms. Rios?

A Yes, sir, it is.

Q Is that the reason it was included in this overall?

A Yes, sir.

Q Thank you, Special Agent.

May I have one moment, Your Honor?

THE COURT: Yes.

MR. KETCHMARK: That's all I have for the agent, Your

Honor.

THE COURT: Cross-examination?

MR. OSGOOD: I don't have much.

Could I have the photo of the larger intersection by

the Island.

CROSS-EXAMINATION

BY MR. OSGOOD:

Q While we're doing that--would you agree with me that a

mile is 1,760 yards?

A Yes.

Q That's 440 times 4, isn't it?

A Yes.

Q Would you agree with me that point 4, 4 tenths of a mile, 4 tenths of 1760 yards would be 704 yards. You want to multiply that out and check my math?

A No. That sounds about right.

Q 704 yards, to put it in perspective, would be seven football fields, wouldn't it?

A Yes, sir, it would.

Q And so presuming we're talking goal post to goal post, I guess if it's college or pro would make a difference but the zero yard line to zero yard line on a football field is a hundred yards, isn't it?

A Yes, sir, it is.

Q So this would be just a smidgen over seven football fields if you put them end to end?

A Yes.

Q Or just shy of a half mile of an 880 that you would run in track, two times around the track?

A It would be a little short of a half mile, yes, sir.

Q And a track is 440, is a quarter mile around a track, typical track in a high school stadium, isn't it?

A Yes, sir, it is.

Q And so an 880 which is half a mile is twice around that track, isn't it?

A Yes, sir, it is.

Q Okay. So that's a substantial distance, isn't it?

A Half a mile?

Q Yes.

A Half a mile is half a mile.

Q Well, it's a substantial distance to run with a bullet through the heart, isn't it?

A I'm not aware of anybody that ran half a mile with a bullet in their heart in this case.

Q You're not? Or three bullets in the face?

A I'm not aware of anybody who did that in this case either.

Q How long have you been investigating these kinds of cases?

A What kind of case?

Q That we're dealing with here?

A This is the only case of this nature that I've investigated.

Q I guess that's a bad question. How long have you been working for the FBI investigating various types of offenses against the United States government.

A Almost 13 years, Mr. Osgood.

Q Okay. Would you agree with me that when an offense is committed and a person has the ability, they're going to report it as soon as they can, most victims. If you're robbed, you called 9-1-1, don't you?

A I would say, generally, most victims would try and report the crime as soon as they can.

Q If your car is hijacked on the street and you're standing

there, lucky enough to still have your cell phone, you call the police, don't you?

A Yes.

Q And if you don't have a cell phone, you go to the nearest place that you thought you could call the police from, wouldn't you?

A Yes.

Q What time did the G & E Cafe open that morning?

A I'm not sure.

Q Well, we had witnesses testify it was open at 6:00 a.m., eating breakfast in there, didn't we?

A I know Joe Thompson testified he was walking in there about 6:00 a.m.

Q He also said in grand jury he was in there at 6:00 a.m., sitting by the window, didn't he?

A Yes, sir.

Q So, again, how far was the G & E Cafe from this corner at 9th and Spruce?

A I'm not sure.

Q Well, would it help to see the picture again?

A Never really clocked that distance.

MR. OSGOOD: Could we put 300 up, please?

THE WITNESS: I know the G & E Cafe is located just west of Spruce.

BY MR. OSGOOD:

1685

Q All right. Could you step down to the photo, again, sir?

A Yes, sir.

Q Show us, again, where the G & E Cafe is in this photo?

A Right here.

Q And show us where this alley is that this incident

occurred?

A Right here.

Q And so it would be a short distance from the G & E Cafe,

if you didn't have a cell phone to report?

My question was, it would be a short distance to run to the G & E Cafe to report this, if you didn't have a phone?

A The G & E Cafe is close to that alley.

Q And Mr. McCay, according to your own testimony, walked

this street almost every day to go to work, didn't he?

A I didn't testify that he -Q

Well, your investigation?

A Yes.

Q Your investigation revealed that he walked that street

almost every day?

A Yes, sir.

Q So it's a reasonable presumption that he would know the G

& E Cafe was open when he walked by it, wouldn't he?

A I would be assuming what Mr. McCay knew but that would make sense to me.

Q That would be the logical place for somebody to run to

1686

report a shooting at that hour?

MR. KETCHMARK: Again, Your Honor, I would object to

the speculative nature. There's been no testimony whether

McCay would have known the cafe was open or not.

THE COURT: Sustained.

BY MR. OSGOOD:

Q

Let me ask you another question. This is the alley right

here, isn't it?

A

That's the alleyway between Spruce and Kensington on 9th Street.

Q

Where Rios says that Eye reached out the window and fired

shots?

A

Right here.

Q

And what do you have right across the street directly from

that in the line of fire?

A Well, if -Q

Please answer the question. What do you have across the street in the line of fire?

A That's not necessarily in the line of fire. If you're firing from the alley, down that southerly direction it would be right in the line of fire. But if the car is at the end of the alley and Mr. McCay is right here, the fire could be here or down here or down here.

Q The testimony was according to her, he was stepping off

the curb, wasn't he? They were back in the alley. The

car wasn't protruding from the alley. Remember that?

A No.

Q Okay. Well, the jury will. Did you check these buildings over here across --2-story building, 2-story here and 2-story and single story and 2-story, is that right?

A Yes.

Q Did you check all of the buildings for bullet holes?

A Special Agent Janke and myself did do a canvas in the area but we did not check every building for something as small as a .22 caliber bullet, no.

Q Did other members of the FBI check?

A No.

Q Check these buildings here for bullet holes?

A I believe that is one of the buildings that Special Agent Janke and myself looked at.

Q You found no .22 caliber bullet holes, did you?

A No.

Q Did you check these buildings back here for bullet holes?

A I don't believe that we did. I have a report that I could reference that would tell exactly what buildings we checked.

Q If you want to, please do?

A No. I don't have it with me.

Q Can you get it and tell us? It might be helpful.

A I don't know where it is. It's part of the discovery.

Q Maybe I can find it for you?

A Okay.

Q Now, you did what is called an area canvas, didn't you?

A Yes, sir.

Q And you talked to other merchants and people that worked in the area to see if they heard anything or had seen anything, didn't you?

A Yes, sir.

Q That was, basically, negative, wasn't it?

A Can I refer to my report to refresh my recollection?

Q Sure.

A Thank you, sir. Okay.

Q Is this the report that tells you which buildings you looked at, agent?

A Yes. There's several of them listed there but -Q

And can you relate this to this map to show me which buildings you-A

Well, this, first, the Nelson Island is the Island Liquor Store we were talking about here. And this actually looks like the reports documenting who we actually spoke to so I guess I can't be positive that we didn't look at any other buildings along here. But my recollection is we went right along this area here. I don't think we looked at any, I don't remember looking at any of these buildings

back here.

Q Okay. Now, this was when that you did this canvas?

A August 12th of 2005.

Q Five months after the fact?

A It is.

Q Now, obviously, a bullet hole doesn't deteriorate or go away, does it?

A I guess it would depend on what's it in.

Q It's in wood?

A I would expect it to still be there unless somebody repaired it.

Q By this time how many times had Ms. Rios lied to you?

Take your seat back unless you need to be there.

I don't mean to be bossy.

How many times had Ms. Rios lied to you by this time?

A I don't know.

Q Several at least, right?

A Yes.

Q We know she denied being there on March 9th?

A She did, initially.

Q And then she denied certain aspects of it in her videotaped confession, didn't she?

A She did.

Q Then she lied to you in her first interview and in her

grand jury, didn't she?

1690

A Yes, she did.

Q Maybe we can precisely tell when this was.

5 May '05 you interviewed her?

A Yes.

Q That was one of the interviews she lied, misled you and held stuff back?

A It was.

Q So you're out here in August. You've got a witness that you think is critical to the case, don't you, Ms. Rios?

A She's one of about 39 witnesses or 30 some, 40 witnesses that have been put on. Yes, I think she's an important witness.

Q How many other witnesses have you called that claimed to be in the car and were aware of the incident from start to finish?

A None.

Q She's the only one who claims to be in the car and knows what happened start to finish, isn't she?

A Yes.

Q So she's a pretty important witness, isn't she?

A Yes, sir.

Q You knew she lied to you multiple times by August?

A Yes.

Q And you know that she said there was a shooting that

occurred here, right?

1691

A Yes.

Q That makes that pretty important to whether or not you can

corroborate that, doesn't it?

A Yes, that's why I was out there.

Q Well, who made the judgment call that you just kind of ask

a few people and not look at all the buildings and inspect

them for bullet holes?

A Me.

Q You made that call?

A Yes.

Q You didn't think it was important to see whether or not

you could prove or disprove what this liar was telling

you?

MR. KETCHMARK: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: I think that the chances of finding a

.22 round in that mess of buildings is extremely unlikely
whether it's there or not.

BY MR. OSGOOD:

Q So you don't think that this case warrants that level of

intensity of investigation? That's what you're telling

me.

A That's not what I'm telling you.

Q Well, what are you telling me?

A I think you know that I've taken this investigation very

1692

seriously.

Q Well, that's what you're telling us now but if there was a bullet hole in one of those buildings over there, that would pretty well confirm that this incident occurred, wouldn't it?

MR. KETCHMARK: Your Honor, objection, asked and

answered. He indicated that he didn't think he could find a

.22 round.

THE COURT: Sustained.

MR. OSGOOD: That's all I have.

THE WITNESS: Would you like the report back,

Mr. Osgood?

MR. OSGOOD: Yes, sir. Thank you.

CROSS-EXAMINATION

BY MR. ROGERS:

Q

So you went out and did the area canvas that you and Mr. Osgood have been talking about in August, is that correct?

A

Yes, Mr. Rogers.

Q

That was August 11th, did you say?

A

I think that's correct.

Q

Okay. Can't ask you to look at the report you gave it back to him. And is that the time at which you learned about Mr. Thompson, Joseph Thompson?

A

Yes. I think that is the day we interviewed Brenda Thomas

from the G & E Cafe.

Q And she's the owner and operator of that cafe?

A Yes, sir, she is.

Q She's the one that told you Joe Thompson said he heard something?

A Yes, she did.

Q From that you were able to locate Mr. Thompson and confirm that?

A Yes, sir.

Q And when you talked to Mr. Thompson, he told you he heard several shots, didn't he?

A That's my recollection. If you would like me to be specific for sure, I'll look at my report from interviewing him. I do believe that's what he said.

Q Is this the report we're talking about?

A Thank you, Mr. Rogers.

Q Does that refresh your recollection that he told you, in fact, he heard 5 to 7 shots?

A Yes. He said 5 to 7 quick shots from a gun.

Q Okay. And even though .22 caliber bullets are small in comparison to bigger bullets if there's five to seven of them would make it a lot more likely to find something than if you were just looking for one or two?

A Yes, that would make the probability go up. But it would

still be extremely hard to find any bullet in that mess of

buildings. But, yes, that would.

Q Or any bullet holes?

A Yes.

Q But the more needles you have, the smaller the haystack, so to speak, if I can mix a couple of metaphors?

A The haystack would be the same size. There would just be more needles. Five to seven instead of one.

Q More likely to find one than if you're just looking for one?

A Yes, sir .

Q But you're not worried about not corroborating that any way because you thought you already corroborated it already with Ms. Rios, Mr. Thompson's statement to you?

A The G & E Cafe was pretty late down on the canvas, if I remember, so we did do some looking around before we ultimately got to the G & E Cafe.

Q Nothing kept you from going back some other day?

A No.

Q Or sending a horde of agents back some other day, except maybe you don't have hordes at your command?

A No.

Q Did Mr. Osgood clear up the name of the liquor store was Nelson's Island?

A Yes, sir, he did.

Q That's because if we could see Exhibit 300, please? Or

301 actually.

That's because it's in this building that is as Mr. Ketchmark said, pie shaped, located on this little island in between Spruce and 9th Street Terrace?

A I think that curved street is 9th Street Terrace but I'm not positive.

Q Spruce as it goes south, 9th Street Terrace between Spruce and 9th Street?

A I believe that's true.

Q This, again, is the G & E Cafe?

A Yes, it is.

Q I'll try to stand next to the microphone.

Did you ascertain what time of day the Nelson's Island opened?

A I believe I did.

Q And that was not until like 7?

A I can't remember if it was 7 or 8. I know it was after 6:00 a.m. in the morning or significantly after that.

Q And by the way did you ever ascertain when the sun came up in Kansas City on March 9th?

A No, sir.

Q Okay. Did you know the sun had not yet risen by 6:00?

A I don't know that because I never checked.

Q How would you check?

A I don't know. I suppose you could find something online

that would tell the sunrise times. A Google search is how I would look probably.

Q When did you have these aerial photographs taken? The 300, 301 and that series?

A The 301, for example, was taken on, I think it was March 12th of 2008.

Q All right. Just less than a month ago. No. Excuse me. Less than two months ago?

A Yes. Earlier this year I was trying to simulate the foliage around the time of March 9, 2005 is why I waited.

Q Okay. And if you look at the Google map, by the way those aren't maps. Those are aerial photographs you access at a website named Google Maps, right?

A I didn't but that's my understanding of where they came from, yes.

Q One accesses that website?

A Yes, sir.

Q And they are, obviously, taken at some other time of year because there's a lot more foliage in those pictures?

A It looks like it. I'm not sure when those photographs were actually taken.

Q When did you clock the distance between the alley of between 8th and 9th between Spruce and Kensington from that alley on 9th Street to 9th and Brighton?

A I know I did it recently, like a month ago I think. I

can't remember if I had done it prior to that also or not.

Q Okay. And how you did that is you have a car that you drive that has like a trip odometer?

A Yes, sir.

Q You stopped in front of the alley and pushed the button to set it at zero?

A I think we punched it right when we were there. I don't think we physically came to a stop but -Q

Punched it while rolling past the alley?

A Not past it. Right at it.

Q Okay. As you were rolling past the alley, the button was pushed immediately as you passed the alley?

A Okay.

Q Fair statement? Okay. And then you drove straight east on 9th Street?

A Yes.

Q And when you got to Brighton, did you stop?

A No.

Q You looked at the trip odometer?

A Yes, sir.

Q And it was showing 4?

A Yes.

Q So the 4 had already turned over?

A Yes.

Q How far did you go before the 5 turned over?

A I didn't watch to see.

Q Okay. So you don't know whether you had gone .49, 49/100s of a mile or 41/100s of a mile?

A I believe my testimony was approximately 4 tenths of a mile. And to be more specific my recollection is it had just rolled to the 4 shortly before we got to 9th and Brighton.

Q Do you know whether it actually already rolled completely on the 4 as you passed Van Brunt?

A No, I don't know that. I wasn't watching any more after that.

Q Were you driving?

A No, I was not.

Q So you were riding shotgun, so to speak?

A Yes, sir.

Q Front passenger seat?

A Yes.

Q Who was driving?

A Heith Janke.

Q Are you the one who pushed the button.

A No.

Q He's the one who pushed the button?

A He did.

Q And I guess you're the one who looked over to see it was

still 4 as you passed Brighton?

1699

A

Well, I was watching it. I don't know if he was watching it also.

Q

Because, obviously, somebody has to watch the road, right?

A Yes, sir.

MR. ROGERS: Now, if I could see Exhibit 258, please.

BY MR. ROGERS:

Q

That's the biggest panorama that we've got, is that right?

A

Yes, sir, it is.

Q

And here is what you got marked as the Sandstrom house, is

that correct?

A May I come down there so I can see?

Yes, this is. The Sandstrom house is listed right here.

Q

And there appears to be a rectangular green space with like a panhandle across the street from the Sandstrom

house?

A

Yes. That's a park.

Q

That's Sheffield Park?

A

I think that's the name but I'm not positive.

Q

And you would agree that this neighborhood where the Sandstrom house is, is sort of set off from the neighborhood where Jonnie Renee lives by railroad tracks and other geographical features?

A

Yes, sir.

Q

Those are all the questions I have. Thank you, sir.

1700

THE COURT: Redirect examination?

MR. KETCHMARK: Briefly.

REDIRECT EXAMINATION

BY MR. KETCHMARK:

Q With respect to the businesses you and Special Agent Janke checked, did you try to ascertain whether or not those businesses were open at 6:00 in the morning?

A I did.

Q And of the businesses that were referenced, is the only one that was opened, which one?

A G & E Cafe.

Q Is it when you talked to Brenda Thomas that she told you Joe Thompson, a customer, reported to her that he heard gunshots about 6:00 a.m. on the day of the shooting at 9th and Brighton?

A Yes, it is.

Q Is that what prompted you to go talk with him?

A Yes.

Q Is that what Mr. Thompson told you?

A Yes.

Q And in addition, the 9-1-1 call, you're aware the 9-1-1 call comes in at 6:13, is that correct?

A I think the first one was 6:12, if I remember right, but yes, 6:12 a.m.

Q 6:12. Then another one?

1701

A At 6:13.

Q Then Ms. Lugo and Mr. Wright, two witnesses who testified?

A That's my recollection.

Q In addition to being a special agent who's assigned to do

investigations, do you also have other duties at the FBI

as a firearms instructor?

A Yes.

Q Do you train and qualify agents in firing firearms?

A I do.

Q And in your experience in dealing with trained agents in a

controlled setting, have you had experience where agents

have missed the target at close range?

A That happens.

Q And that's in a controlled environment where you're,

basically, testing them on hitting the target?

A Yes.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Recross?

RE CROSS-EXAMINATION

MR. OSGOOD: Just a moment, Your Honor.

BY MR. OSGOOD:

Q I have to think for a minute.

I'm sorry. I've totally got a blank on what I was going to ask.

Oh, the businesses that were open. G & E Cafe

was the only one open that morning?

A At 6:00 a.m.?

Q Yes, sir.

A That was the only one that said they opened at that time.

Q And there was some discussion about 9-1-1 calls. All the 9-1-1 calls were in response to a shooting at 9th and Brighton, weren't they?

A Yes.

Q There was no calls in response to a shooting at 8th and Spruce earlier?

A Not as far as I know.

Q When you interviewed Mr., what was his name? Thompson?

A Thompson. Yes, sir.

Q You interviewed him when, sir?

A Let's see some time in August of 2005 I believe.

Q Again, 4 months after the incident?

A Yes.

Q You asked him to put a date on when he might have heard shots in an area that shots are frequently fired, is that right?

A I think it was Brenda Thomas who remembered that the shots Mr. Thompson had heard was on the day that there was a shooting at 9th and Brighton. I don't believe Mr. Thompson recalled what day it was.

Q That's what she told you. Do you have an interview of

1703

her?

A

Yes, I do. I can look at the report if you would like me to.

Q

Please do.

A

If anybody has that handy.

Q

Read that, please.

A (Witness complies.)

MR. OSGOOD: It's an awkward age, Your Honor.

BY MR. OSGOOD:

Q

Does that help you refresh your memory?

A

I'm sorry. Can you ask the question again?

Q

Well, the question is, first of all, she told you she did

not hear any gunshots, didn't she?

A

She did say that.

Q

She told you that he was in the restaurant having breakfast?

A

Yes. Sitting underneath the window on the east side of the restaurant.

Q

She, again, also was interviewed in August of 2005?

A

She was.

Q

And she also told you it was not uncommon to hear gunshots in the area?

A

She did say that.

Q

So she's like Mr. Thompson, trying to put a date and an

event together that happened three or four months prior?

A She is. But the date she recounted was the same day there was a homicide at 9th and Brighton is what she told me. But you're right, she was interviewed several months after.

Q She said that's what he said later?

A Okay.

Q Right?

A I'm sorry. Could I see the report one more time, Mr. Osgood?

Thank you. Ms. Thomas said on the morning a man was killed at 9th and Brighton, one of her customers, Joe, she didn't know the last name, stated that he heard gunshots outside of the cafe at approximately 6:00 a.m.

Q Okay. Now, that's a little ambiguous, isn't it? She doesn't say that he told her that that morning, does it?

A On the morning of the man being killed at 9th and Brighton.

Q Your report doesn't say he said that on that morning. He could have said it some time after that after he read about it or something. We don't know when that conversation with her occurred, do we?

A Can I see the report one more time, Mr. Osgood? Sorry.

Q Or I don't have any objection to you reading that paragraph to the jury, if you want to, sir.

MR. KETCHMARK: I don't have any objection if he

1705

wants to offer the 302 in as evidence, Your Honor.

MR. ROGERS: I have no objection, either or both.

THE WITNESS: Do you want to throw Thomas's in, too?

MR. KETCHMARK: I think the --Government's Exhibit

304 and I'll go ahead and offer it.

THE COURT: 304 is admitted without objection.

BY MR. OSGOOD:

Q Read that paragraph to the jury, please?

A On the morning that a man was killed at 9th Street and Brighton Avenue, a customer Joe, last name unknown, stated that he heard gunshots outside of the cafe at approximately 6:00 a.m. Thomas stated that after Joe, last name unknown, made these comments regarding the gunshots that she went outside of the cafe to look around. When Thomas got outside, she did not see anyone with a gun. Thomas stated that she did not specifically hear any gunshots but that her and Jim are often in the kitchen area of the cafe.

Q So my point is, it's a little inartfully written, I guess, because we don't know whether or not this is a report of a contemporaneous conversation with him or it's a reconstruction of a conversation with him after the fact, do we?

A Well, I'm pretty confident that Mr. Thompson is not the kind of guy that would reconstruct something.

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Q

Well, after he goes, would you agree with me that it appeared on the news that day and was an ongoing investigation in the neighborhood? That's an accurate statement?

A

Yes, sir.

Q

And he eats there three times a week we heard?

A

Yes. Monday, Wednesday and Friday, I think it was.

Q

So he could have come in any time after the fact and said, remember last week. I think I heard gunshots. Couldn't he?

A

And told Ms. Thomas that?

Q Yes. In point of fact, he was confused in the grand jury as to whether he was outside or inside?

MR. KETCHMARK: Again, Your Honor, I'm going to

object.

THE COURT: Sustained.

MR. OSGOOD: That's all.
RECROSS-EXAMINATION

BY MR. ROGERS:

Q
I'm going to try to resurrect the horse so I can beat on
it some more.

A
Yes, sir.

Q
So Ms. Thomas told you on August 11th that on the day that
somebody got shot at 9th and Brighton, a customer told her

about hearing gunshots?

A I'm sorry. I was just looking at the report. It's August 12th.

Q Is that the date of the investigation or the date dictated?

A That's the date of investigation.

Q Okay. August 12th?

A Yes, sir.

Q Okay. Good enough. Well, August 12th, Ms. Thomas tells you that on the day that a guy got shot at 9th and Brighton, a customer named Joe was sitting, eating breakfast underneath the window, right?

A Yes, sir.

Q On the east side of the cafe, right? That's what window we're talking about?

A What she said was that after --he heard gunshots outside the cafe at approximately 6:00 a.m.

Q Okay. And then what did she do when he said that?

A She went outside to look around.

Q And so if he said I heard gunshots last week you, she wouldn't go outside and look around, would she?

A That wouldn't make any sense so I'll agree with that.

Q That's all. Thank you.

THE COURT: You may step down, Special Agent.
(Witness excused.)

THE COURT: Mr. Ketchmark?

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MR. GIBSON: Thank you. Government calls Jennifer Howard.

JENNIFER HOWARD, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

MR. GIBSON: May I proceed?

THE COURT: Yes.

MR. GIBSON: Thank you.

BY MR. GIBSON:

Q Good afternoon, Ms. Howard.

A Hi.

Q How are you employed?

A I'm employed by the Kansas City Police Crime Laboratory.

Q How long have you been with the crime laboratory?

A Almost 6 years.

Q What is your current title?

A Senior criminalist.

Q And prior to your current position as a senior criminalist

what position did you hold?

A I was a criminalist.

Q What's the difference?

A Just seniority, basically. A few additional

responsibilities but the majority of the work is the same.

Q Before you worked for the Kansas City Police Department, where did you work?

A I worked for the Alabama Department of Forensic Science.

Q What was your educational background?

A I have an undergraduate degree in chemistry from Southwest Missouri State University and a masters degree in forensic science from the University of Alabama at Birmingham.

Q And are you a member of any professional associations?

A Yes. I'm a member of the American Academy of Forensic Sciences, the Midwestern Association of Forensic Sciences and I'm accredited by the American Board of Criminalists.

Q And have you testified before, ma'am?

A Yes, I have.

Q Approximately how many times?

A About 15 times.

Q Now, what exactly does a senior criminalist do for the Kansas City Police Department?

A I work in the DNA section so my main duty is to develop genetic profile from biological material and compare those to the known individuals to see who may or may not have been the source of those samples.

Q Are you familiar with any DNA analysis that was done on Kansas City case 05012638 involving the death of William D. McCay?

A Yes, I am.

Q And are you prepared today to testify to your conclusions regarding the DNA analysis that was done?

A Yes.

Q And are those conclusions to a reasonable degree of scientific certainty?

A Yes.

Q Now, let's talk, generally, if we could for a minute, about DNA. Exactly what is it?

A DNA is the basic unit of genetic information that makes an individual who they are.

Q And from person to person approximately how much of our DNA is the same?

A Actually, the majority of DNA is the same between individuals because it makes your heart work properly and your eyes work properly. So all of us that have the same body have very much similar DNA.

Q And are there certain characteristics of our DNA that differentiate us from one another?

A Yes. Obviously, characteristics that you can see differ like hair color and things like that, as well as areas in your DNA that don't mean anything to your body can be very different between individuals and that's actually what we examine to differentiate people.

Q Now, the particular testing that was done in this case was initiated by Ms. O'Dell from your office, is that correct?

A That's correct.

Q And Ms. O'Dell left to get married, is that right?

A Well, she left to take another job in Denver, Colorado,

and she's getting married next weekend.

Q Okay. Now, at the time that she did the original analysis on the DNA, did you review her conclusions at that time?

A Yes. All the work that we do is reviewed by a second qualified analyst so in this case Ms. O'Dell did all the original work. I was the second analyst that reviewed everything that was done.

Q Now, with respect to DNA testing, what do you need to do the testing? In other words, if you have a genetic sample, what additional materials, if any, are you going to need to do your testing?

A I'm not sure what you're asking.

Q What is a standard?

A A standard is a known sample from an individual that we can develop the genetic profile to know a person's profile to compare to any unknown profile we may have.

Q So in this particular case did you have a standard for William McCay?

A Yes.

Q And did that arrive to your lab identified as Item No. 4-1?

A Yes.

Q And that was a sealed lavender top tube of blood labeled William McCay from Mr. McCay's autopsy, is that correct?

A Correct.

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Q And that was provided to the lab by Melanie Bartch?

A That's correct.

Q Who works for the criminalist, the crime scene unit, correct?

A That's correct.

Q Now, in addition to that did you also receive from Ms. Bartch or did the lab receive from Ms. Bartch Item 5-30 which consisted of right-hand nail scrapings from Mr. McCay?

A Yes.

Q And did you also receive 5-31 left-hand nail scrapings from William McCay?

A Yes.

Q What were the nail scrapings, tell us about that. What does that mean?

A Nail scrapings are collected using a wooden scraper. That's just scraped under the nails and collected on, basically, wax paper.

Q And did you also receive a standard of the blood from Gary Eye?

A I believe that was a buccal swab, yes.

Q Buccal swab?

A Yes. Which is the swabbing of the inside of the cheek.

Q That was obtained by Detective Robert Blehm, is that correct?

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A That's correct.

Q There were reports prepared in connection with this matter, is that correct?

A Yes.

Q Would those assist you in your testimony?

A Yes.

Q Okay. Showing you what's been marked as Government's Exhibit 75 and Government's Exhibit 118. Taking Government's Exhibit 75, first, could you identify that for us?

A Yes. This is the report authored by Colleen O'Dell and approved by myself regarding the DNA work done on this case.

Q And in the original report that was completed in September of 2005, was there an omission?

A Yes, there was.

Q What was the omission?

A The standard by Gary Eye, the results of that just stating that a profile was obtained.

Q And is that something that is reflected in Government's Exhibit 118?

A Yes, it is.

Q And is that a correction that you did?

A That's correct.

Q Okay. Now, you have the nail scrapings. You have the

standards from Gary Eye. And you have the standard from William McCay. Walk us through the testing process. And, first, tell us what type of testing it is that you're doing, please?

A It's called PCR-STR testing. Those are acronyms which stand for Preliminary Chain Reaction and Short Tandem Repeat which is a type of DNA that we're looking at.

Q And what does that mean? What is being done in this testing procedure?

A PCR is actually where we make millions of copies of the DNA and that's how we can take a very small sample and get a genetic profile. And the STR is, again, a repeat.

That's the DNA that doesn't code for anything in your body so it can be different. And different people have different number of repeats. We just count how many repeats that sample has.

Q Now, how is it you go through the duplication process?

Does that change the DNA result in any way?

A No.

Q Walk us through that, please?

A All we're doing is making copies of what is already present.

Q And the purpose of making the copies is what?

A So that there is enough material there of the DNA that

we're interested in for us to be able to detect it.

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Q And what is the next step in the process?

A After we make the copies?

Q Uh-huh. Well, let's start with how many copies are you making? Are you making copies of the standards and copies of the nail scrapings or just one? Tell us how that works?

A Well, each sample goes through the exact same process so the standards are not treated any differently than the unknown samples. And once we separate the DNA from the rest of the biological material, then we make those millions of copies of the DNA that we're interested in.

Q And what is a loci?

A That's actually the genetic location that we're looking at.

Q How many loci are you looking at to make your comparison?

A We look at 13 different locations that differ between individuals and a 14th that tell us the sex of the individual.

Q So these, each one of these 13 regions differs from person to person, is that correct?

A That's correct.

Q Okay. Now, tell us what you did here or what was done by Ms. O'Dell here?

A The whole process?

Q Yes.

A First, the samples are submitted and in tubes so that the scrapings stay in one location and we don't contaminate any samples. The samples are also treated separately from the known standards so we don't have any contamination occurring that way as well. We extract the DNA and that's a physical removal using chemicals to get the DNA separate from all the other biological material that might be present in blood or tissue samples.

After we get the DNA isolated then we have to determine how much DNA we have, to know if we have enough DNA to make those copies to try to get a profile and also to get it to the right concentration so that we put the right amount of DNA into the system. Then we make those millions of copies and that's just basically replicating what your body does to make millions of copies. Cells are dying and having to replicate themselves. And the system we use just does that exact same thing.

Then we take that amplified DNA and put it on an instrument that can physically separate the different locations from each other so we can read that profile and see what those repeats are.

Q So a profile is developed from the blood standard for William McCay, is that correct?

A That's correct.

Q And a profile was also developed from the blood standard

for Gary Eye, is that correct?

A That's correct.

Q And then you also developed standards for the right-hand nail scrapings and left-hand nail scrapings?

A Profiles, yes.

Q Let's take the profile for 5-30 on your report, first, the right-hand nail scrapings. What were your findings with respect to the right-hand nail scrapings?

A In the right-hand nail scrapings, there was very little DNA so instead of those 13 locations, we were only actually able to look at 10. And in this case there was a mixture of genetic information present. That's mean there was more than one contributor present. The way we know that is you actually have two copies of all your DNA. One that you get from your mom and one that you get from your dad, so they're actually different. So at each of those locations, for one person's sample, we may have two different numbers. If we see 3 numbers or 4 numbers, we know that there's more than one individual present in the sample. That was the case in this sample. It was actually a mixture of two people.

Q Two people as opposed to three people or four people or five people?

A That's correct. There was no indication there was more than two.

Q And were you able to classify one of those contributors as a major contributor versus a minor contributor?

A Yes. Depending on how much DNA each person is contributing, some times you can tell which genetic information goes with one person and which goes with the second. In this case there was a clear major and some information from a minor contributor.

Q Were you able to identify the major contributor?

A The major contributor matched William McCay.

Q And what does that mean, matched William McCay?

A That means that all the genetic information for the major contributor matched all the genetic information developed from the standard of William McCay.

Q And were you able to identify a minor contributor for the right-hand nail scrapings?

A There was only a few pieces of genetic information from the minor but it did match Gary Eye.

Q And I believe you said for that particular item there were ten regions that you were able to map out, is that correct?

A That's correct.

Q And how many of those 10 regions matched Gary Eye's profile?

A Only two pieces of information were present for the minor contributor.

Q But they were consistent with Gary Eye's DNA?

A That's correct.

Q Now, looking at the left-hand nail scrapings, tell us about your findings from the left-hand nail scrapings?

A Actually two different samples were ran from the left-hand nail scrapings, one that contained the nail particles that come off the stick and then the actual stick itself was tested separately. And in both of those cases, all 13 locations were looked at and a major contributor was present that matched William McCay and a minor contributor was present that matched Gary Eye.

Q And you indicated that all 13 regions that you tested you were able to draw conclusions from on this particular sample, is that correct?

A Yes. For the major all three and nine of those contained minor information.

Q And of the nine regions that you were able to compare to Gary Eye's DNA, all nine were a match, is that correct?

A Yes.

Q So the sample on the left-hand nail scrapings was consistent with the DNA standard from Gary Eye, is that correct?

A Yes.

Q And also the nail scrapings from the right-hand were

consistent with Gary Eye, is that correct?

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A Yes.

Q Was any of the genetic material consumed during this process? In other words, could the process be repeated?

A

The DNA that was extracted from the right-hand nail scrapings, there was a very little amount there. We couldn't develop a whole genetic profile. That DNA was consumed.

Q What does that mean?

A That means we used all of the DNA that we extracted to

develop that profile.

Q How about the other sample?

A There is DNA remaining there to retest.

Q And your conclusions were reduced to your report, is that

correct?

A That's correct.

MR. GIBSON: May I have one moment?

THE COURT: You may.

MR. GIBSON: Your Honor, at this time the government

is going to offer Government's Exhibit 75 and Government's Exhibit 118.

THE COURT: Without objection Government's Exhibit

118 and Government's Exhibit 75 are admitted.

MR. GIBSON: And with that, I'll tender the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Good afternoon, ma'am. I represent Mr. Eye. And what you're telling us is based on a reasonable degree of scientific certainty that the nail scrapings under the deceased's fingernails came back to Mr. Eye?

A He's included as a contributor, yes.

Q Meaning he had some physical contact with the deceased?

A Likely, yes.

Q Okay. Let's talk a little bit about what kinds of things can you examine to or what are the sources of DNA examination? Hair, for one, for example?

A Yes. The type of testing that we do, the hair actually has to have a root on it. So, naturally, fallen hairs, we can't test but the root of a hair, we can get a profile from.

Q I thought even a partial, part of the hair, if you have enough sample can be tested?

A It can be tested with mitochondrial DNA which is different from the STR testing.

Q It is possible to use a hair without the follicle and do mitochondrial DNA testing?

A That's correct.

Q To do a comparison?

A Yes.

Q So we all lose hair constantly every day?

A Yes.

Q And so if someone else was in close proximity to Mr. McCay, it's possible, is it not, that there could be hairs on Mr. McCay's clothing that would come back to that person?

A Yes.

Q And what other kind of genetic materials are you able to determine a profile from, besides hair and nail scrapings?

A The most common sources that we test are blood, semen, saliva, skin cells from contact.

Q All right. So in a confrontation it's some times possible I suppose that saliva is present on a person during an assault, for example, or something?

A That's possible. Saliva is not a common thing we test in an assault case. But I suppose it's possible.

Q I don't necessarily mean sexual assault but physical assault where both people are fighting and breathing and wheezing and out of breath, it's possible there would be some body fluids may be present on the other person?

A Correct. That's possible.

Q Now, I presume what you test is what the field people send you?

A Yes. Our crime scene unit responds and collects all of the evidence. Then based on the detectives statements and

a case review of the case done by the criminalist to

determine scientifically what might be the best evidence, samples are selected in that manner.

Q How far away would someone have to be, for example, to deposit a hair on somebody? What's the furthest you've seen in your work where maybe somebody has left a hair on something where they weren't in direct contact with somebody?

A We don't have any sort of studies on how far a hair might travel. Usually it falls directly down and it's just by gravity that it's resting on the floor or some sort of altercation where it might occur there.

Q Now, let's get back to fingernail scrapings. What typically do you find under fingernail scrapings? Do you find skin particles, for example?

A Yes. Most of the time when we test nail scrapings it's because there's some sort of indication that physical contact has occurred between two individuals. And often times if it's just skin cells that we're seeing, usually that's only the person whose nails or scrapings profile that we're getting.

Q I presume it wouldn't be necessarily so that they would always leave scratch marks on the other party, would it?

A No.

Q You can just run down the side of my face like I just did

and probably deposit DNA, can't you?

A It's possible.

Q Don't we all shed cells all the time?

A We do, but, again, generally, if we only see the skin cells, almost always that's the person whose scrapings that we'll get. But it's certainly possible to transfer skin cells.

Q You don't have to have a deep abrasion or scratch to deposit cells under the fingernails, do you?

A Not necessarily, no.

Q And does it depend on such things as age of the contributor and skin condition and that kind of thing?

A It's very person dependent, not so much age. But different people shed at different rates so some people might lose a lot of skin cells and some people don't lose very many at all. So we can get profiles off some people very easily and some people not so easily.

Q So is it possible to deposit one's skin DNA through clothing? Maybe that sounds like a stupid question. But can I scrape on my shirt here and get DNA under my fingernails from my body?

A Would you get your DNA under your fingernails from scraping your shirt? That's highly unlikely.

Q So what we're really talking about is direct contact, aren't we?

A Yes.

Q So if Mr. Eye's DNA is under Mr. McCay's fingernails, which I do not dispute, that is a pretty clear indication he was in some kind of a physical altercation with him, isn't it?

A It's quite possible, yes.

Q Are there any other plausible explanations for it, ma'am?

A No. That's the most likely scenario. That's exactly why we look at nail scrapings.

Q Could that have come from the head area?

A It's possible. There are not a lot of hairs in the nail scrapings.

Q Were there any?

A I believe there was one.

Q And it could have come from the, I guess, the facial or the neck?

A Yes.

Q Or the forearms?

A Correct.

Q Or even the hands?

A Correct.

Q So do you know whether or not the crime lab looked on Mr. McCay's clothing for other hairs that might have been deposited on the clothing or did you just go with the nail scrapings?

A The clothing was examined. I don't know how much hair was

looked at but certainly the blood samples were looked at.

Q Well, the blood, obviously, undoubtedly came back from Mr. McCay?

A It was not tested because it was obvious those were soaking stains from the victim.

Q What about the presents of maybe third party deposits of hair from somebody in close proximity but not up right in direct contact with him?

A I don't know if hair examination was done or not.

Q So if somebody else, if Mr. Eye was in a fight with him and somebody else two or three feet away walked up and they're on the ground and you say hairs normally fall down?

A Yes.

Q Someone could have walked up and shot Mr. McCay and possibly left hair on his clothing?

A That's possible.

Q That's all I have. Thank you.

MR. ROGERS: No questions, Your Honor.

THE COURT: Redirect?

MR. GIBSON: No, Your Honor. May she be excused?

THE COURT: Without objection, Ms. Howard is excused.
(Witness excused.)

MR. GREEN: Your Honor, the United States calls Steve

Burdick.

STEVE BURDICK, GOVERNMENT'S WITNESS, SWORN
DIRECT EXAMINATION
BY MR. GREEN:

Q Would you, please, tell us your name and spell your last name?

A My name is Steve Burdick. B, as in boy, U-R-D-I-C-K.

Q How are you employed, Mr. Burdick?

A General manager of Aeroform.

Q And where is Aeroform located?

A We're at 5301 East 9th, Kansas City, Missouri.

Q And how long have you been the general manager at Aeroform?

A I've been with them for eleven years.

Q And just tell us what kind of business Aeroform is?

A We manufacture urethane and fiber glass sporting goods and aftermarket automotive accessories.

Q You said your address is 5301 East 9th Street, is that correct?

A Yes, sir.

Q How long have you been at that address?

A We moved to that location in 2004.

Q And how far is that, your address, your location of Aeroform, how far is that from the intersection of 9th and Brighton?

A It's within 6 to 8 blocks, I believe.

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Q Now, through your employment with Aeroform did you come to meet a man named William McCay?

A Yes.

Q How is it you came to meet Mr. McCay?

A He had applied for a job there and I had interviewed and hired him.

Q And what position was he hired for?

A He was a material handler in the urethane production department.

MR. GREEN: And if you would show Mr. Burdick what is in the Plaintiff's Exhibit 54C.

BY MR. GREEN:

Q Can you see that, Mr. Burdick?

A
Yes, I can.

Q
Can you identify who that is?

A
That's William McCay.

Q
Now, when Mr. McCay was working at Aeroform what were his scheduled work hours?

A

7:00 a.m. to 3:30 p.m.

Q

And did you have knowledge of what time he usually got to

work?

A

He usually arrived between 6 and 6:30.

Q

And we're talking a.m.?

A

Correct.

Q

And were you aware of how Mr. McCay generally got to work

and we're focusing on the winter of 2005?

A Sure. Many times he walked. He also rode the bus. And I believe his girlfriend would drop him off from time to time.

Q And did you have knowledge that back in the winter of 2005 that at least, occasionally, Mr. McCay lived at a homeless shelter?

A Yes, I am.

Q Now, did there come a day when, well, directing your attention to March 9th of 2005, that Mr. McCay did not arrive for work? Do you recall that day?

A Yes, I do.

Q And what time did you arrive for work on that day?

A I was there shortly after 6:30, I believe.

Q And when you arrived to Aeroform in the area, did you notice anything about the area? Did you see any kind of police activity?

A Yes. There were police cars close to our building and I believe there was some like cones or street markers that were blocking off that street.

Q Which street would that have been?

A 9th Street.

Q And did you learn on March 9th later that day that Mr. McCay was shot and killed near 9th and Brighton?

A Yes. That day he had not showed up for work and

1730

approximately an hour or two after I arrived there was an officer that came down and explained to me that that was him that was on the side of the road down the street.

MR. GREEN: May I have one moment, Your Honor?

THE COURT: You may.

MR. GREEN: The United States has no further

questions of Mr. Burdick.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. OSGOOD:

Q Sir, do you know where the bus stop is he would get off

of?

A No, I don't.

Q Is there a bus that runs on 9th Street there?

A I'm sure there's several but I don't know their schedule.

Q Okay. Thank you.

MR. ROGERS: No questions, Your Honor. Thank you.

THE COURT: Redirect?

MR. GREEN: No, Your Honor.

THE COURT: Thank you, Mr. Burdick. You may step down.

May this witness be excused?

MR. GREEN: Yes, Your Honor.

THE COURT: Without objection, Mr. Burdick is

excused.

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(Witness excused.)

MR. KETCHMARK: With that, Your Honor, the government would rest its case in chief.

THE COURT: I think we will go ahead and take our afternoon break. This may be just a little bit longer than normal. We'll call you back some time after 3:00 p.m. We'll get you back in here as quickly as we can at which time we'll begin to hear from defense witnesses. Please don't discuss the case. Keep an open mind. We'll see you back here in 15 or 20 minutes.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Motions?

MR. OSGOOD: First of all, it would be disingenuous to say they haven't made a submissible case on 9th and Brighton. I would say they have. I do not believe they've made a submissible case on the counts that are tied to 9th and Spruce and I would move for judgment of acquittal at this time on those counts.

I'm not going to go over the evidence. The Court has been here. It's as fresh in your mind as it is mine, Your Honor. I think you know what our argument would be.

THE COURT: I do. I believe that there is evidence that is at least sufficient for a reasonable jury to return

verdicts of guilty and so the motion will be denied.

MR. OSGOOD: I would also, I'm sorry. I have one more. I think at this point it's appropriate for me to make a Bell objection that the Court needs to make some determination as to the admissibility. Hasn't been a great deal but some co-conspirator hearsay in this case that we have objected to and I think the Court is obligated at this point to make a finding.

THE COURT: I make that finding at this time. I find that there has been sufficient evidence of a conspiracy so as to allow and make proper co-conspirator statements.

MR. OSGOOD: There is a second Bell finding that I think you have to make with respect to the evidence proffered as post criminal conduct charged in the basic indictment here that centers and focuses on the conduct of Mr. Buchanan, which you have given limiting instructions on. I do not believe there is sufficient evidence to show that Mr. Eye was a party to those planned threats and therefore the instructions you gave were proper and that that should continue to be the situation in the case.

THE COURT: I should hear from the United States on that issue.

MR. KETCHMARK: Your Honor, with respect to the Buchanan matters, I kind of view it as two separate issues with respect to the letters. There's clearly the evidence that was

being submitted as relates to racial animosity as well as

threats to witnesses. I would agree that was being offered as relates to Mr. Sandstrom, who was the author of the letters. Now there is evidence that came out with respect to a plan and agreement between Mr. Sandstrom and Mr. Eye that was reflected in the letters and Mr. Buchanan testified as such, there was a plan between the two defendants on how they were going to approach the defense in terms of putting this off on Ms. Rios. And I think that is obstruction conduct that is reflective of an agreement or an understanding between them that was reflected, not only in the letters as it relates to that conduct, but also from the testimony of Mr. Buchanan with respect to other correspondence that he had received. I think there was more than ample evidence as it relates to those letters to find that that can be attributed both to Mr. Sandstrom as well as Mr. Eye and there should be no limiting instruction as relates to that.

Now, with respect to the threats and the racial animosity, I think it's clear and the Court already instructed on those, that should be considered only as relates to Mr. Sandstrom. That is appropriate. But I don't think that the latter in terms of the plan to put this off on Regennia Rios is and I think that the Court should not restrict that as only relates to Mr. Sandstrom.

THE COURT: I have restricted the jury's

consideration of most of the evidence in the letters to the

government's case against Mr. Sandstrom. I agree that some of the evidence would suggest the existence of a post conspiracy, conspiracy if you will to obstruct and hinder justice by falsifying testimony concerning the exact nature and involvement of Ms. Rios. I decline to give a limiting instruction as to that evidence.

MR. OSGOOD: But it stands with respect to the actual threats back and forth between them?

THE COURT: Between Mr. Sandstrom and Mr. Buchanan?

MR. OSGOOD: Yes, sir.

THE COURT: Yes.

MR. OSGOOD: And I can argue to the jury that Mr. Eye is not a part of that?

THE COURT: Yes because that evidence is admitted only against Mr. Sandstrom.

MR. OSGOOD: Thank you. That's all I have. Thank you.

THE COURT: Mr. Rogers?

MR. KETCHMARK: Point of clarification. There was

additional evidence of Mr. Buchanan's interaction with Mr. Eye at CCA. You're not trying to suggest that was part of the limiting instruction?

MR. OSGOOD: It isn't true but I understand it's before the court.

MR. KETCHMARK: I understand your view, Mr. Osgood.

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THE COURT: Mr. Rogers?

MR. ROGERS: Can't jump on that. Are we claiming that Mr. Buchanan is involved with some plot to pay Mr. Eye to kill Mr. Sandstrom is -

MR. KETCHMARK: No, not suggesting that Mr. Rogers.

MR. ROGERS: I was confused for a minute there.

THE COURT: It's easily done.

MR. ROGERS: I've been in trial for a couple weeks, Judge.

Let me go back to the, I think really significant issues in terms of a motion for judgment of acquittal at the close of the government's evidence with regard to Counts 1 and 2 because those are, I'm looking at the indictment, they both charge an attempt to injure, intimidate and interfere with William McCay by shooting at him with a firearm because of his race or color at 9th and Spruce.

The only evidence that the person who was, according to Ms. Rios, shot at at 9th and Spruce was Mr. McCay. She, basically, recanted on the witness stand. She said that she assumed it was the same guy but she had no knowledge that it was. So even if every word that proceeds out of her mouth is believed and credited by the jury, there is not sufficient

evidence to find that Mr. McCay was, in fact, shot at 9th and Spruce. And furthermore the undisputed evidence is very

heavily weighed against the notion it was the same guy that

we're talking about, the distance of travel, the lack of any type of wounding or stippling or other indications to his face. The testimony of Ms. Rios was the guy was right there within four or five feet of the gun. The fact that when they went around the block in a matter of 30 seconds or so, the person was not visible. All of that is evidence, I think, that argues against that inference. And when we're only talking about circumstantial evidence, I think because there's no direct evidence it was Mr. McCay, I think the circumstantial evidence weighs heavily against that notion. So I do think that both defendants are entitled to a judgment of acquittal as to Counts 1 and 2.

Next with respect to Count 3, Count 3 has to do with the homicide at 9th and Brighton. And I don't believe that there's any evidence that Mr. McCay was killed at 9th and Brighton because of his race and color and because he was enjoying the privilege of walking down a public street, which is the charge in Count 3.

The evidence from Ms. Rios, if believed, was that she said we're going to have to go get him, he saw our faces. Now, whether or not that's Mr. McCay is another issue but that certainly rules out the notion that he was shot because he was walking down a public street at 9th and Brighton. There is overwhelming motive that he was shot because he was a witness

or potential witness or he was mistaken for a witness maybe is

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the real answer.

And so I don't think they've made that case.

That also applies to Count 4 because Count 4 incorporates by reference Count 3.

So I think with regard to those particular counts, Judge, I think you were a little hasty in denying Mr. Osgood's judgment for acquittal. And I don't think he pointed out these issues that I think are there and very difficult to refute.

MR. OSGOOD: In retrospect and having heard Mr. Rogers, convinces me I'd like to join in those motions, Your Honor.

THE COURT: We'll show Defendant Eye joining in Mr. Osgood's statements and supports Mr. Rogers's statements in support of his motions. With respect, I disagree. I think that there is sufficient evidence from which a jury might infer, a reasonable jury might infer that the individual shot at 9th and Spruce was, in fact, Mr. McCay.

And further that the homicide which occurred at 9th and Brighton is a continuation, a completion of a plan to shoot and kill someone because of his race. And so the motions are all denied.

Let's take about 5 minutes and then we'll resume.

(Recess)

(The following proceedings were had OUT OF THE

PRESENCE AND HEARING OF THE JURY:)

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MR. OSGOOD: Sunrise, sunset for the National Weather Service here on the Internet right now. It says on March 9 of 2005 apparent sunrise was 6:39 a.m. in Kansas City, Missouri.

MR. ROGERS: I'm willing to stipulate if the government is.

MR. KETCHMARK: Appears that's the website he's on so I don't have any problem with it.

THE COURT: Do you want to do a stipulation? Do you want me to just take judicial notice of it?

MR. OSGOOD: I'd like them to check it on their own. We just called it up on this website, United States Weather Service. I'm not trying to snooker them. I don't know what apparent sunrise is.

MR. KETCHMARK: Can we just draft that stipulation? You want us to sign it? We'll check it tonight and do it tomorrow.

MR. ROGERS: Apparent sunrise means if there were a true horizon it might be 30 seconds difference at the bottom of the hill.

THE COURT: All right.

(The following proceedings were had IN THE PRESENCE

AND HEARING OF THE JURY:)

THE COURT: Please be seated.

Mr. Sandage, are you ready to proceed?

MR. SANDAGE: Yes, Your Honor.

The Defendant Eye would call Harold Dean.

HAROLD DEAN, DEFENDANT EYE'S WITNESS, SWORN
DIRECT EXAMINATION

MR. SANDAGE: May it please the Court.

BY MR. SANDAGE:

Q Sir, could you, please, state your full name and spell it for the record?

A Harold Eugene Dean, H-A-R-O-L-D, E-U-G-E-N-E, D-E-A-N.

Q You might want to pull that microphone a little closer.

We some times have a hard time hearing.

Sir, where are you currently employed?

A St. Luke's Health Systems.

Q And what are your duties at St. Luke's Health System?

A Behavior technician. I pretty much supervise mentally ill kids and conduct groups and educational programs for them.

Q When you say kids, what age group are we referring to?

A Ages 12 to 18 year old.

Q What is your educational background, Mr. Dean?

A Criminal justice major, Washburn, Topeka, Kansas.

Q And so how long have you been dealing with kids?

A I've been working with kids since 1998.

Q And has it always been here in the Jackson County area?

A Yes.

Q Through your employment at some point were you employed at

McCune?

A Yes. Through '98 through 2002.

Q And could you, please, explain to the ladies and gentlemen of the jury what McCune is, please?

A It's pretty much a juvenile system for, we have kids age 12 to 18 who commit crimes such as burglary, car theft, you name it. We house kids, 78 boys, for a period of 6 to 9 months at a time or longer depending on their behavior.

Q And some of the kids that would come to your facility would it also be drug-related crimes?

A Correct.

Q And you said, I think you just stated that you were there from 1999 through 2002?

A 1998 through 2002.

Q During that period of time did you supervise a student or a kid by the name of Gary Eye?

A Yes.

Q And when would that have been, sir?

A I'm thinking it was the 99-2000 year.

Q Would you tell the ladies and gentlemen of the jury, were your groups broken up into smaller groups? How many students would be at McCune at one time?

A Well, actually, there are four different cottages. Normally 20 boys to a cottage. Gary wasn't in my cottage but I pretty much, probably had to redirect all 78 boys

that was on the hill at the time.

Q 78 boys, is that what you said?

A Yeah. We housed 78.

Q And you were the supervisor over all of the cottages?

A No, just my cottage which is Log Cottage.

Q But while there you did have contact with Mr. Eye, is that correct?

A Yes.

Q And in 1999, 2000, 2001 when you would have had some contact with Mr. Eye, what was the racial makeup of the cottages?

A 90 percent of the boys there period was probably African-American at the time. So they all pretty much did the same thing, rap, hip hop, sagging.

Q What do you mean by sagging? I don't know if the ladies and gentlemen of the jury understand what that means?

A Teen-agers tend have their pants down to their knee caps. They think it's cool. So that was, that era was just coming in at the time with all of the races.

Q So they're all listening to rap music at the time?

A Pretty much, yeah.

Q And I guess it's a fairly, again, is it a fairly structured environment at McCune?

A Yes, it is.

Q So students have rules that they must follow?

A Yes. And intense school also through the Fort Osage

School District.

Q So there are not only rules, also attending school during the day?

A That's correct.

Q I assume there were policies and procedures at McCune that if a student violated any rules or regulations that there would be a report written by some facility member at McCune, is that right?

A Yes. There would be reports written and also would be 30 days freezes which mean they can't leave campus at all and 72 hour lock downs. So they're pretty structured on the hill for their infractions.

Q Is it fair to say that the kids that stick out in your mind the most, are the kids that got into, didn't follow the rules the most while they were under your supervision?

A That would be correct.

Q In your history of Mr. Eye, is he one of those people that stuck out in your mind?

A No. Gary was pretty isolated at times. He isolated himself. But he still fit the criteria of the whole campus with the other 77 boys.

Q When you say he fit the criteria, you mean he got along with his peer group?

A Yeah. They all got along pretty well but there was always

conflicts. But it was, basically, all the same thing, you

know, the institutionalized part of it. That's pretty much.

Q Was he respectful of authority?

A Yes, he was.

Q Do you ever remember him having any disagreement with you?

A Oh, yeah, they all have disagreements with us.

Q Were those motivated by anything other than just not liking the rules of McCune?

A No, not at all.

Q Did you ever know Mr. Eye to get into fights with African-American students that you can remember?

A No, not at all.

Q So he assimilated well into his group of 19 other boys in the cottage then?

A That's correct.

Q Okay. So of the 19 boys, and it is an all-boy facility, is that right?

A Yes.

Q And of the 20 boys and you said 90 percent and you're talking in any one cottage there might be 2 to 3 white students.

A Yes.

Q Were there also Asian students?

A We had a few of those also, yes.

MR. SANDAGE: May I have one moment, Your Honor?

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Nothing else, Your Honor.

THE COURT: I think we'll go to Mr. Sandstrom then the government.

CROSS-EXAMINATION

BY MR. ROGERS:

Q Mr. Dean, there was one particular cottage that you were

in charge of?

A Yes. That was Noland House then we changed it to Lottan.

Q Also called Four House?

A Yes.

Q Do you remember Mr. Sandstrom being a student there at

Four House?

A Yes, I do.

Q Now, that you've had a chance to look at him. There were

also some Hispanic kids there at the same time?

A Yes.

Q Steve Sanchez, for example?

A Yes.

Q And Joe Chavez?

A I don't remember him.

Q Don't remember him. Okay. And do you remember a black kid named Jessie Rogers?

A Yes.

Q Also in Four House?

A Jessie Rogers, he was a white kid?

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Q Jessie is a white kid. Okay. I'm sorry.

And they were there the same time Steve was there?

A I'm not sure. I mean, I remember all the kids but I don't know the timings.

Q Let me ask you the same kind of questions that Mr. Sandage was asking. Did Steve Sandstrom get along with the other kids?

A Yes. But, you know, like I said, all the kids had problems. You know, that's just teen-age behavior. So we had problems from time to time with all of the kids.

Q Okay. And regardless of race, the kids would use the same type of hip hop?

A Correct.

Q Vocabulary, hip hop dressing and etc.?

A That's correct.

Q And that included Mr. Sandstrom?

A Yes.

Q Thank you.

THE COURT: Mr. Gibson?

CROSS-EXAMINATION

BY MR. GIBSON:

Q Good afternoon, sir.

A Hi.

Q You work within the juvenile system, correct?

A Correct.

Q Have you ever taken a break since you started?

A As far as?

Q Well, is it safe to assume that you've been working continuously with juveniles since you started?

A Yes.

Q How many years would that be now?

A Since 1998.

Q Since '98. And how many boys, approximately, have you seen since '98 would you say?

A I would say three, four hundred, maybe.

Q Since 1998 or a year?

A Since 1998.

Q Now, you indicated that McCune is a boys placement facility, correct?

A Correct.

Q 6 to 9 month program, is that fair to say?

A Correct.

Q And when you say 6 to 9 months, optimally if the boy behaves, he can get out in 6 months, correct?

A Yes.

Q You have to make periodic reports to the court on any particular individual's progress, correct?

A The deputy juvenile officer.

Q They're going to get your input, right?

A Yes.

Q If there is a problem or kid who is being a particular problem in the cottage you're supervising, you're going to report that to the deputy, correct?

A Right.

Q The deputy is going to report it to the court, right?

A Right.

Q And if there is such a problem you're going to go from 6 months to 9 months, right?

A Correct.

Q Or even longer, correct?

A Which is what most of them do.

Q Right. Because as you indicated, I believe or at least you said in the past that most of the offenders don't complete the program within 6 months, right?

A Correct.

Q And as you said, they've got problems when they get there, right?

A Right.

Q Now, 90 percent of the boys that you see in the homes are African-American?

A When I first started, yeah, most of the kids were African-American.

Q Okay. And that's the environment in which Mr. Eye isolated himself while he was under your supervision?

A Well, he was never under my supervision. He was in a different cottage than I worked in. We supervise all the boys when they were in school. All the boys went to school together in the administrative building.

Q In fact, I meant to ask you about that because when -there was a Mr. Reeder who contacted you, correct, in reference to coming here to court?

A Correct.

Q And you told Mr. Reeder that Mr. Eye didn't stay in your particular cottage, isn't that right?

A Correct.

Q And you told him that it would probably be better or at least more informative if he spoke to Mr. Alton Clay, is that correct?

A Yes.

Q Because Alton Clay had more contact with Gary Eye, correct?

A Yes.

Q And you also told Mr. Reeder that Joseph Taula, T-A-U-L-A, am I pronouncing that, correct?

A Taula.

Q Did I spell that wrong or did I get that right?

A I'm not familiar with the spelling.

Q But you know who he is?

A Yes.

Q He had a lot more direct contact with Gary also?

A He pretty much worked in the security area.

Q In the security area. And you referred Mr. Reeder to those two gentlemen to get more background information on Mr. Eye because you didn't really supervise him, right?

A Correct.

Q Now, you did, however, remember Gary as being very manipulative, isn't that right?

A Yes.

Q And you also knew Gary to be one who knows what to do and say to make a good impression on authority figures, right?

A That's correct.

Q You also knew Gary as being, having a street mentality and a kid who was street smart, is that right?

A That's right.

Q Now, just want to make sure I understand this. The individuals who are supervising the cottages, I mean, essentially, if I want to complete the program in six months, it's in my best interest not to antagonize the individuals who are supervising me. Wouldn't that be fair to say?

A Yes.

Q And if I did antagonize the individuals supervising me, I can almost guarantee I'm not getting out on the six month

date, right?

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A Right.

Q And, in fact, if I continue to antagonize anybody beyond that, I might not get out at the nine month date, right?

A Right.

Q After that, if I'm still being a problem at the home, I might end up in another facility as opposed to going back home, right?

A Right.

Q So, essentially, you and the other members of the staff kind of have the keys to get in the home in your hand, right?

A Correct.

Q So it would be in the best interest of Mr. Eye and Mr. Sandstrom and anybody else you're supervising to not rock the boat so to speak, wouldn't it?

A Correct.

Q Now, you said you knew Mr. Sandstrom to have, excuse me, not yet. Mr. Eye to have been at the home you believe around 1999, is that right?

A I guess. I'm not really sure of the time.

Q Because you didn't have a lot of contact with him, right?

A Well, not direct contact with him. But I did, like I said, I made a note to know all of the kids on the hill so and they all pretty much had the same behaviors, that's

why -

Q Sure. Sure. But to the best of your recollection it was about 1999?

A Yes.

Q Maybe give or take a year?

A Maybe.

Q Now, since he left the McCune home, have you had any contact whatsoever with Gary Eye?

A None, none at all.

Q Never saw him on the street?

A No.

Q Never saw him in his home?

A No.

Q Never saw him interact with anybody, family members or anybody like that after he left the McCune Home?

A Not at all.

Q In fact, today is the first time you have seen Gary Eye since he was at the McCune Home, isn't that correct?

A Correct.

Q Do you know when it was that you would have seen Steven Sandstrom? Do you have a recollection when he was at the McCune Home?

A Not at all. Maybe in that same time frame. I'm not sure.

Q Do you have a specific recollection of Mr. Sandstrom completing the program successfully?

A Not to my knowledge, no.

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Q Since Mr. Sandstrom left the McCune Home, have you seen him?

A No.

Q Today is the first time you have seen Steven Sandstrom since he was at the McCune Home?

A Yes.

Q And, in fact, you told Mr. Reeder, did you not, that you didn't really have a recollection of Steven Sandstrom. Is that fair?

A The name rang a bell.

Q But just the name. Didn't stand out?

A Couldn't put the face with it at the time.

Q Again, you haven't seen him on the street since he was in the McCune Home?

A No.

Q Haven't been to his home?

A No.

Q Haven't seen him at a ball game or anything like that?

A No.

Q I don't have anything else, sir.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. SANDAGE:

Q Mr. Gibson just asked you a series of questions regarding

boys try to do what they have to do to be good to the

supervisors and stay in the program. Do you remember that line of questioning?

A Yes.

Q Despite some boys trying to do that, some boys don't do that, do they?

A Most of our kids don't complete the program in six to nine months.

Q So it's pretty common for that to happen?

A Yes.

Q And then he asked you some questions regarding you describing Mr. Eye as street smart?

A Correct.

Q What percentage of the 78 kids on the hill would be considered street smart?

A I would say 90 percent of them.

Q What percentage of the kids on the hill would try to get along with you?

A I would say 90 percent of them.

Q Thank you. Nothing further.

THE COURT: Mr. Rogers?

MR. ROGERS: Nothing further, Your Honor. Thank you.

THE COURT: Mr. Gibson?

MR. GIBSON: Nothing further, Your Honor.

THE COURT: Thank you, Mr. Dean. You may step down.

MR. SANDAGE: May he be excused, Your Honor?

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THE COURT: Without objection, Mr. Dean is excused from his subpoena and you may call your next witness. (Witness excused.)

MR. SANDAGE: The defense calls Tina Wilkerson, please.

TINA WILKERSON, DEFENDANT EYE'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. SANDAGE:

Q Could you, please, state your full name for the record?

A Tina Wilkerson.

Q How do you spell your last name, ma'am?

A W-I-L-K-E-R-S-O-N.

Q Where do you currently reside, Ms. Wilkerson?

A Where do I live?

Q Yes, ma'am.

A 2031 Park Tower Drive, Kansas City, Missouri.

Q Where is that? Is that in the northeast part of Kansas City?

A Yes, sir.

Q And have you lived in the northeast part of Kansas City

your whole life?

A No, a majority of it though.

Q How long have you lived in northeast?

A For years, off and on.

Q Did you go to school in the northeast?

A Yes, sir.

Q And where did you go to? What grade school did you go to?

A I finished in Job Corp. I have a high school diploma but I dropped out, freshman at Central High School.

Q So growing up in the northeast part of Kansas City, you're familiar to the people that reside in that community, correct?

A Yes.

Q And is it fair to say that there are Caucasians that live in the neighborhood?

A Yes.

Q African-Americans that live in the neighborhood?

A Yes.

Q Hispanics that live in the neighborhood?

A Yes.

Q Asian Americans that live in the neighborhood?

A Yes. It's multi-cultural.

Q Multi-cultural or melting pot, isn't it?

A Yes.

Q You know Krystle Eye, is that correct?

A Yes.

Q Who is Krystle Eye?

A My best friend.

Q And is she related to the defendant, Gary Eye?

A Yes.

Q And what is her relationship to Mr. Eye?

A Her brother.

Q Okay. And how long have you been friends with Ms. Krystle Eye?

A Six, 7 years, something like that. Since we came out of Job Corp. I've been knowing her since Job Corp so six or seven years.

Q And when you say she's your best friend, you've have daily contact with her for the last seven years?

A Yes. Every day.

Q Through your close friendship with Ms. Krystle Eye, did you become acquainted with my client, Mr. Gary Eye?

A Yes.

Q And would you have a lot of contact with Mr. Eye?

A Yes. When he would be out, that's when I get to know him.

Q So around late 2004 to the first part of 2005, you saw him a lot, is that fair?

A Yes. Just when Gary was out, I did get to see him a lot.

Q Did --would you see Mr. Eye and did Mr. Eye have African-American friends?

A Yes.

Q Were there times where you would be at his house with you and Krystle Eye and Gary Eye and there would be African-Americans present?

A Yes.

Q And, in fact, you primarily date African-American men, is that correct?

A Yes.

Q And so it's fair to say that you'd bring your boyfriends over around Gary, is that right?

A Yes.

Q Did you ever, do you ever recall seeing any instance between Mr. Eye and any of your boyfriends?

A No. They got along fine.

Q There's been a lot of discussion over the last week regarding the youth slang language in your neighborhood. Are you familiar with that type of slang language?

A Yes.

Q What I mean, is it common to hear friends use the word cuz?

A Yes.

Q Or nigga?

A Yes.

Q Or homie or anything like that, right?

A Yes.

Q And you, I assume when you're with your friends you've been known to use that type of language, is that right?

A Yes.

Q And you would hear Mr. Eye use that type of language, is that right?

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A Yes.

Q And Krystle Eye as well?

A Yes.

Q You also have heard the word nigger, is that correct?

A With A or E-R?

Q E-R, N-I-G-G-E-R?

A I heard it but I don't approve of it.

Q You don't approve of it?

A Uh-huh.

Q And why don't you approve of it?

A Because it's a racial slur. Me, having a mixed kid, that I need to --because my baby is half black. So that's fighting words to me even though I am Caucasian. That E-R word is fighting words to me because it offends my baby.

Q And in all of your contact with Mr. Gary Eye, have you ever heard him use the word nigger?

A No.

Q Ms. Wilkerson, was there a time between late 2004 and early 2005 that you were trying to get your driver's license?

A Yes.

Q Were you successful in your first attempt to do that?

A No.

Q And so what were you going to try to do that day to get your license?

A We had took it downtown and I didn't pass so we was going out to Raytown to take it.

Q Let me stop you there. When you say we, who are you referring to?

A Me and Krystle Eye.

Q Gary's sister?

A Yes.

Q Was anybody else with you that day?

A When we went downtown, it was me, Krystle Eye, my little cousin and Gary Eye. We had all went downtown. And I didn't pass so we had all went to her grandma, back to her grandma's house.

Q How old is your cousin?

A She's about to be five this month.

Q Is your cousin mixed race as well?

A Yes.

Q And so you said you were going to go over to Raytown to retest?

A Yes.

Q Who all went to Raytown?

A Me and Krystle Eye.

Q Who stayed behind at Gary and Krystle's house?

A Gary and my little cousin.

Q How long were you gone?

A I was gone about an hour or so, little longer. We had to

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drive all the way to Raytown from northeast and I had to take the test and back so probably about an hour or little longer.

Q When you came back who was watching your cousin?

A Gary.

Q And what observation did you make when you came back?

A He was standing on a chair and he had my little cousin in

hand he was playing muffie babies.

MR. SANDAGE: Thank you, Your Honor.

May I have one moment, Your Honor?

Nothing else, Your Honor.

THE COURT: Mr. Rogers?

CROSS-EXAMINATION

BY MR. ROGERS:

Q You don't know this kid here, do you?

A No. No.

Q Okay. Thank you.

THE COURT: Mr. Gibson? Mr. Ketchmark?

MR. KETCHMARK: Your Honor, may we approach briefly?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

MR. KETCHMARK: Your Honor, at this time I would again renew my request to get into the photographs with respect

to what Mr. Sandage has now pulled out on direct examination

that the northeast is a melting pot. Actually used that term in talking about it in the present tense. The Court cautioned them continuing down that line. I think it is relevant. I should at least be able to ask her about graffiti that is popping up. They can establish the time frame or she can say she knows about it or doesn't know about it. But I think in light of continuing down that road, in my opinion, made a fairly strong showing about they're trying to paint the picture of this racially harmonious northeast side. I understand the Court's initial reservation. We don't know if it's persons from Grandview or Raytown. But, bottom line, we know the graffiti is there and it's in the neighborhood of the northeast side and should be relevant because it paints quite a diametrically opposed picture to what they're trying to suggest to the jury. I think it's inappropriate to continue along with the line of questioning without allowing us to be able to inquire about the racial slurs appearing in the neighborhood.

THE COURT: David, my ruling is going to stay the same. I think that's too remote, too tangential to be relevant.

MR. KETCHMARK: Okay.

THE COURT: If there was some evidence that Gary Eye was seen doing that painting back in 2005, that would be different. But here we have random paintings that are present

in almost every neighborhood in the United States. And to say

that some how means that the northeast section is more racially prejudiced than some other, I think it kind of leads us down a trail that has no end. So my ruling is that it's not relevant and it will be excluded.

MR. KETCHMARK: I understand. The other thing I would point out in that regard is the testimony that's coming in through these witnesses is remote in time to 2005, which is the event in question. And as the Court is well aware, we don't have to establish they're racist. We have to establish there's racial motivation. So to be bringing in testimony from other witnesses talking about how he was in 1999, some 6 years removed, under the same racial --potentially is not relevant. I mean, we can bring that up by way of cross-examination.

I also -

THE COURT: Certainly, I'll let you cross-examine and I think we all ought to be focusing on the time frame 2004, 2005. And not, at least at this stage, when we get to the mitigation stage, if we get there, it's a different matter. But at this stage we need to be focusing on the time close to the killing.

MR. KETCHMARK: Since we're up here, so we don't have to continue to come up, the reference with respect to a specific incident of good conduct, baby-sitting for children, I don't know, necessarily know he can establish there's no racial

animosity and Mr. Eye is fine around the children. I think

that goes a little bit further afield. I don't know if that's going to come up with another witness but, obviously, my recommendation or my motion would be they restrict those types of --because clearly that's just trying to ingratiate Mr. Eye to the jury in that vein. And so I allowed him to do that but since we're up here, I'm bringing that to the Court's attention, I think that's far afield.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)
CROSS-EXAMINATION
BY MR. KETCHMARK:

Q Good afternoon, ma'am.

A Good afternoon.

Q And, Ms. Wilkerson, just so I understand the relationship, you consider yourself to be the best friend of Krystle Eye, who is the sister of Defendant Gary Eye, is that correct?

A Yes.

Q And you have been best friends, you indicated that you have known her for six or seven years?

A I've known her since Job Corp and I think we got out when we was like 18.

Q How old are you now?

A I'm about to be 23. I've known her and she was in Job Corp for a year with me. So I've known her since she came to Job Corp.

Q So you've known her for about six or seven years. What I'm trying to figure out is how much of that six or seven years would you consider her to be your best friend?

A I was the north president in Job Corp. I had orientation with everybody so I have really when I was in Job Corp I had to get to know everyone. Me and Krystle, both of us, being from Kansas City, we automatically, you know, became close. Then we moved to Honor House together and we was around each other every day. Then outside of Job Corp it was like we're best friends and tell each other everything down to anything, any secrets, anything you can't tell your parents, anything.

Q Just so I'm clear then, I guess in terms of it didn't take you long to develop a bond with Krystle Eye, is that correct?

A Correct.

Q And for a period of time since you've known her, you would have considered her your best friend for a significant period of that, is that correct?

A Yes.

Q There was some question with respect to the use of the term nigga, N-I-G-G-A, and then the more offensive word that ends in E-R. Do you remember that line of questioning with Mr. Sandage?

A Yes.

Q And I think you indicated that nigga, the N-I-G-G-A version is used in the street slang to reflect maybe a friend, homie, cuz, things of that nature, correct?

A Yes.

Q In fact, you indicated that you have heard Mr. Eye use that term nigga and used it reflective of friend or homie, is that correct?

A Could I explain the difference to me in that? When you use it with an A, really you got to kind of know that person. You can't just go to anybody and use it. With an E-R, to me, that's just totally off boundaries.

Q The E-R version? That's out of limits?

A That's out of limits completely.

Q But if I'm clear and I understand, Ms. Wilkerson, if I were to walk up to you, and I don't know you, and say, hey, nigga, what's up, that would be offensive to you because we don't know each other?

A Right. And that word with an A, you have to know somebody. Because if people still get offensive even though it is with an A, you have to kind of know that person then to actually use it.

Q So then use of the term nigga to somebody you don't know on the street is going to be -A

Offensive to somebody? It could be.

Q And just so we're clear, the other version of that word

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with the E-R, in any context?

A It could be my momma and we got a problem.

Q That's offensive?

A Yes. It could be my momma, my daddy, we got a problem.

Q Just so we are clear you have near heard Mr. Eye, this

defendant, the brother of your best friend ever use the
nigger, E-R version of that word?

A No.

MR. KETCHMARK: That's all I have, Judge.

THE COURT: Redirect?

MR. SANDAGE: No, Your Honor.

MR. KETCHMARK: No objection to her being finally

excused, if they wish to make that request.

THE COURT: Ms. Wilkerson is excused.

(Witness excused.)

MR. SANDAGE: Defense would now call Krystle Eye to
the stand, Your Honor.

KRYSTLE EYE, DEFENDANT EYE'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. SANDAGE:

Q Could you, please, state your full name for the record and

spell it?

A Krystle Nicole Eye.

Q How do you spell your name?

A K-R-Y-S-T-L-E.

Q Last name E-Y-E?

A Yes, E-Y-E.

Q Probably pretty obvious at this point but are you related to Gary Eye?

A Yes.

Q What is his relationship to you?

A Brother.

Q Are you older or younger than him?

A Older.

Q How many years?

A One.

Q Have you always resided in the northeast part of Kansas City?

A Yes.

Q And where have you resided at almost the entire time?

A 126 South White.

Q Ms. Eye, if you can scoot up a little bit. I know you're probably a little bit nervous. But if you could pull up and speak into the microphone that would help the jury, the court reporter and me, too.

You and Gary had a pretty close relationship?

A Yes.

Q It's obvious, you've known him your whole life, right?

A Yes.

Q What is your nationality?

A Half Native American Indian and half Caucasian.

Q And Gary is the same?

A Yes.

Q And which side of your family is Native American Indian?

A My mom.

Q You and Gary have for how much of your life have lived under the same roof?

A Pretty much my whole life.

Q So you know most of Gary's friends, is that right?

A Yeah.

Q And you knew Gary's friends, I guess, from the very beginning, right?

A Yes.

Q And in late 2004 and early 2005 did you know his friends?

A Yes.

Q Some of his friends, included Vincent Deleon, is that correct?

A Yes.

Q In fact, at one point in time is it true you dated Mr. Deleon?

A Yes.

Q Did you know Mr. Eye to have African-American friends?

A Yes.

Q Did he interact with them on a regular basis?

A Yes.

Q Is it true that you have interracial relatives?

A Yes.

Q What would they be as relates to you and Gary? What are they?

A Cousin.

Q First cousins?

A I think like second.

Q Do they live in the Kansas City area?

A No.

Q Throughout --where do they live?

A Omaha, Minnesota.

Q Throughout your life, you and Gary would have interactions with your relatives, is that correct?

A Yes.

Q There's been discussion in this courtroom over the last week regarding various words used among your peer group in the neighborhood of northeast. I'm going to go over some of those words with you now. It was not uncommon to hear your peer group use the word cuz, is that fair?

A Yes.

Q And homie? Is that fair?

A Yes.

Q And the word, nigga?

A Yes.

Q And ho bitch?

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A Yes.

Q Okay. Did you hear Gary use all those terms?

A Yes.

Q On a regular basis?

A Yes.

Q Do you draw a distinction between the word nigga and nigger?

A Yes.

Q Have you ever heard Gary Eye use the word nigger in your presence?

A No.

Q You're here today under oath, right?

A Yes.

Q You're here to tell the truth, is that correct?

A Yes.

Q You're not --you wouldn't lie here today to protect your brother, would you?

A I'm here to tell the truth.

Q If it hurt your brother, so be it. Is that fair?

A Yes.

MR. SANDAGE: One moment, Your Honor.

BY MR. SANDAGE:

Q Ms. Eye, do you have any convictions, any felony convictions?

A No.

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MR. SANDAGE: Nothing further, Your Honor.

THE COURT: Mr. Rogers?
CROSS-EXAMINATION

BY MR. ROGERS:

Q
Ma'am, do you know Steven Sandstrom?

A
I don't know him but I've seen him before.

Q
And he wasn't one of Gary's regular friends that he hung

around with?

A
No.

Q
And when is the first time that you think you saw
Mr. Sandstrom?

A
I've seen him before when we were like about 13.

Q Okay. When you were kids?

A Yeah.

Q Okay. Just living in the same general area?

A Yeah.

Q Okay. In terms of seeing him hanging around with your brother Gary, did you ever see that happen any time?

A Say that one more time.

Q Did you ever know a time when you would see Steve Sandstrom hanging around with your brother Gary?

A Not on a regular basis.

Q Okay. Just occasionally they would be in the same place?

A Well, I seen, well, at the beginning I seen them and then

like I didn't see him at all for a long time and then I

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seen him again.

Q

When you said you seen him again, would that have been like toward the end of February of 2005?

A

Pretty much.

Q

Okay. And did you know Steve Sandstrom to hang around

with Vincent Deleon?

A

Yes.

Q

And that was, Vincent was Gary's best friend for awhile or

good friend for awhile?

A For awhile.

Q Thank you.

THE COURT: Mr. Gibson?

CROSS-EXAMINATION

BY MR. GIBSON:

Q

Good afternoon, ma'am.

A

Good afternoon.

Q

You love your brother, correct?

A

Yes, of course.

Q

If I understood you correctly, use of the term nigger, N-I-G-G-E-R, is always outside of bounds, is that correct?

A

Yes.

Q

In other words, if one were to refer to another as a

nigger, that's a derogatory comment, correct?

A

Yes.

Q

An insult?

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A Yes.

Q The person you're talking about is less than human?

A Yes.

Q And so in your presence with your friends, your brother has never used that word?

A No.

Q But you did know Gary and Stevie to start hanging around in February of '05, is that right?

A Around, I'm not pretty sure what exactly month it was.

Q Okay. But at some point they started hanging together a lot, right?

A Yes.

Q And you also knew Gary to hang with Regennia Rios, right?

A Yes.

Q And you also knew Gary and Vincent were pretty close, right?

A Yes.

Q In fact, they were best friends at one point, weren't they?

A Yes.

Q And, am I correct, you don't know Steven Sandstrom well? Is that fair to say?

A Yes.

Q Did you consider Steven Sandstrom to be a positive or negative influence on Gary?

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A Negative.

MR. ROGERS: Objection. No foundation.

THE COURT: Objection will be overruled.

MR. GIBSON: Thank you, ma'am.

MR. SANDAGE: No questions, Your Honor.

MR. OSGOOD: May she be excused, Your Honor?

THE COURT: Ms. Eye may be excused.

(Witness excused.)

MR. OSGOOD: Call Mark Reeder, Your Honor.

MARK REEDER, DEFENDANT EYE'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. OSGOOD:

Q State your name, please, sir?

A Mark Douglas Reeder.

Q And what is your occupation, Mr. Reeder?

A I'm a private investigator.

Q And were you appointed by the court in this case to

provide investigative services for the defense team?

A Yes, I was.

Q I referred to you as my investigator but you're actually a

lot of people's investigator, aren't you?

A Yes. I own my own company and have for 22 years.

Q And you're a former policeman?

A Yes, I am.

Q Was a sergeant when you left the force?

A Yes.

Q And as an appointed investigator, you take direction from the lawyers in the case but, basically, your job is to go out and do pretty much what the FBI has done, only you're looking for the answer to questions the defense has asked you to investigate?

A That's correct.

Q Now, when did you first start working on this case?

A In October of 2005.

Q And were you given copies and access to what we call the discovery in the case?

A At that time we had a limited amount of discovery. I was given that by you.

Q And tell the folks, maybe lot of them know but maybe some don't, what are we referring to by discovery?

A We're talking about Kansas City, Missouri police reports, FBI 302 reports of interviews, crime scene reports, crime scene diagrams, findings from the regional crime lab, interviews that were conducted as of October 2005 that were released to us.

Q Now, did there come a time when you determined that we were basically looking at two locations in connection with this case?

A That's correct.

Q And what were those two principle crime scene locations?

A That was the area of 9th and Spruce to 9th and Kensington then 9th and Brighton.

Q And did you focus some of your investigation on the physical layout of those areas and do some things?

A That's correct.

Q Are you familiar with the cafe located on 9th Street?

A The G & E Cafe, 4213 East 9th Street.

Q Have you physically been there?

A Yes, I have.

Q In fact, have you eaten in there?

A Back in the day, I did.

Q Pardon?

A Back in the day.

Q Okay. When you were a policeman?

A Yes.

Q Have you eaten in there recently?

A Yes.

Q You're familiar with that area?

A Very familiar with.

Q Did you work East Patrol at one time?

A Yes, I did.

Q And East Patrol is on Van Brunt, is that correct?

A That's correct.

Q It would encompass all of that area?

A It runs from the Missouri River south, at the time I was

there to 50 Highway or Blue Parkway to Prospect to -Q

All right. Do you know a Mr. Cayton?

A John Cayton, I know him from the Regional Crime Lab when I was assigned to the crime lab prior to being on the patrol.

Q You might want to speak up just a tad. I think your voice is trailing off.

A Okay.

Q You say Mr. Cayton's occupation was what, when you first met him?

A When I met him, he was assigned to the Regional Crime Lab as a firearms and tool mark examiner.

Q And what does he do now?

A It's my understanding he does the same thing only on a contract basis, much like myself.

Q Do you have knowledge of whether or not he also was appointed to do some work for the defense in this case?

A My understanding is that he has been.

Q And funded by the court?

A That's correct.

Q And did you have occasion to have some discussion with Mr. Cayton and coordinate with the FBI to conduct an experiment at the location of 9th and Spruce?

A Yes.

Q And what were -

Your Honor, I represent that Mr. Cayton will be here tomorrow. He was not available this afternoon or I would probably have put them on in the opposite order. I'm going to proceed under the assumption he'll be here in the morning.

THE COURT: Proceed.

MR. OSGOOD: Thank you.

BY MR. OSGOOD:

Q What was the general gist of the agreed upon experiment you were going to conduct?

A With the concurrence of the United States Attorney's Office and working through you, we were to conduct a firearms test which we did and we were working with a couple of FBI agents.

Q Was there any Kansas City Police people there?

A No, there wasn't.

Q All right. Did you go to the alley located at 9th and Spruce, initially, the four of you?

A Yes, the four of us. Mr. Cayton arrived around 5:00 a.m. that morning and I took him through the areas of concern, riding in my car. We waited for Special Agent J. C. Bauer and Special Agent John Tucker, I believe is the gentleman that arrived on the scene. And we spoke with them. I explained to Mr. Bauer what we were doing. He inquired of

me whether or not anybody had contacted the Kansas City

Police Department to notify them that we were going to be doing a live fire or live test fire examination or experiment. And explained to him that it was my understanding through talking with you and Mr. Sandage, that since they were the authority that they would contact the police department, let them know.

Q All right. Why were we concerned about that?

A Well, because we didn't want a heightened response of police cars, showing up on shots fired call.

Q Because you're going to discharge some shots in this area?

A I wasn't. Mr. Cayton was.

Q Well, I mean you, the group?

A I was inside the cafe. Mr. Cayton would be standing in an alley to the east of the G & E Cafe.

Q You kind of jumped ahead of me. Two people were going to be located in the cafe, is that right?

A Yes.

Q Who was going to be?

A Myself and, I believe, Special Agent Tucker.

Q And then Mr. Cayton and somebody else was located in another location?

A Special Agent Bauer.

Q And they were in the alley?

A They left Special Agent Tucker and myself at approximately

5:40. We all entered the cafe and they, basically, left.

And Special Agent Tucker and myself sat down at a table and waited.

Q Now, did Mr. Cayton tell you precisely what time he was going to discharge the firearm on the test?

A No.

Q Did he tell you how many rounds he was going to fire on the test?

A No.

Q And did you and the agent sit in the restaurant there then until something happened?

A Yes, we did. Based on the information we sat or I positioned myself under a window on the east wall of the building. And I assume, since that's the only cursory information I had, I assumed that was the correct place to sit. I sat under that. Agent Tucker sat to my left. And we just sat there and conversed.

Q That's a small restaurant, isn't it?

A Yes, it is.

Q Only one set of windows?

A Well, there's a set of windows on the front of it and there's the door that leads into a vestibule, then a small window up above.

Q Okay. And what happened next?

A At approximately 5:50 a.m. after myself and Agent Tucker

had sat there for awhile, Mr. Cayton and Special Agent

Bauer returned inside. Mr. Bauer walked through the door first. Motioned for Mr. Tucker to leave. And we left.

Q Now, had I asked you to do something in terms of an interview with the participants?

A Since I was part of it, I didn't since I was part of what occurred I didn't want to do any interviewing. I believe at the time that Mr. Cayton eventually told me the shots were fired so I saw no reaction from anybody. Mr. Bauer came through the door. When he first, he motioned for Mr. Tucker to come on with him and they went out to Mr. Tucker's car and, basically, they were away from us and we went and got in our cars and we left.

Q How old are you, Mr. Reeder?

A I'll be 58 this year.

Q You go to the doctor regularly?

A Just went to the doctor.

Q You have regular physicals?

A Yes, I do.

Q And in your line of work is it necessary to be physically fit?

A Yes, it is.

Q Do you have any hearing problems?

A I have hearing problems with real low tone or a whisper some times. I can't hear that. But for the most part my

hearing is within the normal range.

Q Did you hear any shots fired?

A No, I didn't.

Q Did Mr. Cayton later tell you how many shots had been fired?

A Yes.

Q How many shots were fired?

A Mr. Cayton told me approximately 5:47 a.m. by his watch he discharged four live rounds of .22 caliber ammunition into what he called a hand held recovery tube. They were live rounds to simulate the situation. What information I had, and I can only assume that he stood there and held the tube out to here and the gun back here and fired four rounds. And I don't know whether he fired them fast, slow or whatever. But he told me that he fired four rounds at 5:47 a.m.

Q Did you explain to him before the test, the position of -the alleged position of the automobile when Mr. Eye allegedly fired rounds out the window?

A That was the purpose of driving him around. I drove him up on 8th Street. Then we came down through the alley in my vehicle. And based on what information that we had as to the supposed position, if that's the correct word, where Mr. McCay would have been according to what Ms. Rios explained, I told Mr. Cayton that in my understanding or

assumption that the car would have had to be back up

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between two walls in the alley. Mr. McCay would have stepped from the alley or about to take one step I believe is what she said. And at that point the two rounds were discharged, I believe, is what I recollect her testimony.

Q

As far as you know, you weren't there but those were the instructions you gave him to duplicate that as much as possible?

A

That's correct. And I informed Mr. Bauer at the same time

as I informed Mr. Cayton.

Q Who is Mr. Cayton again?

A He's a firearms and tool mark examiner with over 30 years

experience with the Kansas City Regional Crime Lab and works as a contractor for both the prosecution and defense.

Q Thank you, sir.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. ROGERS:

Q Good afternoon, sir. You were inside the cafe, the G & E Cafe?

A That's correct.

Q And you were seated as close as you could get to the only window in the east side.

A That's correct.

Q And before you got there had you and Mr. Cayton

synchronized watches?

A The synchronizing occurred when he walked out the door and I looked at my watch and I said it was 5:40 and I wrote it on a sheet of paper. And he said 5:40.

Q Okay.

A And at that point he and Special Agent Bauer departed and myself and Special Agent Tucker sat down at the table.

Q So the purpose, I guess, was if you had, in fact, heard gunshots, you could, you and Tucker could have made a note of the time according to your watch then compared that with the time that Mr. Cayton said, according to his watch, he discharged the revolver?

A That's right.

Q Tell me about this handheld recovery tube?

A You'll have to ask Mr. Cayton about that. The only thing I know is that Mr. Cayton and I departed the area there, went to another location to wait until we could come down here that morning. And he explained to me with Mr. Bauer's concurrence that he fired four live rounds holding or it's a handheld recovery tube, quote, unquote.

Q You don't know what that is?

A Well, I do know from my experience in the lab that when a firearm or tool mark examiner is firing a gun or rifle, pistol, whatever, into, what they do is they fire in through a tube that goes into water, goes into wadding, so

there won't be any, so they can compare the striations on the rounds and compare one round to another round to see if it was fired from that. And I assume, I, obviously, don't think it was that elaborate. But my understanding if he's fired four live rounds, holding like this and he said, he told me that he held the gun back out here so as to not to muffle, stick it down in there like that, he holds it back here and he fires four live rounds so it would be, it wouldn't be muffled other than by the natural environment with the walls.

Q All right. And let's talk a little bit about the natural environment. You've been down that alley several times?

A Yes, sir.

Q Is it fair to say it's pretty narrow?

A One car can get down through there which is like a traffic lane, which a standard traffic lane is about eleven feet depending on who is painting the street, about eleven feet wide.

Q If you were driving down that alley, would you need to have at least one hand on the steering wheel at all times to avoid hitting the building?

A I would.

Q Okay. And have you had occasion to measure the distance from the opening of that alley on 9th Street to the intersection of 9th and Brighton?

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A It's four-tenths of a mile.

Q And could that be a little bit over?

A Could be a little bit over, little bit under, depending

where you start from. There's numerous ways that you could get to 9th and Brighton from that alley but the most direct route which is right from the, as you would exit the alley on to 9th Street then go east towards Brighton, it's four-tenths of a mile.

Q Okay. Thank you.

THE COURT: Mr. Ketchmark.

CROSS-EXAMINATION

BY MR. KETCHMARK:

Q Good afternoon, Mr. Reeder.

A Good afternoon, Mr. Ketchmark.

Q Just so we're clear, the initial questions about your involvement in this case and your payment by the court, you were hired and retained by Mr. Osgood, correct?

A Well, I was, the way the process works is that Mr. Osgood identifies me through an affidavit with the Court and asks the Court for permission to have so much.

Q To fund you?

A Yeah, to fund it. I have to submit an affidavit. I have to submit a resume.

Q I understand, Mr. Reeder. But my point is, it's Mr. Osgood who is selecting, says, Court, I want to use

Mark Reeder and his company, will you appropriate the funds so I can pay him?

A That's correct.

Q So it's not like you are appointed as an investigator for the Court. You're simply paid by the Court but it's at Mr. Osgood's direction?

A Yes, that's correct.

Q And, similarly, with respect to Mr. Cayton. Mr. Cayton is an expert that Mr. Osgood and Mr. Sandage retained and they simply use the Court to fund his payment, correct?

A That's correct.

Q You talked about --my intention is, just so I'm clear and understand, you were in the diner, you weren't in the alley, so those questions of how the test is being conducted and the tubing, that would probably be more appropriate for Mr. Cayton tomorrow?

A I agree with that whole-heartedly.

Q You can rest assured I'll ask him those questions and not probe into you on those because you weren't there?

A Okay.

Q What I want to talk to you briefly is, well, you talked about back in October of '05 when you began working on the case there was limited discovery at the time. Do you remember that statement when Mr. Osgood asked you?

A Yes. I put that in my report, too.

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Q You're also aware, are you not, Mr. Reeder, the reason there was limited discovery was because of the government's concern for threats that we had against witnesses and ongoing investigations into those matters that you might not have been aware of?

MR. OSGOOD: Object to that as speculative as to why we didn't get the discovery.

THE COURT: If he knows the answer to the question, he can answer. If he doesn't know, he can say.

MR. OSGOOD: He knows after the fact. He didn't know at the time.

BY MR. KETCHMARK:

Q

Mr. Reeder, I'll rephrase the question. Were you told by Mr. Osgood that the reason the discovery was being limited is because the government was withholding information because we were concerned about threats to the witnesses whose discovery we were withholding? Were you aware of that?

A I was not aware of that. I've never been told that.

Q You've never been told that?

A Never been told.

Q Were you ever told any reason by Mr. Osgood or Mr. Sandage why the discovery was being withheld?

A I believe that Mr. Osgood and I, because Mr. Osgood was on the case for a period of time before Mr. Sandage was

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appointed by the court. My understanding of the way that, that Mr. Osgood explained to it to me is that -

MR. ROGERS: Excuse me, Your Honor, may we approach?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING PROCEEDINGS WERE HAD:)

MR. ROGERS: I let it go for awhile but it seems to me what we're trying to get into here is either privilege or some aspect of threats to witnesses or something beyond what we have already heard about because discovery is being withheld before they ever go up and get the letters from Mr. Buchanan. So I don't see any of the relevance. I think it's prejudicial impact may outweigh whatever.

MR. KETCHMARK: I have no problem moving on. There was insinuation of limited discovery. There was a reason why the -

MR. OSGOOD: I don't think I insinuated any bad motive.

THE COURT: Those of us associated with the system probably affix a great deal more importance upon that than the jury does. So let's move ahead.

MR. KETCHMARK: I'll move along.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

BY MR. KETCHMARK:

Q Let's talk, Mr. Reeder, if we could about this experiment

that was done at 9th and Spruce. And you indicated, did

you not, when Mr. Osgood was asking you questions, that this was being done with the concurrence of the United States Attorney's Office and that the FBI was, basically, there and you were working with the agents. I think that was your testimony, was it not?

A I could have used the term working. I didn't know how it was we were working.

Q You also said with the concurrence of the United States Attorney's Office, did you not?

A That's correct.

Q And is it correct, Mr. Reeder, that, in fact, this was an experiment that Mr. Osgood wanted to do and I had requested that if the defense is going to conduct any experiment, we wanted agents there, not to participate but simply to observe the manner and means the test was being done?

A That would be something between you and Mr. Osgood. The only way I understood this and I believe the discussion you and I had on the phone was so it would not be what they call unfair surprise and because of the discovery time was limited so that's -Q

But we wanted to be there, not to participate, but to observe. Is that a fair statement? Because they didn't, the agents didn't participate. They observed, correct?

A I would have to agree with that, yes.

Q And you talked about and, again, we'll talk with Mr. Cayton about his exact location, but you also indicated that you were in the restaurant for a period of time and that you didn't hear any shots, correct?

A That's correct.

Q And was Mr. or rather Special Agent Tucker, was he in the restaurant with you?

A Sitting right beside me.

Q Sitting at the table? Is that yes?

A Yes, sir. I'm sorry.

Q Okay. That's fine. The court reporter is taking it down.

A Apologize for that.

Q With respect to, now you were basing your location, were you not, on information that you had received from Joe Thompson, the gentleman who said he was sitting at that table when he heard the shots?

A My information was based on a synopsis that Mr. Osgood provided me that had a very short, probably maybe seven or eight or nine lines. I never saw an FBI 302 on it. But there was a synopsis that said Joseph Thompson, that was the only identification I got on him, was seated at a table inside the G & E Cafe, under the window located along the east wall of the cafe. Based on that, I entered the cafe that morning with the four of us. And there is a

long table that accommodates five or six people which, if

you want to scoot around it. I sat directly above a window --window that's close to the ceiling. And I sat below that.

Q Where did Special Agent Tucker sit in relation to you?

A He sat to my left.

Q In terms of the information, was it unclear from Mr. Osgood or were you aware was Mr. Thompson supposedly with anyone at the time he was eating breakfast on the morning that he heard the shots?

A I don't know. Again, my information was limited, that Mr. Joseph Thompson was sitting in there and he heard the shots.

Q So you had no idea whether he was eating his breakfast alone or had someone with him?

A I don't know.

Q Would it be accurate that while you were sitting in there, you spoke continuously with Special Agent Tucker and you engaged him in small talk?

A That was my instruction.

Q But you did do that?

A Yes.

Q That was an instruction from Mr. Osgood?

A To try to simulate so that we would be -Q

My question to you, I think you answered, was Mr. Osgood

told you, simulate a discussion with Mr. Thompson?

A Mr. Tucker.

Q I'm sorry. With Mr. Tucker, Special Agent Tucker?

A Yes, that's correct.

Q At any point in time, and I don't know if this was clear but, well, did Mr. Osgood ever provide you with more detailed information about what Mr. Thompson said when he came in and testified about where he was at or where he remembered being at when he heard the shots on the morning of March 9th?

A My only information was what I explained, I had a synopsis of the report and that's Mr. Tucker was seated under that window and that's what I did.

Q Mr. Thompson?

A Now, you got me doing it.

Q I apologize.

A Mr. Thompson was seated underneath that window and that's what I did.

Q Was anybody asked to be outside of the cafe in a parking lot area by the vehicles when this experiment was being conducted?

A No. The only thing we did was as Special Agent J.C. Bauer went with Mr. Cayton.

Q Into the alley?

A Into the alley. And Special Agent Tucker and myself

entered the cafe.

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Q

Have you been asked by Mr. Osgood or Mr. Sandage to go back and repeat this test and to be out in the parking lot in front of the G & E Cafe to see if you could hear the shots?

A No.

MR. KETCHMARK: One moment, Your Honor.

BY MR. KETCHMARK:

Q

And, Mr. Reeder, was that a window you can look out?

A

Well, I'm short but I suppose if you're taller you could stand up and look out that window, with a clear view.

Q

It wasn't a window you could look out?

A

No. It's a small 2 by 3 or 2 by 4 window that's positioned closer to the ceiling than it is closer to the table. The table sits here. There is a display where they're selling curio items, bears, stuff like that. And then that, there is a level there, level here, level there, and then above that is where this window is. And you can sit right underneath that window.

Q

So you weren't in position where you could look out the window at all?

A

No. My understanding was that I was suppose to sit underneath that window.

Q

And simulate a conversation with Special Agent Tucker?

A Right. And I did do that.

MR. KETCHMARK: That's all I have, Judge.

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THE COURT: Redirect?
REDIRECT EXAMINATION
BY MR. OSGOOD:

Q

Mr. Reeder, did I tell you the experiment was based on information we had from an FBI report and grand jury transcript where he was seated?

A

Yes.

Q

When is the first time I told you or they found out at the trial now he's claiming he's outside? When did you find that out?

A Just now. I never heard that Mr. Thompson was outside.

Q Thank you, sir.

THE COURT: Mr. Rogers?
RECROSS-EXAMINATION

BY MR. ROGERS:

Q

So when did you do this or when were you observing, I guess, this experiment by Mr. Cayton?

A

Last Monday.

Q

Last Monday, April the -

A

April 27th or 28th.

Q

28th. I think some time like that. Anyway, certainly,

well before Mr. Thompson testified in this court on May

first?

A

I don't know when Mr. Thompson testified. If he testified

May first it was prior to May first.

Q Now, let me get a little bit more about the layout of the table in G & E Cafe. This is a rather long narrow table, is that correct?

A That's correct.

Q And it is against the wall, the east wall of the cafe?

A Yes, sir, it is.

Q And the chairs then are around the outside of the table?

A Yes, they are.

Q They're not chairs which are facing the table with their backs to the east wall.

A That's correct. They --there is, the table is a rectangular shaped table. There is a chair that sits, if you're sitting there looking at the east window, there is a chair on the north. There's at least three chairs that will face the window and one chair that will set almost under directly or right even with that window.

Q And those are, the chairs closest to that window are the chairs that you and Mr. Tucker occupied?

A That's correct.

Q And so you would therefore be facing the window itself?

A I sat right below the window. I scooted my chair over and I was sitting below the window. And Agent Tucker was to my left, looking this way. And the window would have been up to his left, up above. He wasn't directly under the

window either.

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Q You would have been facing the window. He would have been perpendicular to the window?

A Yeah.

Q And you positioned yourself in the best place you could

find to hear any sounds that might come through that

window. Is that a fair statement?

A That's what I attempted to do.

Q That's all. Thank you.

THE COURT: Recross-examination?

MR. KETCHMARK: No, Your Honor.

THE COURT: Thank you, Mr. Reeder. You may step down.

(Witness excused.)

MR. SANDAGE: Your Honor, may we approach?

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

PROCEEDINGS WERE HAD:)

THE COURT: I'll go ahead and send the jury home.

We'll talk after.

(THE PROCEEDINGS RETURNED TO OPEN COURT.)

THE COURT: We're out of witnesses. You want to go home?

All right. Please don't discuss the case. Don't make up your mind. Don't read, watch or listen to any news reports about the trial. We'll see you back here at 8:30 in

the morning. Good night.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Can someone help me understand where we are in the overall progress of this phase of the trial?

MR. OSGOOD: We're getting close, Your Honor. We have the firearms expert, first or second witness in the morning. We have Mr. Terron Maples, the inmate who is going to testify about the attempted sale of discovery to him. He's in

custody. And I assume they'll have him down here in the morning. Then we have Diante Broadway. I'm hopeful that he'll be here. But I think he's in transit right now. That may pose

a problem. I may have to ask you to allow us to put him on

after the defense for Mr. Sandstrom.

THE COURT: Who has custody of Mr. Broadway?

MR. OSGOOD: B.O.P. He was in Florida.

THE COURT: Are those the three witnesses that you

intend to call?

MR. OSGOOD: Tomorrow it's, well, also maybe Mrs. Tresenriter. Am I saying that right? Tresenriter. That's Mr. Sandstrom's grandmother. So Mr. Maples, who will be pretty brief. Firearms expert, that will take awhile. And then Ms. Tresenriter, maybe a little longer than Mr. Maples. I would assume we would be done by the break.

THE COURT: Mid-morning break?

MR. OSGOOD: Yes, sir.

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THE COURT: All right. And then for Defendant Sandstrom?

MR. ROGERS: We have, the universe is in a constant state of flux, Your Honor. And we are, I did not expect the government to get done this quickly today. We have witnesses under subpoena who have been told to be here at 10:00 tomorrow morning. And we have a witness, Mr. Carter, who is being brought in on a writ from Crossroads. I think the marshal service is working on that, even as we speak, so, hopefully, he'll be here tomorrow.

THE COURT: Is he the one that we overlooked?

MR. ROGERS: The one who I think the writ was just issued today. But they have it.

THE COURT: It's unlikely I'm told he will be here tomorrow.

MR. ROGERS: Unlikely? Okay.

THE COURT: So maybe we'll have to save him for Wednesday morning.

Actually, the third time. I'm going to start collecting.

MR. ROGERS: Second for me.

THE COURT: You've been warned. First time. Second time. Okay. But turn them off.

MR. ROGERS: I actually called over, I think to talk

about witnesses.

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THE COURT: I understand how it happens but it's disruptive.

MR. ROGERS: I'm glad the jury is not here.

Anyway, got him, hopefully. We have another witness who I had hoped to put on toward the end of the day tomorrow but we can--works for a living and gets off work at 3:30, could be here by 4. But we can, he's under subpoena and he'll have to take off work.

THE COURT: How are we going to get from 10:30 to 4?

MR. ROGERS: I have three witnesses to get from 10:30 till noon probably. And after that, I don't know. I'm at a loss.

THE COURT: I don't want the jury just sitting around here for three or four hours. What does this man do who can't get here until -

MR. ROGERS: He's a carpenter. He can get here. He'll just have to lose the time, lose a couple hours work. And I'll have to see if he can get here like at 1.

THE COURT: All right. See if you can get him here.

MR. ROGERS: I'll do my best. There should be four witnesses other than him. And other than Mr. Carter.

THE COURT: Okay. So I don't want anybody just filling up time but it looks to me as though we can get through tomorrow with live testimony.

MR. ROGERS: With the possible exception of

Mr. Carter.

MR. KETCHMARK: Your Honor, only thing I would point out with respect to Mr. Maples and Mr. Broadway, we would renew our original motion that they should be excluded because they only go to the information on whether or not Mr. Buchanan attempted to sell them information. I think it's a collateral issue as it goes to credibility and not directly related to a material issue. I know John takes a different view on that. And it's my belief he was able to probe, he was able to question probably further than normal because he inquired that the FBI actually looked into it and met with these people and these were the names and I think that he's stuck with those answers. And I don't think it goes to a material issue that would enable him to bring in extrinsic evidence of proof as relates to those. And it's my understanding from the 302s that we had indicated or provided that's what they're basing that on and I don't think they bring anything to the table at least my belief because I haven't seen any other defense reports to suggest there is anything they're going to bring in other than try to call in question Mr. Buchanan's credibility about whether or not he did or did not attempt to sell them information. I don't think they have any other relevant information. I don't want to speak for Mr. Osgood if there is something more above and beyond because that was information that we provided to him by way of 302 discovery process.

THE COURT: Is there anything other than the attempt to sell, is it Mr. Eye's file?

MR. OSGOOD: That's it, Your Honor. Obviously, I don't think it's extensive. I think it's direct rebuttal of his entire line of testimony to his truthfulness. It's not like the situation where he claims he was having breakfast at Wendy's and it turns out it was Hardee's. That would be extrinsic. It goes to the heart of an issue, whether or not Mr. Eye made these statements. And it substantially impeaches him from a motive standpoint, that he got the reports, read the reports, then regurgitated back to the FBI what the reports said. Then went on and tried to sell them to other people. It's a pattern of case jumping. He knew what it was and admitted.

MR. KETCHMARK: Your Honor, if I might reply, I think Mr. Buchanan's testimony was he was solicited by Mr. Eye for \$5,000 down payment to use putting out hits on witnesses. That wasn't contained in the police reports. Mr. Gibson also pointed out this is something we brought up to the Court beforehand. I think the Court had asked Mr. Osgood to do some briefing on this related issue in terms whether it was collateral or whether it went to a material fact. I don't know if he looked at that but I'm still strongly of the belief this does not go to a material fact. It's not a situation where you

have an eyewitness as he's suggesting and the person says I'm

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at home in bed with my girlfriend when I see the intruder come in and there are witnesses that say, no, he's at the bar getting drunk with his buddies. That's not the situation here.

THE COURT: Well, I think I indicated when the issue first came up it seemed to be a collateral issue to me and counsel would be bound by the witness's answer. That continues to be my thought and will be my thought tomorrow unless you want to provide something to me first thing in the morning that causes me to change my mind.

MR. OSGOOD: I'll look tonight, Your Honor. I think it's governed by the rule and I don't think any of us disagree what the rule is.

THE COURT: Extraneous or --it seems to me it is not intrinsic.

MR. ROGERS: I realize it's not my witness we're talking about but seems to me that something like selling information to, basically, suborn perjury on cases goes directly to truth and veracity which is never collateral.

THE COURT: Show me some case law.

All right. Anything else tonight?

MR. KETCHMARK: And I don't know, I'm assuming maybe but based on the representations, they haven't indicated their

clients, I'm trying to see if there's any need, if that decision.

THE COURT: I suppose I'm not entitled to know that

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until just before they rest.

MR. OSGOOD: I don't want to leave you in a lurch, Your Honor. Our inclination is that Mr. Eye will not testify. Now if Mr. Rogers tries to sandbag me and I don't think he'll put his client on, you can expect some rebuttal testimony.

THE COURT: Well, I tell you what, let's just take a few minutes to make a record.

Mr. Eye and Mr. Sandstrom, you have the right to testify in this case. You also have the right not to testify under the Fifth Amendment. Nobody can compel either one of you to give testimony which might be used against you. If you choose to testify, I think it's fair to predict that you will be subjected to a very thorough and vigorous cross-examination. If you have prior felony convictions, those convictions may be admitted on the sole issue of your credibility. The decision on whether to testify or not is yours to make. You should certainly talk to your attorneys but, ultimately, that decision is yours to make. And before Mr. Osgood closes his case, I'll ask you, Mr. Eye, on the record whether knowing all of that, it is your desire to testify or not. And then when we get to Mr. Sandstrom's case, Mr. Sandstrom, I will ask you the same thing on the record. And at that point I'll expect an answer from you as to whether you wish to testify or not, knowing the things that I just told you. Understood?

DEFENDANT EYE: Yes.

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DEFENDANT SANDSTROM: Yes.

MR. SANDAGE: One matter, Your Honor, you mentioned the second phase, the time the Court might give the parties off. I'm in the process of starting to put that together. Some of the witnesses that we anticipate in the event there is a phase 2 might be coming from further than the metropolitan area so I'm trying to get a gauge from the Court as to what his thoughts are about that topic.

THE COURT: Well, my thought is that you should have at least part of the day off. I mean, if we finish with phase 1 and there is, in fact, a phase 2, and that finish occurs in the morning, my thought is that we would take the rest of that day off and come back the next morning and start with phase 2. If on the other hand phase 1 doesn't finish until late afternoon, then seems reasonable to me that we would take a full day off then come back and start with phase 2. So those are my thoughts along that line.

David, you were going to think further about this idea of not bifurcating but submitting issues to the jury separately for both defendants in phase 2 if we get there. Have you done that?

MR. KETCHMARK: I have to confess, Your Honor, I haven't. I used my lunch hour to attend to other matters. Can I get to the court tomorrow morning?

THE COURT: You can. I will tell you I'm leaning in

the direction of allowing the jury to consider the charges, to consider the punishment for each defendant separately, allowing the United States to present its aggravating evidence then doing one defendant, returning a verdict for that defendant and then allowing the second defendant to proceed with his mitigating evidence. And the government's evidence would not be repeated. The jury would simply be instructed they could consider all the evidence they heard throughout the course of trial up to that point.

MR. KETCHMARK: Let me think about that and talk to some people in our office and I'll make what I believe is appropriate reference tomorrow morning.

THE COURT: I'm not sure which way that cuts. I can see advantages and disadvantages for doing it both ways. But if that's what the defense wants, that's what I'm inclined to do unless you persuade me otherwise.

MR. KETCHMARK: I will report back first thing in the morning, Your Honor.

THE COURT: Steve will hand you the second round of the instructions for phase 1. It seems to me, it's very possible that phase one could be submitted on Wednesday. Now we haven't talked about the time you want for final argument. It may be that we won't get to the submission stage but in light of that, I think what I would like to do is discuss these

instructions tomorrow morning so that we'll have an opportunity

to make changes and get copies made for the jury. So let's be here at 8 and we'll talk about these instructions in the morning. And as I said, John, your instruction isn't in there.

MR. OSGOOD: It's done and I don't know whether we can give an advance copy of it tonight. I've got a jump drive. We'll work that out after court here.

MR. GIBSON: Your Honor, I believe if my recollection serves that this was the instruction proposed by Mr. Osgood that runs counter to the law in the Eighth Circuit and the Eighth Circuit and the rest of the circuits, as I understand it. So I understood Mr. Osgood to be perfecting the record for purposes of appeal but not that this was anticipated. This would be included in the eventual instructions.

THE COURT: I think he would be delighted if I did include it but as I said, my preference is to give the model instructions and it's very likely what I will do but I will consider it.

MR. OSGOOD: It's built around two Supreme Court cases that came along after the Bledsoe law develops. It defines the dual motive instruction for sexual discrimination cases, Your Honor. That's where I got it. And I used that as kind of a spring board for ideas and wrote something around that.

MR. ROGERS: Your Honor, I might, for planning

purposes, be safe in assuming that whatever time tomorrow we

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finish the evidence, you wouldn't expect us to argue this tomorrow?

THE COURT: That is very likely correct. Let's talk about that. How much time are you going to want for arguments?

MR. KETCHMARK: I would say, maybe, Your Honor, if we could have a couple hours. I think that's probably reasonable especially in light of the fact the defense is splitting, two hours would be the government's request.

THE COURT: What about defense?

MR. OSGOOD: I assume you're going to split whatever he takes between the defense?

THE COURT: Yes, unless -

MR. OSGOOD: Won't be any filching of my time? I get to go first. Do I get to use his time now like we did in voir dire?

THE COURT: That's between you and Charlie.

MR. OSGOOD: I'll take an hour, Your Honor.

THE COURT: An hour, Charlie? So we agree that two hours is adequate for everyone?

MR. ROGERS: I'm yielding to Mr. Gromowsky.

MR. GROMOWSKY: I think an hour will be fine.

THE COURT: We'll plan on two hours a side. That being the case, I can't see us submitting tomorrow so very likely Wednesday. It will take some period of time just to

read the instructions.

MR. ROGERS: And I don't know if the record reflects, at least on behalf of Mr. Sandstrom, we are requesting that the government present their evidence in aggravation which applies to both defendants at once and then after that, if there's other, sequentially one defendant then the next.

THE COURT: Well, I understood the government to say they thought it would have just victim impact testimony. If so, that would apply to both.

MR. KETCHMARK: Well, I understand what Mr. Rogers request is. What I would like to do, Your Honor, is take back, look a little bit closer at that aspect. I had always operated, quite candidly, under the assumption as we put in our pleadings that the Court would do two separate, just because that's the way it's usually done in the district. I know, obviously, from the case law that it's not constitutionally required. And that's where I had indicated a preference on the sole victim. But what I would like to do is be in a position where I can go talk to other prosecutors in our office, digest the implications. Then come back tomorrow morning and respond to his request and, obviously, the Court's initial thoughts on how to proceed. I'll do that at 8:00 tomorrow morning when we talk about instructions.

THE COURT: All right. Good night.

(End of session)

6, 2008 -DAY 10

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Good morning. Have a seat.

5 Would you like your clients in here?

6 MR. OSGOOD: I don't know that they need to be for
7 this.

8 THE COURT: It's up to you.

9 All right. John, I haven't been online. Did you
10 file anything with respect to -

11 MR. KETCHMARK: Your Honor, I can provide you a copy
12 of it. I printed a copy this morning.

13 THE COURT: Thank you.

14 MR. OSGOOD: While rambling, in essence what it says
15 is what the Eighth Circuit rule is which you articulated which
16 is you have to find another independent reason for
17 admissibility of evidence before it would not be collateral.
18 The 10th Circuit case says bias is never collateral. And I'm
19 arguing it would show bias on the part of Mr. Buchanan to
20 protect his cousin Stevie when he cried on the stand. That is
21 the short version.

22 MR. KETCHMARK: I have a copy of the Kershke opinion
23 if the Court would like it, too. I glanced at it, briefly. I
24 have a copy if you would like to have that.

25 THE COURT: All right. Thank you.

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1 Well, I'm struggling with this issue. Obviously, I
2 would like for the defendants to have every opportunity to
3 provide a defense consistent with their theory of defense. And
4 yet the law of the Circuit is what we all acknowledged that it
5 was yesterday. The question becomes is this issue collateral
6 to Mr. Buchanan's direct testimony and I conclude that it is
7 and that extrinsic evidence should not be admitted on the
8 issue. So the testimony of those two witnesses will be
9 excluded.

10 MR. OSGOOD: We have another matter if the Court is
11 inclined to take it up at this point. You had denied our offer
12 of an expert and I think we need to make an offer of proof on
13 what he would testify to.

14 THE COURT: All right.

15 MR. OSGOOD: And we have given the defense copies of
16 Mr. --I mean the government, pardon me, copies of
17 Mr. Eggington's C.V. as well as a letter as to what his
18 testimony would amount to and they have had this for some time,
19 Defendant's 15. And that's not right. Defendant's 15 and
20 Defendant's 56, Your Honor.

21 MR. KETCHMARK: Your Honor, for the record,
22 acknowledge that Mr. Sandage gave me marked copies with the
23 defendant's exhibit numbers but we have been in possession of
24 these in reciprocal discovery.

25 THE COURT: Okay. And these, I assume, need to be

1 tendered in order to be a part of the record. I show that
2 Defendant Eye has offered Exhibits 15 and 56. Those exhibits
3 are rejected consistent with the Court's pretrial ruling that
4 this is not a proper subject for expert opinion.
5 Further, the record is certainly replete with many,
6 many references to the meaning of these two words, nigga with
7 an A, and nigger with an E-R. And the attorneys are free to
8 argue to the jury what meaning was intended when the words were
9 used.

10 MR. OSGOOD: I didn't mean to resurrect the issue
11 again. I just feel I have to have an offer of proof to
12 preserve for appellate purposes.

13 THE COURT: All right. On that topic, your proposed
14 Instruction 28 needs to be filed, Mr. Osgood.

15 MR. OSGOOD: I did file it this morning.

16 THE COURT: You did file it this morning? Okay.
17 And then before we turn to the instructions, the
18 other loose issue was the request to take judicial notice of
19 the time the sun rose on March 9th and or a stipulation to that
20 effect.

21 MR. KETCHMARK: Your Honor, Mr. Rogers did tender a
22 stipulation. We pulled up some definitions and I don't know, I
23 don't think the government is going to be in a position to
24 agree to the stipulation as Mr. Rogers has tendered. My
25 concern is there is, I mean, I don't dispute that the record

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1 cites, and we did check, confirmed the sun rose at 6:38 in the
2 morning on that date. My concern is that in looking at
3 definitions on sunrise, there is some ambiguity because they
4 talk about sunrise being the time when the first part of the
5 sun appears above the horizon in the east. Sunrise is not to
6 be confused with dawn which is variably defined as the point at
7 which the sun begins to lighten, some time before the sun
8 itself appears, ending twilight. There is also definitions of
9 civil dawn, nautical dawn, astronomical dawn and various
10 degrees of what those terms entail.

11 What my concern is, is my recollection from the
12 witnesses testimony is they're not saying it's sunrise, as the
13 sun is coming up. They're describing it as daybreak, as dawn,
14 those types of things. I know the Court has heard repeatedly
15 from these individuals, time is not necessarily something that
16 was their forte at this particular time. And I think that
17 trying to get into a definition of when the sun rose isn't
18 necessarily consistent with the way the witnesses have
19 testified. And they testified about, Ms. Chrisp being the most
20 recent one and freshest in my mind, it was daybreak or dawn.
21 And I think because of the ambiguity and the confusion between
22 the sun rising and dawn, we all have been up at 5:30 in the
23 morning, some more often than others, and we know what it looks
24 like outside. And to try to get into a hyper technical
25 definition and distinction as is tendered in the stipulation is

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1 the definition of civil dawn. But then there's the other forms
2 of dawn. And I just think that the argument is there to be
3 made and I don't necessarily think it's relevant. I think it's
4 more confusing because there hasn't been any single witness who
5 said that it's as the sun is rising as they're using the term.
6 And I think that the arguments are free to be made. I think
7 the jurors probably have experiences themselves with many of
8 them probably rising at that time and they're going to know
9 what the lighting conditions are.

10 MR. ROGERS: Obviously, Your Honor, we cannot compel
11 the parties to stipulate to something they don't want to
12 stipulate to. What the proposed stipulation that I prepared
13 includes and I'll give the Court a copy just for convenience, I
14 guess. It includes the definition of civil twilight which is,
15 I think, crucial and the data from the United States Naval
16 Observatory, Astronomical Applications Department includes a
17 beginning of civil twilight for March 9, 2005 at 6:12 a.m.
18 Both of these, I also included I got the definition of civil
19 twilight from the National, I guess, actually, even though I
20 got it from the National Weather Service Forecast Office in
21 Memphis, it was actually from the Naval Observatory. So what I
22 would ask-

23 Anyway, what I would ask the Court to do is take
24 judicial notice of not only the time of sunrise at 6:38 a.m.
25 but also the time of the beginning of civil twilight and the

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1 definition of civil twilight. I think that's an appropriate
2 subject for judicial notice. I think that meets the
3 government's concerns. I don't think there's anything
4 misleading about it. And it still leaves room for argument.
5 I don't think the jury knows from their own
6 experience what time the sun rose or what time it became light
7 enough before sunrise to carry on outdoor activities without
8 artificial lumination on March 9, 2005. First of all, there's
9 been an hour difference because of Daylight Savings Time.
10 There is also I think which operates the other way. It's,
11 obviously, two and a half months or two months later now than
12 it was then in the year. There is also I think a slight
13 variation from year to year of what time of day the sun rises
14 on a specific day.
15 I have been up at 5:30 in the morning. I've been up
16 at 5:30 in the morning on March the 9th and -
17 THE COURT: Do you remember what it looked like,
18 Charlie?
19 MR. ROGERS: Yes. It's night. And I remember, at
20 that time, get up in the morning and go for a walk outdoors for
21 exercise. And I would leave at about 5 minutes before 6 and I
22 would get back at about quarter till 7 and when I got back
23 about quarter till 7 it was light.
24 THE COURT: I am reluctant to define civil twilight.
25 The definition tendered defines it as in the morning and to the

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1 end of the evening when the center of the sun is geometrically
2 six degrees below the horizon. That strikes me as being so
3 much detail that it's meaningless to the jury.

4 What I will do is take judicial notice that on
5 March 9, 2005, the sun rose at 6:38. The parties are free to
6 argue --6:38 a.m. The parties are free to argue the effects
7 of that upon visibility before and after.

8 MR. KETCHMARK: Thank you, Your Honor.

9 THE COURT: Okay. And I'll do that when the jury
10 comes in first thing this morning.

11 Let's turn to the instructions. I have reviewed the
12 defendant's proposed Instruction No. 28 and concluded that it
13 is an inappropriate instruction and that the better instruction
14 and the one which has received greatest acceptance within this
15 Circuit is the one I have included in the original packet. So
16 the record will reflect that the defendant's tendered
17 Instruction No. 28 is rejected.

18 MR. OSGOOD: And to keep from falling into the Eighth
19 Circuit trap, I would ask the Court to consider each paragraph
20 individually and that I would be content with any one or all
21 three. Because as an addition to your proposed instruction.
22 I'm assuming the Court is rejecting the paragraphs collectively
23 and individually.

24 Again, the one I submitted online may be slightly
25 different, I think some of the language in it, but the gist of

1 the three paragraphs are identical to the one I filed.

2 Did you print that out, David?

3 MR. KETCHMARK: The instruction? Yes.

4 MR. ROGERS: For the record, Your Honor, may the

5 record reflect that Mr. Sandstrom joins in the request for this

6 instruction?

7 THE COURT: Yes. The record will so reflect.

8 MR. OSGOOD: Here's the one on file, Your Honor.

9 Might be a slight variation in the language.

10 THE COURT: You are correct, Mr. Osgood. I reject

11 the instruction in its entirety and I also reject the offer of

12 each paragraph individually. I don't believe that each of the

13 paragraphs individually is an improvement upon what I have

14 proposed. Paragraph 1 refers to race or color being the

15 motivating factor and I don't think that's the law. I think it

16 just needs to be a motivating factor. I think that the

17 proposed instruction, the one that I included in your packet

18 gives both sides the opportunity to argue what conduct

19 motivated or moved the defendants to do what they did. So the

20 record will reflect that it is rejected collectively and

21 individually, the paragraphs individually.

22 MR. OSGOOD: Thank you, Your Honor.

23 THE COURT: All right. Let's talk now about the

24 instructions as a packet.

25 David, you want to begin?

1818

1 MR. KETCHMARK: And, Your Honor, I reviewed them last
2 night and they looked fine. I did, and I think I understand
3 there was a 53 that was loose at the end because the 53 that
4 was in the packet didn't have, this is as to Count 9, didn't
5 have a verdict form reflecting back. There was a loose copy
6 that says if you record your verdict on Verdict Form Q, so I
7 assume it was to be inserted in the 53 in the packet. If that
8 was the case, that was the only thing I noted, Your Honor.

9 THE COURT: Okay. Instruction No. 23 talks about
10 evidence of prior crimes admitted to by certain witnesses. We
11 identified Mr. Deleon, Mr. Buchanan and then yesterday
12 Ms. Chrisp. Are there others who will be testifying that would
13 have prior convictions that we need to know about to include?

14 MR. KETCHMARK: I don't anticipate them on behalf of
15 the government.

16 MR. OSGOOD: I'm not aware of any, Your Honor.

17 MR. ROGERS: Yes. I think, obviously, we have a
18 Mr. Carter. I don't know if anybody has heard anything about
19 his availability today or not.

20 THE COURT: We think we're going to have him.

21 MR. ROGERS: Obviously, the man didn't-

22 THE COURT: With extraordinary effort by the
23 marshals.

24 MR. ROGERS: I greatly appreciate it, Your Honor.

25 THE COURT: What is his first name?

1 MR. ROGERS: Melvin. There is also Kenneth Robinson
2 convicted of previous crimes.

3 THE COURT: R-O-B-I-N-S-O-N?

4 MR. ROGERS: Right.

5 Anybody else?

6 MR. KETCHMARK: And I don't know, Charlie, when we
7 reviewed Willis Jones, he indicated he had been incarcerated
8 and I didn't ever receive any disclosure. There was no
9 identifying information provided in his video statements so I
10 don't know if you have an idea of what his -

11 MR. ROGERS: I don't think he has any felony
12 convictions. I'm not sure.

13 MR. KETCHMARK: Do you have his identifying
14 information so we can have him run? Because he did indicate
15 that he was incarcerated and while incarcerated he --the
16 people who were racists, people who weren't racists --that
17 suggests to me maybe it wasn't just -

18 MR. ROGERS: You're right. Go ahead and add him to
19 the instruction for that, Your Honor.

20 THE COURT: Willis.

21 MR. KETCHMARK: Jones.

22 MR. ROGERS: I don't have his identifying
23 information.

24 MR. KETCHMARK: W-I-L-L-I-S, then Jones, common
25 spelling.

1 THE COURT: Okay. All right. John, is there
2 anything in this packet that you believe you need to make a
3 record on that you haven't already?

4 MR. OSGOOD: No, Your Honor.

5 THE COURT: And Charlie?

6 MR. ROGERS: I don't think anything I haven't already
7 mentioned, Your Honor.

8 THE COURT: All right.

9 MR. ROGERS: I had something I was going to talk
10 about-

11 THE COURT: I'm sorry?

12 MR. ROGERS: I think I mentioned last week
13 Instruction No. 31 which is the one that says, Count 3 talks
14 about in order for you to find the element of --resulting in
15 the death -

16 Instruction 31 says if you find a particular
17 defendant guilty of, should be under Count 3 rather than of
18 Count 3, under Instruction No. 25, you must then decide if the
19 government has proven beyond a reasonable doubt that the
20 defendant's conduct resulted in the death of William McCay.
21 In order for you to find that this element has been
22 satisfied you must find that the death was a natural and
23 foreseeable consequence of the acts committed by the defendant
24 or someone acting with him. Not necessary for the government
25 to prove that a defendant or someone acting with him actually

1 intended for William McCay to die to satisfy this element.
2 I think it's unnecessary and I think it's potentially
3 confusing because if you look at, this is for what I call the
4 additional finding or the aggravating finding under Count 3.
5 But nobody is claiming that this is an accidental death.
6 Nobody is claiming that this is a death arising from sudden
7 passion or something like that. So I don't think there's an
8 issue as to intent of natural and foreseeable consequence.
9 That's why I object to that instruction.
10 THE COURT: And I think you did mention that last
11 week. My judgment remains the same. That language will be
12 included.
13 Let's take about 5 minutes. Get comfortable. We'll
14 bring the jury in.
15 Eva's mother is having surgery. Alex Martinez is
16 standing in for her today and perhaps tomorrow.
17 (Recess)
18 (The following proceedings were had OUT OF THE
19 PRESENCE AND HEARING OF THE JURY:)
20 MR. ROGERS: Your Honor, one more thing. I don't
21 know if the record reflects that we joined in the offer of
22 proof by Mr. Eye's team about the expert witness. Would the
23 record reflect we also move?
24 THE COURT: Yes.
25 MR. ROGERS: We have sort of divided up the thing but

1 we certainly would argue that evidence is relevant and
2 material.

3 THE COURT: Okay. The record will show that you
4 joined with Mr. Osgood.

5 One other thing, David, you were going to consider
6 the submission of that penalty stage.

7 MR. KETCHMARK: I did, Your Honor. I didn't know if
8 the Court wanted to take that up. I have thought about that.
9 And what my thought would be, if the Court is inclined to grant
10 the severance request by the defense and do it in two separate
11 deliberations, I would request that we be allowed the
12 opportunity to present the government's evidence in aggravation
13 twice, once as to Mr. Eye and once as to Mr. Sandstrom, if it
14 becomes relevant. The reasons for that are numerous. One,
15 quite candidly, I have concerns about presenting the evidence
16 in aggravation, Mr. Eye's mitigation, then in deliberations
17 that could be very suspended or protracted. We don't know.
18 Then get into a situation going in and not being able to bring
19 any evidence in in aggravation, going into mitigation and
20 having that large temporal break.

21 But more importantly, the other thing is not just
22 victim impact, Mr. Gibson correctly pointed out to me there are
23 several other letters in the correspondence of Mr. Sandstrom
24 the government would probably be seeking to admit under various
25 non-statutory aggravators that had been pled. And I think that

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1 would need to be presented. There is also a couple of family
2 members of the victim who are trying to get in from out of
3 town. And we started that process, one of which I intend to
4 use in the penalty phase, if and when we get there. And if he
5 were not available in the penalty phase with respect to Mr. Eye
6 I would want to be able to use him as it relates to
7 Mr. Sandstrom. So I think there are a number of reasons. And,
8 obviously, I have no quarrels with the Court if it wants to
9 sustain the oral request for severance. I kind of assumed
10 that's how we would do it based on the prior practice in the
11 district.

12 THE COURT: Just to be sure I understand, you're not
13 talking about redundancy with the second defendant but simply
14 new evidence that pertains to that defendant?

15 MR. KETCHMARK: New evidence on the non-statutory
16 aggravators. And it is possible that if there was a witness
17 victim who was not available, we wouldn't do additional. We
18 wouldn't say okay, you know, but it would be differing family
19 members that maybe weren't available for whatever reason as
20 relates to, it wouldn't be like we're going to take all the
21 victim witnesses who testified, then have them called again
22 because quite frankly I don't think --the jury is already
23 going to have heard them once. But if there are some that are
24 unavailable and, again, I don't know the extent or how much we
25 want to get into that. I just don't know that I can foreclose

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1 that as an option. And I think that we shouldn't have to be,
2 if the Court is going to sever them, sever, basically, the
3 entire proceeding as it relates to each individual defendant.

4 THE COURT: All right. I'll tell you what I think
5 about that before we get to it.

6 Let's go ahead and bring the jury in, please, Alex.

7 (The following proceedings were had IN THE PRESENCE
8 AND HEARING OF THE JURY:)

9 THE COURT: Please be seated.

10 Good morning. Welcome back.

11 We're going to begin this morning with an instruction
12 before we move to testimony. This will be Instruction 11A.

13 Even though no evidence has been introduced about it,
14 I have decided to accept as proved the fact that sunrise at
15 Kansas City, Jackson County, Missouri on March 9, 2005 was at
16 6:38 a.m. Central Standard Time. I believe this fact can be so
17 accurately and readily determined from the National Weather
18 Service and the U.S. Naval Observatory Astronomical
19 Applications Department that it cannot reasonably be disputed.
20 You may therefore treat this fact as proved even though no
21 evidence was brought out on the point.

22 As with any fact, however, the final decision whether
23 or not to accept it is for you to make and you are not required
24 to agree with me.

25 Mr. Osgood?

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1 MR. OSGOOD: Call John Cayton, Your Honor.
2 JOHN CAYTON, DEFENDANT EYE'S WITNESS, SWORN
3 DIRECT EXAMINATION
4 BY MR. OSGOOD:
5 Q Would you tell us your full name, please, sir, and the
6 community that you live in?
7 A John Charles Cayton. I live at Osborn, Missouri.
8 Q And at some point in time did you reside in Kansas City?
9 A Yes, I have.
10 Q And have you previously worked for the Kansas City,
11 Missouri Police Department?
12 A Yes, I did.
13 Q Would you tell us a little bit about what your job was and
14 how long you were there and what it entailed?
15 A I was hired in 1969, in January of 1969, to work as a
16 firearms and tool mark examiner in the crime laboratory.
17 I attended classes at the police academy relative to
18 search and seizure, crime scene processing and so forth,
19 and was assigned to test fire firearms, examine tool
20 marks, conduct comparative analysis with test shots from
21 suspect guns with open case bullet files. Also I was a
22 member of the crime scene team. We would respond to
23 shooting scenes to process, collect evidence, bring it
24 back to the laboratory and conduct our analysis.
25 Over the years I have taught in-service training

at the police academy, typically two academy classes a year then in-service training to the detectives and investigators. I've been a member of the Major Case Squad since 1971 until I retired in September of 1999. This is a class that is conducted by the FBI relative to investigating major cases in the metropolitan area. As that I also attended international classes, seminars conducted by the Association of Firearm and Tool Mark Examiners. I served in several offices in that organization and was president in 1986. This is an international organization of firearm and tool mark examiners from about 35 countries. Presently there's approximately 850 members. And we conduct annual training seminars in relation to firearm and tool mark examination.

Q All right. Mr. Cayton, have you previously testified in a number of cases?

A Yes.

Q For the state?

A Yes. State, local, federal, military, several different courts, several states and also in France.

Q And you are presently in private practice?

A Yes.

Q And in that capacity have you testified for just the defense or do you testify for the state occasionally also?

A I work, yes, we testify for the state. In 2003 and 4 I

1 worked about 389 shooting cases for the Metropolitan
2 Washington DC Police Department and I just returned from
3 another trial back there testifying for them. Also we do
4 civil cases.

5 Q Let me show you what has been marked as Defendant's
6 Exhibit No. 48 and is this your curriculum vitae?

7 A Yes, it is.

8 Q And that is in more detail summarizes your experience than
9 what we just talked about?

10 A Yes.

11 MR. OSGOOD: I'll offer Defendant's 48 into evidence,

12 Your Honor.

13 MR. KETCHMARK: No objection.

14 THE COURT: Without objection, 48 is admitted.

15 BY MR. OSGOOD:

16 Q Now, I believe you and I met through my private
17 investigator on this case who has known you for a number
18 of years, former policeman, himself?

19 A Yes.

20 Q Mr. Mark Reeder?

21 A Yes.

22 Q And at that time when we met, did I give you some
23 photographs?

24 A Yes, you did.

25 Q What did I give you?

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A Well, there's several photographs. I don't remember all of them.

Q Of the deceased?

A Yes.

Q Showing the bullet hole in the side?

A Yes.

Q Did you also have available from me some information about the allegations of a shooting at 8th and Brighton?

A Yes, about 9th and Brighton.

Q Sorry. 9th and Brighton and 8th and Spruce?

A Yes.

Q And before we get into the testimony about ballistics, did I also, within the past couple of weeks, ask you to conduct an experiment of some kind?

A Yes.

Q Would you tell the jury what that was, please?

A I met with Investigator Mark Reeder about 5:00 at 9th and Spruce and about I think approximately 5:45 conducted four test shots using the .22 long rifle revolver with a 6-inch barrel. It's made by High Standard. It's a sentinel model which is similar to the revolver in this case. In this case the revolver was made under a JC Higgins name but the revolver design is similar. It has a 6-inch barrel. It has a cylinder that is approximately an inch and a half long and overall length of the revolver is

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11 inches.

Four rounds of .22 long rifle ammunition was fired in the tube with polyfill to catch the bullet. It was fired in the alley back from the sidewalk area, the opening, and it was shooting a southerly direction.

Q Now, were you told that there was a car parked in that alleyway that did not protrude into the sidewalk area itself?

A Yes.

Q And were you told as to the fact that it was alleged that a person reached out an open window and fired the shots in a parallel manner?

A Yes.

Q At a pedestrian?

A Yes.

Q Stepping off the curb?

A Yes.

Q Where did you place yourself in relationship to that knowledge, sir?

A I was north of the sidewalk area.

Q In the alley?

A Yes, in the alley.

Q And did you try to approximate the position of someone with their hand out a window?

A Well, I was on the west side of the alley which would have

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approximated that area on the right side of the car. And the gun was not obscured by anything. It was out of the tube so the muzzle blast from the front of the gun and the cylinder gap were both exposed to the open air.

Q Now, hold up that Government's Exhibit --the firearm. The number on it is Government's Exhibit 47B. Explain the similarities or dissimilarities, for that matter, the gun you used for a test device and that weapon?

A This gun is a western design as far as the shape of the frame. It has the grip design. The one I used had a different frame but it has the same 9 shot cylinder and the mechanical features are similar. The tolerances as far as the cylinder gap and the way it functions should be similar.

Q All right. And are you, based on your previous experience and training, reasonably convinced that the, both the ballistics and the decibel emission from that weapon and the weapon you used would be similar?

A Yes, sir.

Q Now, what do I mean by decibel emission?

A The emission?

Q The sound?

A Well, you would have the report from the pressure, the combustion in the chamber where the cartridge is actually ignited would be the highest. The pressure would be

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there. Then as the bullet moved forward and as the gas pushed the bullet out, the longer the barrel the less pressure would be at the end of the barrel. So 6-inch barrels are similar. You would have some pressure escape from the cylinder gap between the barrel and the front of the cylinder. So that would be one source of both gas leakage and sound. And then out the end of the barrel would be the remaining unburned, partially burned and then what you would have is the muzzle flash, you would have burning gun powder.

Q Okay. Before we get into that detail I want to concentrate on this experiment then we'll move to 9th and Brighton. What actually causes the report or the sound?

A Well, the report is a combination of --it's the actual gas pressure behind the bullet and the pressure escaping out of the cylinder gap. The bullet can cause a sound itself but the velocity is too low. It's not going to be breaking the sound barrier.

Q Okay. Now, does the presence or absence of obstruction affect the report or the sound emission such as high walls versus shooting in an open field?

A Yes, it will affect it.

Q And how?

A Well, it would contain it. Directly it would hinder from going where the wall was. That would limit it somewhat.

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It would be more, in this case the alleyway was open north and south. North would be just a continuation of the block up the alley. South would be the 9th Street and then there is a street that angles in there. There's buildings straight across from that open alley.

Q All right. And then were you also, was it pointed out to you where the D & G Cafe was?

A Yes.

Q Were there any FBI agents present during this test?

A Yes, there were. There were two there. We met two. And it's I think John Tucker and JC Bauer.

Q All right. And did one of them remain at your location?

A Yes.

Q And do you know where the other one was at?

A He was in the cafe with Reeder.

Q And was it agreed to that you would discharge the test weapon at a particular time?

A No. It was just when ever I was ready to shoot.

Q What was the purpose of that?

A Well, so they wouldn't anticipate it.

Q Okay. And, again, was there any possibility that the test you performed caused a muzzling effect because of this container that you shot into?

A Well, it wouldn't contain any of the gas because I was out away from it. The fire pressure, the flare from the

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muzzle blast and so forth were far enough from it that it wouldn't, anything you do, you know, directionally would effect it some way or another but it would be a minimal effect.

Q So minimal muffling?

A Yes.

Q And how many rounds did you discharge, Mr. Cayton?

A Four.

Q And did you do them in rapid fire succession or was there -

A No. There was a pause between each shot.

Q Did you actuate the gun in double action method?

A I did single action.

Q Single action, which means you cocked it each time and fired a round?

A Yes.

Q Okay. And I presume, or maybe I'm wrong, there wasn't any danger that could have resulted from what you were doing, was there?

A No.

Q This container does what?

A It catches the bullet.

Q All right. Is there some kind of cellulose or something in there?

A It's a polyfill.

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Q Polyfill. Okay. Is that also a similar device you use to retrieve a bullet where you want to do striation comparison?

A Yes.

Q You just happened to have that device and seemed a logical way to do it then?

A That's what I used because --I have another trap that is a steel trap I could shoot into but the steel trap may have changed, it may have made a difference in the sound more than the polyfill.

Q All right. What was --did you notice, was there heavy traffic up and down 9th Street while you were there? I realize it's been several years later.

A There was one car that went by between shots.

Q Okay. And after you completed firing the test rounds, what did you and the agent do, if anything?

A We went to the cafe.

Q And did you go inside?

A Yes. We went inside and we met with Mark Reeder and Agent Tucker.

Q Did you have any conversation with Agent Tucker at that time?

A No.

Q What was his reaction when you walked in?

A I think they were surprised that we were through. I mean,

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it seemed like, it was like, it was kind of like that, you know. That was kind of the expression. Nothing was said but -

Q So you didn't have an opportunity to talk to them about what they heard or didn't hear?

A No. They left.

Q The agents you mean?

A Yes.

Q All right. Now, let's move on, now, to what, I'll ask you to look at in relation to what happened at 9th and Brighton. Were you informed that we were interested in what are known as the absence or presence of stipplings?

A Yes.

Q And that we were concerned about the absence or presence of gun powder residue on clothing?

A Yes.

Q All right. And were you given some information about the fact that there was at least some evidence from the government that these were proximity wounds?

A Well, I understood it would have been like near contact or very close.

Q All right. Now, by the way before I get into that, how many gunshot wounds do you think you've investigated over the course of your career as an expert for the police department?

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A Well, we have 140 to 150 or so homicides a year plus a lot of other shootings and I was either directly involved in each case or as a supervisor to review the work done from my co-workers and it would be several thousands of cases.

Q Is it important to know the position of the clothing, vis-a-vis the position of the wound itself?

A We try to correspond the line-up of wounds with the clothing and we do this with some of the diagrams. We don't go to the autopsy ourselves. We look at the medical report. Autopsy report, some times we talk to the crime scene technician. But we do look at the gunshot residue patterns in relation to the wounds and try to line them up to see which wound happened with which hole in the clothing.

Q Why is that important?

A Well, it can help re-establish, you know, what happened. And some times the clothing is just disarrayed or there is a struggle, then some times they don't line up just right or a fold, you might have several holes in the clothing from one shot where the material is wadded up or pulled out of line.

Q Would you be able to reconstruct, for example, trajectory, perhaps?

A Yes.

Q Now, when a small caliber round like a .22 enters the

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body, does it penetrate straight through and have a straight path or is it possible that it will start moving around inside the body because of contact with organs and that kind of thing?

A Well, it depends on what it goes through first. The clothing, the more clothing there will slow it down. And if it's a hollow point and there's clothing, it will retard the expansion of the hollow point. If it's a solid nose and it doesn't hit a rib or bone or something else, typically, they continue on if there is not something else that causes it to change its path.

Q Now, I believe this round was a solid lead standard commercial round, wasn't it?

A I believe so.

Q And, in fact, it flattened out. What can you tell us about the flattening effect where you can look at the back and see the rear end of the bullet itself and the front part is flat. Can you then determine lands and grooves from that?

A Well, the base of the bullet, the front o-jive or the curve of the bullet doesn't come in contact with the rifling so that doesn't give you any rifling information. If it expands or flattens a lot of times that actually helps protect the rifling marks on the base of the bullet toward the rear portion of the sides of the bullet. So

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some times forward expansion does protect and allow you to look at the rifling marks.

Q Is six lands and grooves then a common pattern on this weapon?

A Yes. That's standard for High Standard Manufacturer.

Q I don't think there's any dispute about six lands and grooves. What is required to actually match a fired round to a weapon so that you could say with a reasonable degree of professional certainty that this bullet was fired from this weapon?

A Well, first of all, the bullet that you recover from autopsy or the scene has to be of a quality that will have the remaining striations made by the rifling in the gun barrel. Lead is a soft material so it's easy to damage the microscopic striations on a bullet that is fired. So it depends on what has happened to the bullet from the time it goes down the barrel until we get it in the laboratory.

Then we would have to examine a suspect firearm and see if it's, first of all, fits the class characteristics. Each gun manufacturer has a specific number of lands and grooves, in this case six, and the direction of twist to the right. So if those things are consistent then we go ahead and conduct our test firing to see if there is sufficient --first, we try to eliminate

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1 it to keep you from reading anything into the
2 identification that may not be there.
3 And if we can't eliminate it then we look for
4 identifying individual features. We try to orient them in
5 the microscope. We use a comparison microscope which is
6 two microscopes joined by a bridge. We have one stage,
7 we'll put the questioned or unknown from the scene or the
8 autopsy and on the left stage, we'll put the test shot and
9 we view through binocular eye pieces. We'll see a
10 circular image with a dividing line down the center. On
11 the right half we see the bullet in the right stage and on
12 the left we see the bullet on the left stage. And the
13 center line we can overlap the bullets on their spindles.
14 We can turn them at the same time. We look for some
15 outstanding feature, mark on the bullet and we try to find
16 that corresponding mark on the other bullet. Then we
17 rotate them simultaneously, keeping them indexed and each
18 land and each groove is examined not only at the point of
19 the dividing line but we have a prism that we can move
20 that back and forth and sweep the entire length of the
21 bullet. So we're not only looking at the circumference of
22 the bullet, keeping them in line, but we look from the
23 nose to the base, as we go along to see the continuity.
24 And what we're looking for is what we call a
25 predictable reproducible pattern of striations. Because

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we know that nothing is 100 percent duplicative. If you take your fingerprint and you put down 20 fingerprints with your index finger, none of them are the same. One will have a little more ink one ridge or two picks up, one smeared. But we can identify them because we're looking at that predictable pattern and this is what we're looking for.

Q You don't mean your print changes, just the evidence you leave of your print can be smeared or smudged?

A Yes.

Q Now, is that scientifically accepted testimony such that you as an expert are permitted in court to testify that you have concluded based on your examination that this bullet came from this gun if these striations match up to your satisfaction the way you just described?

A Yes.

Q Now, conversely, if all you have are class characteristics, can you come in here and testify under oath that this bullet came from this gun based on class characteristics alone?

A No.

Q Why?

A Well, because the vendor that the companies buy, you know, High Standard probably don't make their barrels. They probably buy stock, barrel stock. And I've been to Ruger

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and Smith and Remington, some of the manufacturers, been through the armors course, actually built guns there for periods of time. So what they'll do is take a long barrel stock made in one process and cut it into, say, six inches. Make six barrels. So each one of those barrels would have the same dimensions. 6 right. But we can tell the barrel making process is at least two steps. You have the drilling process that drills it to the caliber, in this case a .22. Then they have the rifling process that puts a rifling tool through it and displaces or removes metal to make the grooves. Each one of those processes is a different tool so the lands and grooves, the surface will have a different effect on the bullet. So that as the drill goes through the barrel, the drill is continued to change until it's unusable then it's discarded in the drill. Same way with the rifling tool. It may make 200 barrels or may make a thousand before they have to change it or repair it. So we know that a continual change of these cutters effects the microscopic details inside the barrel.

Q Which allows you to reach your striation conclusions?

A Yes.

Q With a high degree of certainty?

A We can do that by looking at the overall bullet, the lands and grooves, the length and we can come, test have been

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done where you have six barrels cut from one stock. And test shots are fired. We're able to show which section it came from. So it's very reliable.

Q But and, again, conversely, if all you have is a smashed bullet you can't do the striation test on, all you can say is it has similar characteristics?

A Yes. Yes, and, of course, High Standard, there's other manufacturers that make the same rifling dimensions.

Q So there could be hundreds, if not thousands, of guns out there that could have the same class characteristics?

A Yes.

Q Now, did you at my request do some test firing of that weapon to look for deposits of powder residue on fabric?

A I used a standard laboratory reference revolver, not this one, but it's similar to this one.

Q All right. Do you recognize Defendant's Exhibit 57 for identification?

A Yes, I do.

Q What is it, please?

A This is a test shot that I fired from a High Standard Sentinel Deluxe with a 6-inch barrel, using .22 long rifle ammunition and the distance -

Q Well, before we get into the specifics of it, I have to get it in evidence. Do you recognize that's a test you performed?

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1 A Yes.

2 Q And Defendant's Exhibit 58, is that a similar test on
3 similar cloth?

4 A Yes, it is.

5 Q You prepared, again, in similar fashion?

6 A Yes.

7 Q And Defendant's Exhibit 59, would that be a third test
8 that you did in connection with this case?

9 A Yes.

10 Q And same type of test and same type, or I should say, not
11 the same type of test but test performed using similar
12 equipment and cloth and that kind of thing?

13 A Yes.

14 MR. OSGOOD: All right. I'm going to offer these in
15 evidence, Your Honor, Defendant's Exhibits 58, 57, 58 and 59.

16 MR. KETCHMARK: No objection.

17 THE COURT: Without objection, Defendant Eye's 58,
18 57, 58 and 59 are admitted.

19 BY MR. OSGOOD:

20 Q Now, I think we're at the juncture where and we might have
21 gotten a little ahead of ourselves. Why would a weapon
22 leave powder residue on clothing? What accounts for that?

23 A Well, when you have ignition of the primer then the
24 ignition of the powder inside the cartridge in the barrel,
25 it starts the burning process which causes pressure. Then

1 the heat continues to build on burning the powder. As
2 this comes out what you have coming out of the cylinder
3 gap and out of the muzzle, you have this residue that's
4 partially burned. There is a cloud of, if you take a
5 picture of this in slow motion or time lapse type thing,
6 you can see the smoke residue coming out of the cylinder
7 gap and out of the end of the barrel. What you have
8 coming out is first the projectile, the bullet. Behind it
9 the gas pressure, the gas that's burned. And, typically,
10 that will be a gray sooty residue. Then you have unburned
11 powder that are almost complete flakes of powder or
12 particles. Then you have partially burned gun powder
13 particles.
14 So you have several different components coming
15 out. And at the muzzle you would have the most. You
16 would have the cloud, the gray soot and so forth. Then as
17 you get into the range, intermediate, like twelve inches,
18 you wouldn't have the gray sooting but you still have the
19 unburned powder particles impacting the clothing.
20 Sometimes they'll embed themselves in the weave of the
21 fibers, depending on how tight the weave is and so forth.
22 Then all the way out to the limit where it doesn't
23 carry --the projectiles are the heaviest, so it keeps
24 going. But the energy and the unburned powder or the
25 partially burned powder, the wind slows it down, the drag

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and resistance, so it falls off and it falls between the outer limit when it's recorded. And in this case I shot three feet -

Q Before we get into that I want to ask you a couple more questions about it. Does the type of powder in the cartridge, itself, affect this? In other words, if it's a fast burning powder versus a slow burning powder?

A Yes.

Q What kind of powder is used in pistol rounds?

A Typically, it's fast burning powder and small powder which has --it facilitates the oxygen, the air around it, so it burns quickly. Smaller particles of gun powder burn quicker because the air can facilitate the granular burning. So fast burning powder in a short barrel and this ammunition you can use it in rifles. You can use it in long barrel or short barrels. But in short barrels it's incomplete burning.

Q Because they design these weapons what, these bullets to work at somewhat of an optimum range? In other words, if you're going to shoot it in the rifle you don't want it running out of gas before it gets out of the end of the barrel?

A No.

Q So it's got to project the round out the rifle barrel anywhere from 20 to 24 inches long?

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A Yes.

Q So with a 6-inch barrel you'll have unused powder that spews out?

A Yes.

Q Okay. You did some test, you said, sir, and we've identified those and admitted those in evidence. You ran three different tests. Would you describe that for us, please? Is there any order you want to do them in?

A Well, contact was first.

Q Okay. Which one of the three is that?

A This is contact.

Q Okay. All right. You're referring to Defendant's Exhibit 59. I'm going to put that on the ELMO here. And what do we do now? Oh, there it is.

What do we have here, Mr. Cayton?

A This is the first shot I fired at contact. The barrel was -

Q With the Court's permission, would it be helpful if you step down and went over to the T.V. screen?

A All right. In this case this is a cotton cloth. And it's a fairly tight weave, tighter than like you would have in a T-shirt or jersey type material. The barrel is put against it, not what we call hard contact. In other words, it's not pushed against it to seal it. It's just against it. It's a loose contact. So what you have here

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is the bullet and the bullet hole's in the center and you, have the sooting, all this, the sooty gray residue.

Actually, in this case most of the soot and the residue would be blown through the hole. And you don't see it. If I backed up to three inches, you would have a bigger sooting area. It wouldn't be quite as dark but you would have a bigger sooting area. But for the purposes of this, you have some particles here of unburned powder and these would be from the cylinder gap where they escaped out the sides.

Q What is head space on a gap?

A Well, the head space is the design, it's a feature that when the action is closed, in this case is a cylinder is shut, the back of the cartridge is against the breech, the standing part of the gun so that it's tight. In other words, it's not, when it fires, the pressure in the gas cartridge won't blow up, swell.

Q Obviously, with the cylinder closed, it's got to come back into the --the hole in the cylinder, obviously, where the round is going to be fired has to match up with the barrel end. There's no physical connection between the two.

What is that space in there called?

A Well, that's not head space. That's just cylinder gap.

Q Cylinder gap. That's what I meant to ask. Head space is between the -

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A Between the cartridge head and the breech.

Q So the cylinder gap, itself, can that affect the amount of blow by out of the weapon?

A Well, yes, if it's tight or the tolerance and most of the modern guns are produced with a very close tolerance and the front may be, it would be like 10 thousandths, maybe, something like that. And depends on the manufacturer. But they don't want it to be too close to the back of the barrel so that it drags but they want to make it close enough that the least amount of gas escapes. Decreasing the pressure on the projectile.

Q Do you still have some escape in every weapon?

A Yes.

Q Is that also deposited, something around the sides?

A It can be, yes.

Q So go ahead with your explanation of this.

A This is just some of the loose, from the lack of hard contact, the loose contact, get this sooting deposit here then some unburned particles around.

Q Now, Mr. Cayton, on the actual exhibit which they'll have available, the jury will, you used a white cloth and I can see the specks on the white cloth. You can see maybe partially in the blow up here. Obviously, the deceased was not wearing a white piece of cloth made out of this stuff. Would it make a difference if you had just a

regular jacket, clothing like you would wear?

A Well, you wouldn't be able to see, you know, visually, on the black jacket or dark blue or so forth. That would hinder you. You could probably still see the sooting because there would be a difference there. But some of it you would have a hard time seeing and this is why we use the chemical.

Q That's what I was going to ask you. There is a chemical process you use to enhance it?

A We do a visual which is what we're doing now. Then we use a microscope. We have a bench scope on a boom on the table. We can put the garment under that and microscopically examine it. And in that case you would see more of the residue that you couldn't see visually. Then we use a chemical, modified griess, G-R-I-E-S-S, modified griess. And it's a chemical used, acidic acid. And you put it on, different labs use different desensitized photo paper. Then we put heat on it. And it will develop the, determine the nitrates from the partially burned and unburned gun powder into a dye and they'll show up on the filter paper or whatever we put the heat on. So you can see, chemically you can see the residue that you couldn't see with your eyes.

Q Very well. Now, in this type of a contact wound what would be the effect on the tissue on the body, itself?

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A Well, if this was the only clothing, you might have a combination of the sooting and tattooing or some of the pressure on the skin underneath.

Q Could it actually cause tissue damage inside the wound, if it was so close it burned into the wound, itself?

A Well, if it's contact you would have a temporary maximum cavity. In other words, this fire ball that comes out of the barrel would go into the skin and the skin is elastic. So you would have a real quick ballooning of the wound channel from the gas pressure from the muzzle. You would have a minimal amount of that type of ballooning from the impact of the projectile because it's small and it's just a round nosed bullet. But from the gas temporary cavity you would have some stretching. It would be a minimal amount with a .22 but you would have that. And you might have some soot or some charring, unburned powder in the wound track.

Q Would you clearly expect then to find some evidence of it, if it was a contact wound, on the body itself?

A Yes.

Q All right. Now, let's move on to the next exhibit, sir.

And your next test was done at a greater distance, is that correct?

A Yes. Twelve inches.

Q And I'm going to put on the screen now Defendant's Exhibit

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57. Do you recognize that on the screen there?

A Yes.

Q I need to move it down some.

A Yes. This is a second test I did, twelve inches from the muzzle of the gun. And what we see is the bullet hole and the gray residue around the hole is what they call bullet wipe is when you have the bullet going through material. When it goes through, it will --it stretches the material then basically pushes a hole through it. So the residue, anything that's on the bullet, lead, and whatever, you know, will leave a deposit around it. So that is part of the bullet wipe.

Then you have the unburned or partially burned, the largest pieces are, you see here more of the unburned and the smaller fragments could be partially burned gun powder particles. Then, typically, what we would do, if we had a garment that had or a victim that had a pattern on it, we would measure that. That would be our standard. Then we would try to reproduce that in the lab with different test shots until we approximated the density of the pattern and the size of the pattern. Then we could tell how far back the gun was.

Q All right. And this was, again, at what distance?

A Twelve inches.

Q Which is a foot?

A Yes.

Q Now, did you run another test?

A Yes. I fired one at 36 inches.

Q And what did you get at that --Yes, this is Defendant's Exhibit 58.

A I fired at 36 inches and so you have a few particles of gun powder. Again, you have the bullet wipe around the entry hole and this would be from the residue on the bullet itself but this shows a pretty sparse pattern of gun powder. There's not much there, compared to what was at twelve inches.

Q The state expert testified, I believe, he ceased getting evidence of residue at 38 inches. Would that seem to be consistent with your testing?

A Well, that would be two inches difference. With this here I would still, I think I might still pick up a little bit for a little bit more distance but it would probably be in that range.

Q All right. If you would resume your seat, please, sir. Now, is it possible to have stipplings even though a round is fired through a garment?

A Yes.

Q Explain that, please?

A Well, the term stippling is, some times they have tattooing and so forth. But the actual stippling is the

1 effect of the impact of the particle grounds of powder
2 hitting the skin and causing the capillaires to rupture,
3 leaving some indication there from like a bruising or
4 actually embedded in the skin. So if you're close enough
5 and depending on the weave of the material, the powder can
6 filter on through, go on through the material and impact
7 the skin. This is more likely at closer range. The
8 further back you get, those particles of gun powder lose
9 their energy and they don't have the energy to penetrate
10 the cloth. So the cloth would filter that out and keep it
11 from hitting the skin. But at close range, it's not
12 uncommon, depending on how many layers of cloth you have.
13 If you have a coat or something thick, that could hinder
14 the impact of the gun powder residue.
15 MR. OSGOOD: What exhibit number is that, please?
16 Would you display 54I then, please?
17 BY MR. OSGOOD:
18 Q You've seen that photo on a prior occasion, I believe?
19 A Yes.
20 Q And the state, the government's expert has testified that
21 there were no stipplings on the body and there was an
22 absence of any powder residue on the clothing. Would what
23 you see there be consistent? Would your testimony be
24 similar based on that wound does not appear there is any
25 stippling?

A No, there doesn't appear to be.

Q Do you want to step down and point anything out on that?

A Well, no. I can see the wound and you can see that the dark area around there could be the effect of the bullet wipe. And, you know, the pathologist and the people that recorded the autopsy would indicate whether, you know, it was something else.

Q And would it be, based on all your experience and training, that if the pathologist report said an absence of stipplings that that would be consistent with what you see?

A Yes.

Q Okay. You can take that down now.

Now I'm about done. If, hypothetically, someone walked up to Mr. McCay in this case and the testimony was that the defendant placed his arm around Mr. McCay's head, his left arm, and put the weapon up at his chest and pulled the trigger three times, given that hypothetical, one, would you expect to find more than one bullet hole in the deceased?

A Yes.

Q Where would you expect to find the bullet hole?

A Where the muzzle of the gun was.

Q In the chest, if that's what the testimony was?

MR. KETCHMARK: Your Honor, I'm going to object, he's

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1 interjecting between hypothetical and evidence and hypothetical
2 and evidence. Could we get a little bit of clarification in
3 the question?

4 THE COURT: Sustained.

5 BY MR. OSGOOD:

6 Q Okay. Based on the hypothetical, where would you expect
7 to find the bullet hole?

8 A In front of the muzzle of the gun.

9 Q And how many bullet holes would you expect to find if it
10 was fired at close contact with three rounds?

11 A If it was held tight, it's possible you could shoot maybe
12 more than one in the same wound track. But, typically, it
13 wouldn't happen that way. And the recoil and so forth
14 would effect, but it would be close together.

15 Q And you would expect to find more than one wound?

16 A Yes.

17 Q Would you expect to find anything else that, as what we
18 just talked about for the last half hour?

19 A You would expect to find the residue indicating close
20 range shot.

21 Q All right. So based on your examination and everything
22 you have seen, do you have an opinion as to what the
23 minimum distance was that Mr. McCay was shot at, the
24 minimum distance based on everything you've seen? Had to
25 be greater than what?

1 A Well, from my test and what I observed, it would be
2 approximately three feet.

3 Q Or greater?

4 A Or greater.

5 Q All right. Do you have an opinion as to whether or not it
6 could have occurred the way that I just gave you in the
7 hypothetical then?

8 MR. KETCHMARK: Again, Your Honor, I'm going to
9 object. If he wants to characterize it as hypothetical, that's
10 fine. Now, he's trying to bleed it over to the facts that this
11 witness couldn't or wouldn't testify -

12 THE COURT: I'm not sure I understand the question so
13 I'll ask you to rephrase.

14 BY MR. OSGOOD:

15 Q Based on my hypothetical, that if a weapon were placed
16 against the chest and the trigger pulled three times -

17 MR. KETCHMARK: Your Honor, may we approach?

18 THE COURT: Yes.

19 MR. OSGOOD: Well, I made my point. We don't need to
20 do that. I'll withdraw the question.

21 THE COURT: Cross-examination?

22 MR. ROGERS: Thank you.

23 CROSS-EXAMINATION

24 BY MR. ROGERS:

25 Q Sir -

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1 MR. ROGERS: Could you put up Government's Exhibit
2 300, please?

3 How are you, Mr. Cayton?

4 A Very fine. Thanks.

5 Q Calling your attention to Government's Exhibit 300 which
6 is there in front of you on the screen. Does this display
7 the area where you conducted this experiment?

8 A Yes.

9 Q And calling your attention to that circle I just drew,
10 does that show the opening of the alley on to 9th Street
11 where you actually fired your test rounds?

12 A Yes.

13 Q Okay. Now, I note that, did you make a note of the
14 surroundings while you were doing that? Did you look
15 around and see what was there in the area?

16 A Yes, I did. I drove down, we went through there earlier
17 and I knew, basically, where it was. And I pulled back
18 down approximately to the same place. So I know 9th
19 Street is to the south and then the other street that
20 angles off with the buildings right ahead of the alley
21 there.

22 Q So those would be buildings there, straight across from
23 the alley, is that correct, where I have drawn another
24 circle on Exhibit 300?

25 A Yes.

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Q And you were doing this test a couple of weeks ago or not long ago, is that a fair statement?

A It was on April 29th.

Q Okay. Last week, I guess?

A Yes.

Q And that was over three years after the events in question, correct?

A Yes.

Q Had you been there earlier --if you were told that .22 caliber rounds had been fired probably from the location where you conducted your experiment in a south direction across 9th Street and that he had not hit anybody, would you, would it have been fruitful to attempt to find some evidence of that?

A Well, typically, on our crime scene search that's what we would do. We would try to relate the information and relevant position to reconstruct the event and recover evidence because it's very important to recover the evidence for future comparison, if a gun is recovered on a shooting.

Q So you would be looking for bullets?

A Yes.

Q And if you didn't find any bullets, would you also be looking for bullet holes?

A Pardon me?

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Q Would you also be looking for bullet holes or something like that in the buildings?

A Yes.

Q Okay. And there's also a wedge-shaped building or pie-shaped building there, is that correct?

A Yes.

Q Did you see that when you were there?

A I couldn't see it when I was in the alley where I fired the shot but I saw it there.

Q So for a bullet to have struck that building, you would have had to be outside the alley pointing in a somewhat westerly direction?

A Yes.

Q Is that the Nelson's Island Liquor Store?

A Yes.

Q Now, I'm not going to go over everything Mr. Osgood did. Based upon your, by the way first of all let me call your attention to the pistol on your right, the revolver here, Government's Exhibit 47B. You would agree that that is not a chrome plated revolver, correct?

A No, it's not.

Q And never has been?

A I don't know.

Q Okay. Would you also agree it has black plastic handles?

A Yes.

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Q So if you're looking for a chrome plated revolver with ivory or white handles that's not it?

A No. If it was chrome plated I would expect to be able to see some residue remaining.

Q Okay. And if you were looking for a chrome plated revolver with a wooden handle, that would not be it either?

A No.

Q Okay. But in terms of the size and shape, would the characteristics of that revolver be, for our purposes in terms of test firing distances, the same as the revolver that you used to do your test firing?

A Yes.

Q Okay. So whether it's chrome plated or what color the handle doesn't matter about how far away sooting or stippling is deposited?

A No, it doesn't.

Q And based upon the photographs you reviewed from the autopsy, the reports you reviewed from the Kansas City crime lab and your own experiments, and also the report of the autopsy, you looked at it, too, right?

A Yes.

Q Based upon that can you rule out the wound which killed Mr. McCay having been a contact wound?

A I believe so, yes.

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Q And can you rule out, based upon those, by the way the people who did these tests are people that you trained, right, or in terms of the crime lab people?

A Well, there's no one left there that I trained.

Q They're people who are trained by the people you trained?

A Well, no.

Q Okay. How far back does the succession of training go?

A It's a new crew.

Q New crew. Okay. You're familiar with their practices and the way they do their work?

A Yes.

Q And they're members of your organization that you used to be president of?

A Yes.

Q And in your opinion do they conform to the professional standards of that organization?

A Yes.

Q Okay. Given that, and relying upon their results, can you rule out this having been a close range wound?

A Well, close range, you know they have a contact, then intermediate, then distant. And usually the intermediate is where you still have some residue that you can make some measurement from like I showed in my test. Once it gets beyond that, it's considered a distant. So intermediate would typically be where you have something

you could gauge or produce tests to try to compare it with.

Q So where there's a stippling ring you can measure across the ring of the most intense deposits and then compare that with test bullets fired through the white cotton cloth at various ranges?

A If you have a pattern then you can produce tests to try to reproduce that established range. Without any pattern, you can't.

Q There's contact wound which is determined by the characteristics of the wound itself and also perhaps some characteristics on cloth the bullet is fired through, right?

A Yes.

Q And then there is what you would call an intermediate range which is basically for a weapon such as Exhibit 47B, somewhere between contact and 3 feet or 38 inches?

A Yes.

Q And then after that, you can't tell?

A Yes.

Q Okay. So with regard to what you reviewed, would you agree that it was not either a contact wound or an intermediate range wound?

A Well, intermediate, you know, if you record the evidence, if you record powder, then you can establish that

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1 distance. At some point there could be some other factor
2 that I can't say, you know, like something else filtered
3 it. If there was some other garment or something else
4 that could effect it. But based on my tests and based on
5 what I have seen, I believe it would deposit something
6 that could be either visually observed or chemically
7 developed up to about 3 feet.

8 Q Okay. And so what you're saying is if the weapon is fired
9 at a range of less than 3 feet through a pocket or
10 something like that, then it might not deposit gun powder
11 residue?

12 A Well, it would deposit some. It would filter out some of
13 it. It would effect it some way.

14 Q So it would be a closer range without leaving any
15 detectable traces on the coat?

16 A Yes.

17 Q Okay. I believe that's all I have. Thank you.

18 THE COURT: Cross-examination?

19 MR. KETCHMARK: Thank you.

20 CROSS-EXAMINATION

21 BY MR. KETCHMARK:

22 Q Good morning, Mr. Cayton. How are you?

23 A Fine. Thank you.

24 Q Picking up on this spot where Mr. Rogers left off, I think

25 I'll kind of work the reverse direction. It's the most

recent in our minds. You talked about that with intermediate range, it's difficult to say if you don't have a pattern. Is that a fair statement?

A Yes.

Q And you talked about some factors that could be at play and you mentioned if there were a garment of some sort filtering out the potential pattern, that's going to potentially get the gun closer. But if there's no pattern it's hard to say?

A Yes.

Q Are there other factors that could be at play, too, such as, I'm assuming environment is important? If there is a lot of wind or things that are happening out in the real world, those can be factors that potentially could blow these fine particles as well, correct?

A Yes.

Q Additionally, if there is medical assistance and garments are being removed or torn to administer aid, obviously, the particles are either partially burned or unburned and they can be knocked off clothing as well. Is that a fair statement?

A Yes.

Q Those would be other type factors that could potentially impact the notion whether or not it's in intermediate range. Fair statement?

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A Yes.

Q When Mr. Osgood was questioning you and talking about the hypothetical about 3 shots at close range to the chest and he was asking you about expecting to see more than 3 shots, I think your answer, if I wrote it down correctly, was in terms of where the shots would be, you said, well, in front of the muzzle of the gun. Was that your answer?

A Yes.

Q That makes sense because if I'm firing the gun here, I shoot one, shot is going to go there. Muzzle moves, I shoot twice, shot winds up where the muzzle is?

A Yes.

Q So is it accurate, Mr. Cayton, if there is a struggle and a person is fighting for their life and they're trying to move that barrel off, when that second shot is fired, wherever that barrel is pointed is where that second shot is going to end up?

A That's true.

Q So in terms of the hypothetical with 3 shots to the chest, obviously, if we have a laboratory setting and you're firing into a mannequin or a dummy and that person is an inanimate object and not moving, they're going to be wherever the gun is pointed at, correct?

A Yes.

Q If you take that out of laboratory setting into the real

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world setting and there is a struggle, we only know that wherever the gun is pointed is where those shots are going to end up, correct?

A Yes.

Q Now, in terms of the defense exhibits here we had you talk about or Mr. Osgood had you talk about 57, 58 and 59 and these were various tests that you would have performed at, I'm assuming, his request?

A Yes.

Q There is a date reflected on here, is there not, of looks like April 29th of '08 on all of these?

A Yes.

Q Am I correct in assuming, Mr. Cayton, that's the date you would have performed these tests?

A Yes.

Q And these tests would have been performed in your laboratory or your home that you're working out of at this point?

A Yes.

Q And, similarly, that is, obviously, a controlled setting and you're not --you don't have the fan going or it's impossible to simulate real world activity, is that a fair statement in the laboratory?

A They were actually fired outside.

Q They were fired outside?

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A Yes.

Q Was it at your home?

A Yes.

Q With respect to the tests that were being done, you talked about the gun that was used and you did not use the gun that's before you here in Government's Exhibit 47B, as in boy, is that correct?

A That's correct.

Q This firearm was never submitted to you and I think you said you pulled a stock gun, as best as you could, obviously, would have approximated this particular firearm?

A Yes.

Q Is it an accurate statement, Mr. Cayton, that while these are of the same class characteristics, the individual firearm is probably the best firearm to use when trying to replicate tests of these natures?

A Yes.

Q And so to most simulate this particular gun and the pattern and the distance, it would be best to use this gun in basically making those distance determinations?

A Yes.

Q And, again, just so I'm clear in my understanding and correct in terms of your testimony, you, obviously, have no reason to dispute the crime lab's finding that the

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bullet, that was recovered at the autopsy of Mr. McCay, bore the same class characteristics of the .22 with six lands and grooves and a right-hand twist?

A No.

Q But you never actually looked at the bullet yourself and tried to make any type of comparison?

A No.

Q But in terms of going beyond that class comparison and trying to do a more unique identification where you're putting it under the microscope, I think you hinted at this, but you talked about bullets can be damaged, especially lead bullets and it doesn't surprise you that they weren't able to do that next step and go from class and make a unique identification in this case?

A No.

Q And Mr. Osgood talked to you about the holes in the clothing and you talked about that you, you know, that you could take the clothing and you could, basically, recreate in a laboratory setting and, basically, line up those holes and determine the placement of the clothing. Do you remember talking to him about that?

A Yes.

Q And just so I'm clear and the jury is clear though, you were never asked by Mr. Osgood to examine the clothing that was worn by Mr. McCay and do any type of an analysis

in terms of lining up the bullet holes?

A No.

Q And had that been requested, had he made that request to get the clothing, that's something you could have done?

A Yes.

Q But that request was never made?

A No.

Q Now, if we might, Mr. Cayton, I'd kind of like to focus where Mr. Osgood started and that's on this experiment that you performed at the alleyway that Mr. Rogers had indicated or showed you the picture in Government's Exhibit 300?

A Yes.

Q Mr. Cayton, what I'd like to do, I don't believe this is in evidence yet so I'm going to lay a foundation with you. But let me show you what has been marked Government's Exhibit 3B, as in boy. Do you recognize what is depicted in the photograph?

A This is the alleyway at approximately 9th and Spruce. It's, actually, I think a little bit east of Spruce.

Q If I were to represent to you this is the alleyway between 9th Street and 8th Street, 8th Street being at the north end, 9th Street being at the south end in between Kensington, I guess, being on the east side and Spruce being on the west side, do you have any reason --does

1 that sound correct?

2 A That does.

3 Q And would this be the alleyway in which you would have
4 conducted your experiment?

5 A Yes.

6 MR. KETCHMARK: I would offer Government's Exhibit
7 3B, as in boy.

8 MR. OSGOOD: No objection.

9 THE COURT: 3B is admitted.

10 MR. KETCHMARK: And can we display that the jury,
11 please, Your Honor?

12 THE COURT: You may.

13 BY MR. KETCHMARK:

14 Q Mr. Cayton, that should be popping up on the screen in
15 front of you. I don't know necessarily I need you to step
16 down. But just so we're orientating the jury, would you
17 agree with me in this view we're looking down the alleyway
18 and we would actually be looking south on to 9th Street?

19 A Yes.

20 Q And in terms of setting up the information about what
21 happened, am I correct in assuming that all of that would
22 have been information that would have been provided to you
23 by either Mr. Osgood or Mr. Reeder, the investigator who
24 was working for Mr. Osgood at the time?

25 A Yes.

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Q And you talked about the FBI agents and is it your understanding that the agents were there to kind of observe what the tests were but they weren't necessarily participating in the tests?

A That's right.

Q And that was clearly relayed to you that, basically, I made the request, said, well, if this test is going to be performed I have no problem with the test but I'd like to have the agents there to observe the manner in which the tests were performed?

A I believe they indicated they didn't know anything about the case, just showed up.

Q Show up at 5:30 in the morning?

A Yes.

Q And, obviously, well, in terms of, in this particular photograph that's been depicted as Government's Exhibit 3B, as in boy, when you actually fired the gun into the tube with the polyfill, would you have been somewhere in this location that I'm indicating, kind of by this first pillar? Where would you have been?

A It would be approximately there, maybe a little further south. But I parked the van about where you indicated then I set the experiment up a little bit further in front of the van to the south.

Q So just so we're referencing here, this would be the

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building on the west side of the alley. It appears there are three cinder block columns and I was pointing to the cinder block column that's kind of closest to 9th Street, is that correct?

A Yes.

Q And that's where you would have parked the vehicle. Would you agree with me, that's probably ballpark 15 to 20 feet back in the alley, back from the building?

A I don't know if it's quite, it could be, probably about a car length.

Q And in terms of the tube that you had talked about with the polyfill, I'm not familiar with that but in kind of layperson's understanding, is this tube designed basically to stop the bullet from escaping because you, obviously, want a controlled environment where you're firing at something that's going to contain the bullet?

A Yes.

Q That's done, obviously, for a number of reasons. Primarily, for the safety of the people like yourself who are performing the test?

A Well, it's designed to catch the bullet without damaging the bullet. But it will stop, you know, I have stopped 45s and bigger in it so I know a .22, it will contain it. And it's handy to pick up and take. We have steel traps. In fact, I took a steel trap with me but I thought the

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steel trap may add to the noise level from the metallic.

Q The rattling of the cap?

A From the bullet. So that's why I used the polyfill for convenience and so forth.

Q And in terms of the tube that we're talking about, is it in fact like a PVC pipe, plastic pipe?

A It's about a 12-inch PVC and it's filled with poly, like a pillow filling type material.

Q And so it's 12 inches. And you're talking, you were showing this, for the record, we're talking about probably 12 inches in diameter?

A Yes.

Q And how deep?

A About 30 inches long.

Q So we're talking about a foot wide and 2-1/2 feet deep?

A Yes.

Q And how deep is the polyfill in that tube?

A It was full.

Q And in terms of the location that you talked about, is it accurate, Mr. Cayton, that when you're at that location and conducting your experiment, that you set that tube on the ground here and you would have stood over it and fired the gun into the tube?

A It was set up on the ground with the opening toward the top and I held the gun over it.

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Q You would have had --the tube is so high you would have to hold the gun over it?

A Yes.

Q And do you remember approximately how high you had the gun over the opening of the tube?

A It might have been a foot.

Q And, obviously, what we're talking about when we're talking about somebody hearing is we're talking about sound?

A Yes.

Q And so like earlier when the court reporter had to ask as you're talking this way, it's hard for her to pick up because your sound is projecting in the direction that you're talking.

A Yes.

Q And is it the same analogy or principle also at play with the gun in terms of if I'm shooting the gun this direction the sound is going to travel in that direction?

A Well, it will travel all directions but it would be the main.

Q Well, and similarly, when I had my back to you, you're able to hear me, are you not as we're talking, Mr. Cayton?

A Yeah. It's harder to hear.

Q Exactly but you can still hear me because even though I'm projecting this way, it's easier for the gentlemen sitting

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by the T.V. to hear me but that doesn't mean you can't hear me because the sound is bouncing off the walls and doing what sound does?

A Yes.

Q So the same principle applies to a gun, does it not, that if I'm pointing the gun in this direction the sound is going to be traveling as the bullet travels out and the majority of sound will travel in that direction even though the people in the jury, if I fired the gun right here, would clearly be able to hear the gun fire?

A Yes.

Q And so with the tube and the gun, with the gun being pointed down that sound is going to be, primarily the thrust of that sound is going to be going down into the tube with the polyfill even though there's also going to be sound that's emanating in all directions?

A Right.

Q That's an accurate statement?

A Well, you know, to actually discern the differences, I would have to set up some meters and test it. But, you know, the direction does have an effect on it. I was standing with my back to the north, you know, facing that way a little bit, angled this way so, you know, basically the top was unrestricted.

Q Right. But if the gun is pointed down that's a difference

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1 than if the gun is pointed directly out the alley as in
2 Government's Exhibit 3B and being shot across the street?

3 A It could be, yes.

4 Q Additionally, Mr. Cayton, along that same lines is we
5 talked about environment being a factor on the gun powder
6 residue, like the wind and things of that nature. Those,
7 obviously, have the ability to impact sound as well, do
8 they not?

9 A Yes.

10 Q As well as I think Mr. Osgood questioned you about the
11 environment at that time and you noted that one car had
12 come down on 9th Street?

13 A Yes.

14 Q And, obviously, if there is a car or truck with a loud
15 muffler or any number of factors, that can impact how far
16 that sound is going to be traveling or if that sound is
17 going to be muffled because like if somebody behind us is
18 talking, and they're talking louder than we are, their
19 conversation is going to be projected over ours?

20 A Yes.

21 MR. KETCHMARK: If I might have a moment, Your Honor?

22 THE COURT: Yes.

23 MR. KETCHMARK: Could you, please, pull up

24 Government's Exhibit 300.

25 BY MR. KETCHMARK:

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Q I think I'm about done, Mr. Cayton. Thank you for your patience.

A You're welcome.

Q In Government's Exhibit 300, this is the diagram that was shown to you by Mr. Rogers, correct? And you remember looking at this briefly with Mr. Rogers?

A Yes.

Q And when we talked again, to orientate the jury in Government's Exhibit 300, if I represent that this is 9th Street, 8th Street, Spruce, and Kensington with the alley being here, that's a correct representation of this aerial photograph?

A Yes.

Q And, again, so we're clear in the upper right-hand corner of this is the G & E Cafe, is it not?

A Yes.

Q And so if the gun as we talked about is pointed directly out of 9th Street so the majority of the sound is going to travel in a southerly direction toward the buildings, correct?

A Yes.

Q If the gun is pointed in this direction, the majority of the sound is going to be projected in the direction that it's pointing, correct?

A Yes.

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1 MR. KETCHMARK: That's all I have, Judge.

2 MR. OSGOOD: Could we have the photo in the alley,
3 please?

4 REDIRECT EXAMINATION

5 BY MR. OSGOOD:

6 Q Mr. Cayton, do guns shoot around corners?

7 A They have made them to do that but typically they don't.

8 Q A gun with a straight barrel doesn't, does it?

9 A No.

10 Q All right. Looking at their photo and from the
11 description of events, you wouldn't expect to find any
12 spent bullets in the island over here to the right, would
13 you?

14 A No.

15 Q Now, something we didn't ask, if you're just a really
16 lousy shot and you hold the gun out the window and you
17 shoot the concrete here instead by mistake, would there be
18 evidence of ricochet on the concrete block?

19 A Could be, yes.

20 Q And would that be something you would look for if you were
21 investigating the crime scene?

22 A Yeah. If we were looking for bullet impact, bullet holes,
23 so forth, I think we would do that.

24 Q If there is a car in the alley and the person shoots out
25 the window and the person is stepping off the curb, would

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you also look primarily and spend a lot of time looking for bullet holes in this building over here?

A Yes.

Q And is that building so large that it would make it counter productive and a waste of time to search for bullet holes in it?

A Not in a homicide.

Q Pretty important, isn't it?

A Yes.

Q And a .22 lead bullet into wood buries itself what, maybe quarter inch or less?

A It depends on what .22 it is.

Q .22 longs?

A Long rifle. These are long rifles I think but depends on the wood. Pine is one of the softer woods. Other woods are harder. Depends on the finish, how it's treated, so forth. But, typically, you know, an inch is not unreasonable to expect a bullet to impact. We actually train our crime scene people how to cut bullets out of things like wood.

Q You would cut around it to preserve the integrity of the bullet?

A They would open it up in the lab. They have saws in the van to allow them to do it.

Q You said particularly in a homicide case, you would take

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1 extra effort to see what you could find?

2 A Well, each bullet you have, you don't know what you're
3 going to be able to tell because you may have one in bad
4 shape. So if you recover one, like this at the scene, it
5 may have enough left that you could work with it.

6 Q Thank you.

7 THE COURT: Mr. Rogers?

8 MR. ROGERS: Leave that up, please? I'm sorry.

9 RE-CROSS-EXAMINATION

10 BY MR. ROGERS:

11 Q When you selected the position where you were when you
12 fired your test fire, was that based upon what you had
13 been told?

14 A I don't think I was told any exact location. I think I
15 was told approximately where the vehicle was and they
16 observed the victim step off the curb and that's when it
17 happened. So I didn't pull up so that I would be visible.
18 I stayed back just a little bit. It was kind of an
19 arbitrary position.

20 Q So, basically, you parked about a car length back from the
21 opening of the alley?

22 A Yeah, approximately. I didn't measure it but approximate.

23 Q Then you set up your recovery tube. Is that the name of
24 it?

25 A Yes.

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Q In front of where your van was?

A Yes.

Q And you set it up on the right-hand side of the alley?

A Yes.

Q And you were trying to approximate if you were at a, sitting in a Dodge Intrepid which was not protruding from the alley but at the opening of the alley and somebody were stepping off the curb in front of it, where you would be able to see that person stepping off the curb from the passenger seat of the Intrepid?

A Yes.

Q Okay. Now, you didn't set up the recovery tube parallel to the ground or slightly above where you were holding the gun on the south, did you?

A No.

Q Because it's not built like that, right?

A That's right.

Q But it is at an angle so you were not shooting straight down?

A It was pretty much balanced up but it was a little bit of an angle. But I angled the gun actually, I didn't put the gun straight down. I angled the gun a little bit in relation to the tube.

Q To try as much as you could safely --you didn't just shoot across the alley to see what you could hit, did you?

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1 A No.

2 Q Or shoot across the street, I'm sorry?

3 A No.

4 Q Okay. And was there some echoing there in the alley?

5 A It was loud.

6 Q Thank you.

7 THE COURT: Mr. Ketchmark.

8 RECROSS-EXAMINATION

9 BY MR. KETCHMARK:

10 Q And, Mr. Cayton, that's part of the problem with

11 experiment is it's difficult to recreate because you can't

12 go off firing a gun in that fashion. You have to do it in

13 a controlled setting to protect yourself as well as other

14 people around?

15 A Yes.

16 Q And for somebody sitting in a vehicle holding a gun as I'm

17 sitting here right now, you would agree with me, this is

18 not a gun being pointed at the ground. It's a gun pointed

19 in a different direction?

20 A Yes.

21 Q And along that line, Mr. Cayton, with your experience over

22 the years that you have done this, you're not suggesting

23 that every time somebody pulls the trigger they hit their

24 mark, are you?

25 A No.

1 Q And so there's times when there are shots that are
2 reported and there's no evidence of them hitting the
3 victim or anything, right?

4 A That happens, yes.

5 Q So the most important thing is that in terms of where
6 shots end up, is where the muzzle is pointing?

7 A Yes.

8 MR. KETCHMARK: That's all I have, Judge.

9 THE COURT: Thank you, Mr. Cayton. You may step
10 down.

11 (Witness excused.)

12 MR. OSGOOD: I believe with that, we're going to rest
13 our case, Your Honor.

14 THE COURT: All right. Why don't we go ahead and
15 take our break. About 15 minutes. Don't discuss the case.
16 Don't make up your mind. We'll see you back here about 10:20.
17 We'll be in recess.

18 (The following proceedings were had OUT OF THE
19 PRESENCE AND HEARING OF THE JURY:)

20 THE COURT: Mr. Eye, you will recall our conversation
21 or at least my words yesterday when I told you of your right to
22 testify. Do you understand that you have the right to testify
23 in this case? Right?

24 DEFENDANT EYE: Yes.

25 THE COURT: And you have discussed the strategy,

1 strategy is the word I'll use, of your testifying with

2 Mr. Osgood and Mr. Sandage?

3 DEFENDANT EYE: Yes.

4 THE COURT: You know that no one can force you to
5 testify?

6 DEFENDANT EYE: Yes.

7 THE COURT: You understand that if you do testify you

8 will be subject to a vigorous cross-examination by the United
9 States Attorneys?

10 DEFENDANT EYE: Yes, sir.

11 THE COURT: And knowing all of that and having

12 consulted with your attorneys, is it your desire to take the
13 witness stand and testify in this case?

14 DEFENDANT EYE: No.

15 THE COURT: All right. Anything further?

16 MR. OSGOOD: No, Your Honor.

17 THE COURT: We'll be in recess.

18 (Recess)

19 (The following proceedings were had OUT OF THE
20 PRESENCE AND HEARING OF THE JURY:)

21 THE COURT: What is the witness line-up, Charlie?

22 MR. ROGERS: Willis Jones will be first, Your Honor.

23 Then I think Teresa Davis, Reuben Tindal and then either
24 Kenneth Robinson or Desiree Perkins. And, hopefully,
25 Mr. Carter will be here by then.

1 THE COURT: Thank you.

2 MR. KETCHMARK: One thing preliminarily, I don't know
3 if Mr. Rogers is aware of this, the victim's mother, Ms. McCay,
4 indicated to me through a note that Ms. Perkins is actually a
5 relative of the victim's. It came to light this morning when
6 she was coming into court and saw Ms. Perkins outside. And
7 brought that to my attention. I felt obligated, obviously -
8 it never came you through Mr. Rogers' discovery and I don't
9 think 2 and 2 was put together. But I think that's something
10 we need to at least make the Court aware of as well as
11 Mr. Rogers.

12 MR. ROGERS: That's why I'm expressing questions
13 about whether we'll be calling Ms. Perkins or not.

14 THE COURT: Okay. All right.

15 MR. ROGERS: May call Mr. Tindal before we do
16 Ms. Davis. And then after we do Ms. Davis, decide about
17 Ms. Perkins because she is somewhat uncomfortable.

18 THE COURT: They don't necessarily have to be in this
19 order. I just wanted to know who they were.

20 Okay. Are we ready?

21 (The following proceedings were had IN THE PRESENCE
22 AND HEARING OF THE JURY:)

23 THE COURT: Please be seated.

24 For your planning purposes, ladies and gentlemen, we
25 will now begin hearing evidence presented by Defendant

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1 Sandstrom. Depending upon how long that takes, and I do not
2 know, we may proceed to instructions yet this afternoon. We
3 may postpone that until tomorrow morning. Just sort of depends
4 on where the break is. And then following that, you will hear
5 up to two hours of closing argument from each side. So it
6 would appear that it's likely you will have the case tomorrow
7 to begin your deliberations in the first phase. It's probably
8 not going to happen today but could happen tomorrow.

9 All right. Mr. Rogers?

10 MR. ROGERS: Thank you, Your Honor.

11 Mr. Jones?

12 Your Honor, defense calls Willis Jones.

13 WILLIS JONES, DEFENDANT SANDSTROM'S WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MR. ROGERS:

16 Q Would you, please, tell us your name?

17 A Willis S. Jones.

18 Q Mr. Jones, what is your occupation?

19 A I'm a carpenter.

20 Q And where are you --in fact, were you working today

21 before you came down here?

22 A Yes.

23 Q And are you acquainted with Steven Sandstrom?

24 A Yes.

25 Q Could you point him out, please, and tell us what he's

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wearing?

A (Indicating.)

Q What is he wearing?

A Sunglasses and the light blue button down shirt.

Q Those are the glasses that turn light or dark depending on the lighting conditions?

A I can't tell.

Q Okay. Fair enough. And you need to keep your voice up or lean into the microphone so we can all hear you. Okay?

How long have you known Mr. Sandstrom?

A About five years.

Q And how did you know him?

A Through his mother.

Q And what is her name?

A Bonnie.

Q And have you been to the Sandstrom house?

A Uh-huh. Yes.

Q And would that be --have you been to the house when Steven was there?

A Yes.

Q And how many times do you think?

A Quite a few over the last few years.

Q Okay. And have you seen other African-Americans at the Sandstrom home?

A Yes.

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Q Have you seen white people?

A Yes.

Q Have you seen Hispanic people?

A Yes.

Q Have you seen any other ethnicity that you can remember?

A No.

Q Has there ever been any time that you felt uncomfortable being in the Sandstrom home because of your race?

A Never.

Q Has there ever been any time when you heard Steven Sandstrom say anything derogatory about members of any race?

A No.

Q Have you ever heard Steven Sandstrom use the word nigger, with an R on the end?

A No.

Q Have you ever heard Steven Sandstrom use the word nigga?

A Yes.

Q Tell me about that word nigga?

A It's terminology of the hood, the street. I've heard all races say it.

Q Okay. And when you say the hood, you mean the neighborhood?

A Yes.

Q Where you lived?

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A Pretty much any neighborhood I've been in.

Q Okay. And without giving us your address, do you live in the northeast neighborhood these days?

A Yes.

Q How would you describe the mix of residents of that neighborhood?

A Very multi-cultural, very.

Q And do white people call each other nigga in that neighborhood?

A Yes.

Q Do black people call each other nigga?

A Yes.

Q Do black people call white people nigga?

A Yes.

Q Do white people call black people nigga?

A Yes.

Q Do Hispanic people call each other nigga?

A Yes.

Q Do Hispanic people call white people nigga?

A Yes.

Q Do Hispanic people call black people nigga?

A Yes.

Q Do Asian people call each other nigga?

A Yes.

Q And do Asian people call black, white and Hispanic people

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nigga?

A Yes.

Q And do Hispanic people call black, white and Asian people nigga?

A Yes.

Q So it's a common term. Has nothing to do with race. Is that a fair statement?

A Yes.

Q Okay. Have you ever heard Steven Sandstrom say anything about resenting people of other races being in the northeast neighborhood?

A No.

Q Do you go around the streets of the northeast neighborhood every day?

A Yes.

Q What races of people do you see there?

A All races.

Q Okay. And have you been on the streets of northeast with Mr. Sandstrom?

A Yes.

Q Have you been on the streets of northeast with Mr. Sandstrom when people of various races were there?

A Yes.

Q Did he ever, in any way, act as if he didn't like people of other races other than white being in his neighborhood?

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1 A No.

2 MR. ROGERS: Those are all the questions I have, Your
3 Honor.

4 THE COURT: Mr. Green?

5 MR. GREEN: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. GREEN:

8 Q Mr. Jones, Mr. Rogers asked you several questions about
9 the word, use of the word nigga. Do you recall those
10 questions?

11 A Yes.

12 Q And you would agree, Mr. Jones, that the word nigger, I
13 apologize for having to use that word, but the word nigger
14 is a different word from nigga, correct?

15 A Yes.

16 Q And you would agree, based on your experience, that the
17 word nigger directed at an African-American person would
18 be a racial slur, correct?

19 A True.

20 Q Now, I want to talk about, you said you have known Steven
21 Sandstrom for about five years, is that right?

22 A Yes.

23 Q And can you give us a time frame though from what year to
24 year that would have been?

25 A Say like 2002.

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Q From 2002?

A Yeah. Just about five years, 2003. 2002 to now, to date.

Q So you've known him from 2002 to date?

A Yes.

Q And you said you've been over to the Sandstrom house quite a few times, is that right?

A Yes.

Q What were your purposes for visiting over to the Sandstrom house?

A Oh, I some times go and pick up his mother to come clean my house or go by, have a question about my vehicle for his father to help me fix or just stop in and visit.

Q So and his mother, Bonnie Sandstrom, would clean your house, is that correct?

A Yes.

Q And so you were paying her money to do that, is that correct?

A Yes.

Q And sounds like Mr. Sandstrom would do some work on your vehicle, is that correct?

A Yes.

Q And would you pay him money for the work he was going to do?

A Yes.

Q So you not only --so you had sort of a business

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1 relationship with the Sandstroms, is that correct?

2 A Yes.

3 Q And then, lastly, do you know a person named Gary Eye?

4 MR. OSGOOD: Objection.

5 MR. GREEN: May we approach?

6 THE COURT: No. I'll allow the question. Objection

7 overruled.

8 BY MR. GREEN:

9 Q Do you know a man named Gary Eye?

10 A No.

11 Q And, in fact, I'm going to point to a gentleman here that

12 is seated. Have you ever seen that man before?

13 A No.

14 Q So my next question will be obvious but, so have you ever

15 been in the presence of Steven Sandstrom and the man who

16 just stood?

17 A No.

18 MR. GREEN: May I have one moment, Your Honor?

19 THE COURT: Uh-huh.

20 MR. GREEN: No further questions, Your Honor.

21 THE COURT: Mr. Osgood? Mr. Sandage? Any questions.

22 MR. OSGOOD: No, Your Honor.

23 THE COURT: Mr. Rogers?

24 MR. ROGERS: No questions. Thank you, sir.

25 THE COURT: Thank you, Mr. Jones. You may step down.

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1 (Witness excused.)

2 MR. ROGERS: Mr. Sandstrom calls Reuben Tindal, Your

3 Honor.

4 REUBEN TINDAL, DEFENDANT SANDSTROM'S WITNESS, SWORN

5 DIRECT EXAMINATION

6 BY MR. ROGERS:

7 Q Would you, please, state your name and spell it for the
8 court reporter?

9 A Yes. Reuben Tindal. R-E-U-B-E-N, T-I-N-D-A-L.

10 Q Mr. Tindal, how are you employed?

11 A I'm employed as a juvenile probation officer with Jackson
12 County Family Court.

13 Q How long have you worked for the Family Court.

14 A Approximately 17 years.

15 Q That would be since 1991 or so?

16 A Yes.

17 Q And what do you do? How long have you been a probation
18 officer?

19 A Been a probation officer for probably a little over 25
20 years.

21 Q Okay. So you worked some place else before you went to
22 the Family Court?

23 A Yes.

24 Q Okay. And during your time at the Family Court have you
25 always been a probation officer?

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1 A Yes.

2 Q What are your general job duties as a probation officer
3 for the Family Court?

4 A I supervise juveniles while being on probation.

5 Q And in that connection did you have occasion to supervise
6 Steven Sandstrom?

7 A Yes, I did.

8 Q What do you do when you're supervising a child on
9 probation?

10 A We check on them in the home, in the community, at school.

11 At that point in time I was in intensive supervision so we
12 had a program where we had the kids come from 4:00 in the
13 afternoon until 9:00 in the evening.

14 MR. OSGOOD: I believe some of the jurors can't hear
15 the testimony.

16 BY MR. ROGERS:

17 Q Could you lean forward?

18 A Sure. I supervised the juveniles while on probation. At
19 that point in time we would check on them in school. We
20 would check on them in the home. Also within the
21 community. We had at that time we had a program where the
22 kids would come from 4:00 in the afternoon until 9:00 in
23 the evening.

24 Q And where would they come?

25 A They came to my office at that time which was at 27th and

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Gillham.

Q And that's near the Family Court?

A Yes, it is.

Q In downtown Kansas City?

A Yes.

Q I guess that's downtown?

A Or close.

Q And how would the kids get there after school?

A We had a transportation officer that would pick them up.

Q Okay. And then how would they get home after the program ended at 9 in the evening?

A Our transportation officer would take them home also.

Q And did you ever have to drive around and pick them up yourself?

A Every now and then.

Q Would you also, while you were doing the intensive supervision case load, go to the homes of the children you were supervising?

A Yes.

Q And would you also visit them in the community?

A Yes.

Q Okay. Now, did you have occasion at some point to be the probation officer supervising Steven Sandstrom?

A Yes.

Q And for the record would you point out Mr. Sandstrom,

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1 please?

2 A (Indicating.)

3 Q And you're indicating with your finger that's

4 Mr. Sandstrom?

5 A Yes.

6 Q Could you tell us what he's wearing?

7 A He's wearing glasses with a long sleeve blue shirt.

8 Q Okay. Thank you.

9 Your Honor, can the record reflect the witness

10 has, in fact, identified Mr. Sandstrom?

11 THE COURT: Yes.

12 BY MR. ROGERS:

13 Q How long was he under your supervision?

14 A It was approximately, I think, about six months.

15 Q Okay. And did you have almost daily interaction with him

16 during those six months?

17 A At a period of time we did. While they were in the Asset

18 Program. After that the contact would come anywhere

19 between twice a week.

20 Q So during this program you described called the Asset

21 Program?

22 A Yes.

23 Q And then after completing the Asset Program Mr. Sandstrom

24 remained under your supervision for awhile?

25 A Yes.

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Q And during that time you would have contact with him about twice a week?

A Yes.

Q Would that later contact be in your office, in home, both, what?

A Most of the time wherever we could possibly see him. Some times kids had transportation problems so it would be in the home or it would be in school.

Q Okay. And so you weren't just sitting in your office all day. You would be out in the field?

A Yes.

Q Looking and talking to people, right?

A Yes.

Q And you some times see Mr. Sandstrom at home, some times at school?

A Yes.

Q Okay. Could you describe the way he behaved toward you during the time he was under your supervision?

A He was cooperative. I didn't have a lot of problems with Steven while he was on probation.

Q Did he --was he respectful?

A Yes.

Q Did he ever seem to resent you because of your race?

A Not that I know of.

Q Did he ever say anything that would make you think that?

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A No.

Q And have you had children you supervised who did say things that made you think that?

A Yes.

Q Okay. When Mr. Sandstrom was in the Asset Program, how many other kids were in that program who would be meeting with you from 4:00 to 9:00 every evening?

A Well, they didn't necessarily meet with me. Steven happened to be one of mine. We had four probation officers in that specific unit and all of our kids would come to the Asset Program.

Q How many kids were in the program, I guess, is what I'm asking?

A At that point in time could have been anywhere between ten and twelve.

Q And what was the racial make-up of those kids?

A Probably at that time I think Steven might have been the only Caucasian kid.

Q Were there mostly black kids?

A Yes.

Q And any Hispanic kids that you remember?

A No, not at that time.

Q Okay. And any Asian kids you remember?

A No.

Q So, basically, it was African-Americans and Mr. Sandstrom?

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A Yes.

Q How did he relate to the other kids in the group?

A Seemed to be okay. Never had any issues as far as race was concerned with Steven with the other kids.

Q Have you ever heard Mr. Sandstrom use the word nigger?

A No, I haven't.

Q Okay. And have you ever heard him use the word nigga?

A No.

Q Okay. When kids are with you, their probation officer, they're going to try to talk informally, is that a fair statement?

A Pretty much.

Q So --let me ask this way. When you went to Mr. Sandstrom's neighborhood and saw him interacting with other people in the neighborhood, did you ever hear him use either of those words?

A No, I didn't.

Q Okay. Once again, would he know that you were there?

A Most of the time, yes.

Q I mean, you wouldn't be following him around furtively?

A No.

Q Okay. Have you ever been at the Sandstrom home when he had other kids over?

A Yeah.

Q And do you know anything about the racial mix of those

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other kids that would be over there?

A It's been awhile but I think he had other kids there that were black around the home.

Q And had there been white kids there, too?

A Yes.

Q And are you familiar with the northeast neighborhood, generally, in Kansas City?

A Yes.

Q You supervise a lot of kids from that neighborhood?

A Yes.

Q Could you describe the racial mix of that neighborhood?

A Almost everybody, blacks, whites, Latin Americans, Africans. It's quite a big mix.

Q By Africans you distinguish between natives of the African continent and African-Americans?

A Yes.

Q Do you see any Asians over there?

A Yes.

Q Have you ever heard or seen Mr. Sandstrom say or do anything which would make it look like he did not want people of any particular race in his neighborhood?

A Not that I know of, no.

Q Thank you.

THE COURT: Mr. Green?

MR. GREEN: Yes, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. GREEN:

3 Q Mr. Tindal, you, in response to a question of Mr. Rogers'

4 you said it had been awhile. Let's get some time frames

5 on this. What years would it have been that you actually

6 supervised Steven Sandstrom?

7 A It would have been possibly '94, '95.

8 Q 1994?

9 A Yes.

10 Q And what is your best estimate of the last year you would

11 have had any contact with Mr. Sandstrom?

12 A It was then at that time.

13 Q So at the latest 1995?

14 A Yes.

15 Q Have you had any contact with Mr. Sandstrom in the period

16 from 1995 up to 2005?

17 A No.

18 Q Now, you were in this capacity as probation officer for

19 the Family Court administering this probation program.

20 Just, generally, how, the kids you were supervising, if

21 they did not adjust to the probation that they were on

22 that you were helping supervise, what would be the next

23 step?

24 A More than likely secured structured environment.

25 Q Would that have included something known as the McCune

1903

1 Home for Boys?

2 A Yes.

3 Q Now, and also let me jump back here to this time frame
4 where you knew Mr. Sandstrom or were supervising him in
5 1994-1995, how old would he have been?

6 A I believe 14 or 15.

7 Q And this may seem like an obvious question, Mr. Tindal,
8 but as his supervising probation officer you, obviously,
9 had authority over him, correct?

10 A Yes.

11 Q And so it would have been Mr. Sandstrom as any boy in your
12 charge, it would have been in his best interest to please
13 you, correct?

14 A Yeah.

15 MR. GREEN: May I have one moment, Your Honor?

16 I think that's all I have, Your Honor.

17 THE COURT: Mr. Osgood?

18 MR. OSGOOD: We have no questions, Your Honor.

19 THE COURT: Mr. Rogers?

20 REDIRECT EXAMINATION

21 BY MR. ROGERS:

22 Q Just want to clear up one thing. You've worked there a
23 long time, right?

24 A Yes.

25 Q So your memory of 94-95 is not necessarily accurate, is

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1 it?

2 A No.

3 Q Is your memory of dealing with Mr. Sandstrom when he was

4 14 or 15 years old accurate?

5 A Fairly, yes.

6 Q Okay. And so if I was to represent to you he is now 22

7 that would mean he was 15, seven years ago?

8 A Yeah.

9 Q So could have been as late as 2000 or so that you

10 supervised him?

11 A I guess so.

12 Q Lot of kids over the years, is that right?

13 A Yeah.

14 Q Okay. Thank you.

15 MR. GREEN: I have nothing further, Your Honor.

16 THE COURT: Thank you, Mr. Tindal. You may step

17 down.

18 (Witness excused.)

19 MR. ROGERS: Teressa Davis, Your Honor.

20 TERESSA DAVIS, DEFENDANT SANDSTROM'S WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MR. ROGERS:

23 Q Good morning.

24 A Good morning.

25 Q Could you, please, tell us your name and spell your name

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for the court reporter?

A My name is Teressa Davis. It's spelled T-E-R-E-S-S-A, D-A-V-I-S.

Q And, Ms. Davis, how are you employed?

A I work for the Jackson County Family Court. The division I work in is the detention center.

Q Okay. Now, to explain what that is, if a juvenile, a child is taken into custody of the Family Court for either an alleged act of delinquency or because they're in need of services because they're neglected or whatever, are they brought to the detention center?

A That is correct.

Q And where is that located?

A It's 2625 West 26th Street. It's on Cherry.

Q 26th and Cherry?

A Yes.

Q Is that part of the same building where the Family Court has the courtrooms?

A Yes.

Q And how long have you worked there?

A Eleven years.

Q And what is your job there?

A I'm a youth worker. But I'm also a floater and my position is when juveniles are brought into the detention center, I come in and I process them into the center, if

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they're detained from court.

Q Okay. And when kids are there for more than a day or two, do they go to school?

A Yes, they do.

Q How does that work?

A Well, we have a school program which is DeLaSalle there inside our facility. And the kids who are detained there have to go to school.

Q Okay. And are the kids all housed in one big group or are they divided up somehow? How is that done?

A They're divided up. We have five teams there. We have one team which is the B team for females and four male teams and they're separated by ages.

Q Okay. And what are the ranges of kids who would be in the center, age ranges I mean?

A 13 to 16.

Q Okay.

A Some 17-year-olds. It all depends on if a kid has a capias warrant. That means they hadn't finished their juvenile jurisdiction. They have to be detained until they're sent back to court for the judge to release them from jurisdiction.

Q Okay. And what is the youngest that a kid would be there?

A Well, I'll say the age of, maybe, 11.

Q Okay. And among the four male teams --let me first ask

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you with regard to the kids there, is there some general percentage of racial mix there, in your years of working there?

A Yes, there is.

Q Could you lean forward and talk into the microphone?

A Yes, there is.

Q Okay. Thanks. Tell me about that?

A Well, over the years I've seen more African-Americans coming into the facilities and Hispanics. But, I say when I first started, it was even. I mean with Caucasians and African-Americans and the ratio of some Hispanics.

Q Okay. And when you process a kid into the center, do you make an initial determination of what team that kid is going to be assigned to?

A Yes, sir. And that's determined by his age.

Q Right.

A And it would just be by his age.

Q And after a kid has been there a time or two, then are there other factors that go into what team they're assigned to?

A It could be because of, as you know, we have a lot of gang activity that's starting to be a big problem. So we kind of like separate the kids by they're-

Q With regard to Mr. Sandstrom, how long have you known him?

A Well, my first encounter with him, he was probably about

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13 when I first met Mr. Sandstrom.

Q And was he in the detention center?

A That's correct.

Q And do you know what team he was assigned to at that time?

A He was assigned to Z team.

Q What is Z team?

A Z team is where the age, the residents, male residents are placed in probably age of 14 to 15.

Q So he was there with slightly older kids?

A Yes.

Q What was the racial mix of Z team at that time?

A I would say it was pretty much even, half and half.

Q Okay. And since that time have you had other encounters with Mr. Sandstrom there?

A That is correct. He's come to the detention center quite often.

Q What would it be like when you were processing him in later on?

A Well, I'm pretty much the mother figure to the kids. I'm always trying to encourage them not to come back. I would like talk to him, you know, telling him that, you know, he's a pretty smart kid and that he should stay focused and finish school. And he would kind of like tell me that he had a lot of family problems, too, so.

Q What was his relationship to you as he expressed it?

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1 A He was a good kid. Never had any problems with him. He
2 was well mannered.

3 Q Did he ever say anything like Mrs. Davis, you're my
4 family? Anything like that?

5 A He did. He used to tell me that he really appreciated me
6 always trying to encourage him to do better and for him,
7 you know, use his smarts and not continue to be on the
8 negative behavior that he was on, you know. Like I said,
9 he went to school. He made good grades while he was
10 there, too.

11 Q While he was in school at the center?

12 A Yes.

13 Q And what would the kids do with their free time there at
14 the center?

15 A Well -

16 MR. GREEN: May we approach?

17 THE COURT: Yes.

18 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
19 PROCEEDINGS WERE HAD:)

20 THE COURT: Before we start, this is a record. It's
21 almost 11:00 o'clock. First time.

22 MR. GREEN: I'm sorry to be the one, I broke it.

23 MR. ROGERS: I've been doing good.

24 THE COURT: So far.

25 MR. GREEN: I'm sorry to be the one. I'm going to

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1 object at this time. This seems to --this is more probative
2 for mitigation, penalty phase type evidence. It seems
3 Mr. Rogers wants to ask Ms. Davis about Mr. Sandstrom's use of
4 the word, racial slurs and things of that nature. We already
5 had testimony about that. But to get into, you know, already
6 let him get in probably more than we should have. But the
7 point is, now it's free time and this and that. Seems to be
8 more mitigation type evidence that the jury would consider in
9 the punishment phase rather than the racial animus issue
10 relevant in this part of the case.

11 MR. ROGERS: I'm trying to do a foundation and
12 transition to that kind of evidence so I can maybe do it in a
13 more leading fashion and get there quicker.

14 MR. GREEN: The other thing, we haven't established a
15 time frame either. Talking about things with no time frame, no
16 years or anything like that. So --but I know she's given some
17 ages.

18 THE COURT: Seems the purpose of her testimony is to
19 establish that he did not exhibit characteristics that one
20 would normally associate with people who have a racial bias.

21 MR. ROGERS: What I'm trying to do right now is
22 establish that there is a time when there's at least some
23 choice as to who you're going to hang with and what you're
24 going to do. I can ask that in a leading fashion and then
25 establish that he chose to hang out mainly with

1 African-American kids.

2 MR. GREEN: But I think any more questions about his
3 family life was, like they had a bad family. I think that's
4 out of bounds for this type of witness.

5 THE COURT: It's probably mitigation evidence. Let's
6 get to it. Let's get to the hub of it.

7 MR. OSGOOD: While we're here, another mine field. I
8 think she may have, in playing these defendants off against
9 each other, their investigator interviewed Eye. I believe that
10 if asked, she would say that Mr. Eye may be a racist.
11 Conclusion that we, obviously, tried to stay away from.

12 MR. ROGERS: I'm not asking that.

13 MR. GREEN: I think it was Desiree Perkins who said
14 that. Not this witness.

15 MR. OSGOOD: I don't have the reports.

16 THE COURT: Let's be careful.

17 MR. ROGERS: I don't intend to even mention Mr. Eye.

18 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

19 BY MR. ROGERS:

20 Q Let me go back and so that your testimony is that you
21 first encountered Mr. Sandstrom when he was around 13?

22 A Yes, sir.

23 Q And how old was he when he was last there?

24 A I believe Steven was 16 or 17. I'm not for sure.

25 Q So that would have been around 2002 or so?

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A That's correct.

Q Okay. Now, during especially the later years that you knew Mr. Sandstrom there, would there come a time when the children had, even though they're in detention, where they had a choice of what they were going to do, who they were going to associate with, things like that?

A Yes. That would come natural because they're in a pod. And when you're in a pod, you have like one staff or maybe two staff, if it's more than twelve residents on a team. They interact with whoever they choose to interact with.

Q Okay. And did you ever observe Mr. Sandstrom interacting with the other residents on his team or in his pod?

A Yes.

Q And who would he interact with?

A Mostly see him with African-American children.

Q Even though there were white kids there, too?

A That's correct.

Q And what would they be doing?

A They were either be playing cards or just conversating with one another.

Q Okay. And would they do rap songs and things like that?

A That is correct.

Q How would that work?

A Well, you know, it's not allowed. But, you know, some of the kids just would take over and start beating on the

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desks and they all started singing. And back in the 2000-2001, we had brought a music group to the detention center and that was one of the creative ways of allowing kids to be able to express themselves through poetry, through rap. And the program was based out in McCune, one of our facilities. They thought it would be a good idea to bring it down to the detention center and let those kids there have access to it too. And it was ran by two young men, I don't remember their names. But they would bring all their instruments and everything down to the detention center and let the kids write poetry and write rap songs and stuff like that.

Q Did Mr. Sandstrom participate in that?

A Yes, he did.

Q Was it your impression that rap and hip hop are at least originally African-American cultural phenomenon?

A That is correct.

Q But at the Family Court it was?

A It's everybody's. Who ever wanted to participate in it.

Q Okay. Now, has Mr. Sandstrom ever, in your hearing, made derogatory comments to or about somebody of a different race?

A He hasn't, not to me.

Q Okay. And has he ever been involved in any racially based altercations or incidents like that?

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A No.

Q Okay. And has Mr. Sandstrom to your knowledge used the same hip hop vocabulary that the other children there would use?

A Yes.

Q What are the some of the words that you put in that vocabulary?

A Well, his favorite was like, what's up, Ms. Davis? You know -

Q What's up?

A Yeah. What's up? You know, what's clicking? Or, you know, just some of the slang that the young folks use out on the street.

Q Do the kids there some times use the word nigga?

A That is correct.

Q Mr. Sandstrom some times used that word?

A He used it.

Q Referring to who?

A To his friends. Steven was pretty much, would be fair to say he was always interacting with African-American children and he spoke like them, talked like them. I mean, just walk like them. Always tell him to pull his clothes up, too, because they like the sag.

Q He would be sagging?

A He liked to sag his clothes. And that's not permitted in

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1 the detention center. And --but he would follow the
2 rules. After we had to get on him a couple times, he
3 would pull his clothes up. And he was just, basically,
4 around African-American children.

5 Q Okay. And you know the difference between the word nigga
6 and the word nigger?

7 A I do.

8 Q And did you ever hear him use the word nigger?

9 A Never.

10 Q Okay. Thank you.

11 No further questions, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GREEN:

14 Q Ms. Davis, I believe you testified that the age of
15 Mr. Sandstrom when you had contact with him was from when
16 he was 13 up to 17, is that correct?

17 A Yes.

18 Q And I think you stated in response to a question from
19 Mr. Rogers that Mr. Sandstrom was in detention quite
20 often?

21 A That is correct.

22 Q And if the last time you had, well, if Mr. Sandstrom, when
23 he was 17, do you recall about what year that would have
24 been?

25 A It had to be around about, I say 2004 or 2003, 3 or 4.

1916

I'm not for sure. I've been there for eleven years. I hadn't seen him in so long.

Q If I represent to you that I believe he's 22 today, 2008, and he was 17 the last time?

A I'd say 2002.

Q 2002. Does that sound correct?

A Yes.

Q Now, from the time frame of from 2002 when you last had contact with him up until 2005, did you have any contact with Mr. Sandstrom?

A No. When he came to the detention center, I believe Steven was certified to leave the detention center. And certification means that he's no longer in the jurisdiction of the juvenile.

Q Right. So my point is when he left your jurisdiction in 2002 up through 2005, you had no contact with Mr. Sandstrom, correct?

A No, I hadn't.

Q Excuse me?

A No. I had no contact with him.

Q So you have no idea what, basically, he was, well, let me ask this. In your position with the detention center, although I think you like to say, style yourself as sort of a mother figure, is that correct?

A That's correct.

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Q But you also were an authority figure, is that correct?

A That's correct.

Q You had power of authority over Mr. Sandstrom, correct?

A That is correct.

Q And, logically follows, it would have been in Mr. Sandstrom's best interest to have pleased you, correct?

A Well, I have this kind of air with kids. They just do that with me. So it's not just Mr. Sandstrom with me doing that. It would be other kids. Because that's part of my job is to make them feel safe and secure when they're in the facility.

Q But when a child wasn't following the rules or being disrespectful to you in some sort of major way, that's something you could take action about?

A Not my position. It would be my supervisor's position to do that.

Q You would report the child's activities to your supervisor, is that correct?

A That's correct.

Q Then based on your report, your supervisor would take action against that kid, is that correct?

A That's correct.

MR. GREEN: May I have one moment, Your Honor?

I have nothing further, Your Honor.

THE COURT: Mr. Osgood?

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1 MR. OSGOOD: No, Your Honor.

2 THE COURT: Mr. Rogers?

3 REDIRECT EXAMINATION

4 BY MR. ROGERS:

5 Q Mr. Green asked you about Mr. Sandstrom being there

6 repeatedly, is that right?

7 A That's true.

8 Q If he had been there before and came back, what was his

9 attitude towards seeing you?

10 A He would always be glad to see me.

11 Q Thank you.

12 A You're welcome.

13 THE COURT: Recross?

14 MR. GREEN: No, Your Honor.

15 THE COURT: Thank you, Ms. Davis. You may step down.

16 (Witness excused.)

17 MR. ROGERS: Your Honor, Mr. Sandstrom calls Melvin

18 Carter.

19 MELVIN CARTER, DEFENDANT SANDSTROM'S WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MR. ROGERS:

22 Q Sir, would you, please, state your name for the record and

23 spell it for the court reporter?

24 A My name is Melvin L. Carter. M-E-L-V-I-N. Middle name is

25 Lee, L-E-E, C-A-R-T-E-R.

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1 Q Mr. Carter, you're obviously incarcerated, is that
2 correct?
3 A Yes.
4 Q What are you serving time for?
5 A Drug trafficking.
6 Q What kind of sentence are you now serving?
7 A Fifteen years.
8 Q What court imposed that sentence?
9 A Clay County.
10 Q Circuit Court of Clay County, Missouri?
11 A Yes.
12 Q Where are you currently incarcerated?
13 A Cameron.
14 Q What other felony convictions do you have?
15 A Drugs.
16 Q More than one?
17 A Yeah.
18 Q Okay. And how old are you, sir?
19 A 33.
20 Q Do you know Steven Sandstrom?
21 A Yes, sir.
22 Q Could you point him out for the record, please?
23 A (Indicating.) Right there with the blue shirt on and
24 glasses.
25 Q Blue shirt and glasses?

1920

1 A Yes.

2 MR. ROGERS: Your Honor, can the record reflect he

3 has identified Mr. Sandstrom?

4 THE COURT: Yes.

5 BY MR. ROGERS:

6 Q How long have you known Steve Sandstrom?

7 A Since he was about seven years old.

8 Q How did you met him?

9 A I met him through his mother and his father. They used

10 get high or whatever. And I was selling drugs at the time

11 and that's how I met him.

12 Q And so you met Mr. Sandstrom because his parents bought

13 drugs from you?

14 A Yes, sir.

15 Q And when he got a little older, did he start hanging

16 around with you on his own?

17 A Yes.

18 Q How old was he then?

19 A He was about, I say 15, 16.

20 Q And where were you living at the time?

21 A In North Kansas City.

22 Q North of the river?

23 A Yes, sir.

24 Q Okay. How would he get there?

25 A He would drive or I would take him over there.

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1921

Q Okay. And did he ever come to your home when you lived some place other than North Kansas City?

A Yeah. Yeah. When I stayed in Kansas City on Westport.

Q He would come to your house there, too?

A Uh-huh.

Q All right. Were there some other guys who hung around with you that he tried to hang around with when he was a kid, too?

A Yeah.

Q And would that be somebody named Country Mike?

A Uh-huh.

Q Who's Country Mike?

A That's my friend. He's currently in treatment right now, drug treatment right now.

Q Is he African-American?

A Yes.

Q And how about 7-foot?

A That's my brother.

Q Okay. Would he also be hanging out with you?

A Yeah.

Q Would Mr. Sandstrom hang out with him as well?

A Uh-huh.

Q Have you ever been to Mr. Sandstrom's family home?

A Yes.

Q And where was that when you were there?

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1922

A They used to live with their grandmother on Drury and I used to be over there a lot. And then they used to live in a trailer on, I think, it was 40 Highway or 50 Highway, one of them.

Q Bunker Hill Trailer Park?

A Yes.

Q Have you been over there, too?

A Uh-huh.

Q Have you ever spent in the night in their home?

A Yes.

Q And how about other family members of yours, your brother and somebody like that, have they been there with you?

A Well, in the trailer park, yes. Country Mike, he used to go over to Steve's grandmother's house, too.

Q Now, have you been around Steven when he was dating a girl, hitting on girls or whatever you want to call it?

A Yes.

Q What kind of girls would he be hitting on?

A Black girls. Any kind really. It didn't make no difference. Mexican. It didn't make no difference.

Q Mexican, black, white?

A Yes.

Q Has he ever asked you about getting in touch with a particular black woman?

A It was --he wrote a letter he was asking me about -

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1 MR. KETCHMARK: Your Honor, may we approach.

2 THE COURT: Yes.

3 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
4 PROCEEDINGS WERE HAD:)

5 MR. KETCHMARK: I don't know where Charlie is going
6 with this. It isn't contained in the witness statement
7 provided. I'm concerned about the potentially self serving
8 nature of the hearsay. I understand he can inquire about
9 racial type issues. I have no problem with him leading. I
10 would rather it be done in that fashion than come out in some
11 self serving hearsay that's inappropriate.

12 MR. ROGERS: I will.

13 MR. KETCHMARK: Thank you.

14 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

15 BY MR. ROGERS:

16 Q So Mr. Sandstrom sent you a letter asking about how to get
17 in touch with a black girl named Jennai, is that correct?

18 A Yes.

19 Q Do you know how to spell her name?

20 A Huh-uh.

21 Q That's a no?

22 A Yeah. That's a no.

23 Q Okay. The reason I have to ask that because she's taking
24 down everything in some sort of code and uh-huh and huh-uh
25 kind of looks the same in code.

1924

A Yeah.

Q And about when was this letter? How long ago?

A Man, I say this is around about last year or something.

Q Okay. Have you ever lived in the northeast area of Kansas City?

A Yes.

Q Where did you live?

A On Drury. Not Drury, but Quincy.

Q On Quincy. And what was the racial mix of that neighborhood when you lived there?

A It was mostly white.

Q You, obviously, lived there?

A Yeah. I mean, I'm saying other than me.

Q Okay. Were there Hispanics as well?

A Around in the neighborhood, yes.

Q And Asians?

A Asians.

Q Yeah. Vietnamese or whatever?

A I wouldn't remember no Asians, anything like that.

Q How long ago was that?

A How long ago?

Q Yeah.

A About going on six and a half years ago.

Q And have you seen the people that Steve associated with in the neighborhood during the time that you knew him?

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1925

A Uh-huh. Yes.

Q And by the way when is the last time you saw him out on the streets?

A Steven?

Q Yeah.

A In 2002.

Q Okay. That's before you got -

A Incarcerated.

Q Okay. And who was he associating with then?

A I can't remember.

Q I'm not looking for names. I'm talking, was he associating with white people? Black people?

A White and black.

Q Both?

A Uh-huh.

Q That's a yes?

A Yes.

Q Have you ever heard Steve use the word nigga?

A Yes.

Q And do you use that word?

A Yes.

Q And what does that mean?

A I mean, it's just, it don't mean nothing. Just what's up, nigga?

Q Is there a difference in your mind between nigga and

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1 nigger?

2 A Yes.

3 Q And what is that difference?

4 A If a person, other than a black person, is using the word

5 nigger, I take that as he's being a racist. But if a

6 person is just nigga, then I just take that as just he's

7 being him, who he is. You know, I --that's, I guess

8 that's how Steven was.

9 MR. KETCHMARK: May we approach?

10 THE COURT: Yes.

11 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
12 PROCEEDINGS WERE HAD:)

13 MR. OSGOOD: Did it again. And I have --there's

14 testimony that Mr. Eye has used the word nigger. And now we

15 have opinion testimony from a black witness and Mr. Rogers just

16 elicited where he says that use of the word nigger is racist.

17 I want a mistrial.

18 MR. KETCHMARK: Judge, I don't know that the remedy

19 needs to be that strong. I think the testimony from witnesses

20 yesterday that Mr. Eye sponsored, Tina Wilkerson in particular,

21 said the use of the word nigger is a racially derogatory remark

22 regardless that is equated with being racist. I understand the

23 Court's -

24 THE COURT: Well, he can say how he perceives that

25 remark and that's what I understood his testimony to be.

1 Charlie, clear it up.

2 And motion for mistrial is denied.

3 MR. ROGERS: For the record, I did not expect him to
4 use the term racist. And I didn't have a chance to meet with
5 him before his testimony obviously and -

6 MR. KETCHMARK: I'll renew, Judge. I have no problem
7 with Charlie leading and very strongly leading so we can avoid
8 having to come up here and address these issues.

9 THE COURT: Permission to lead is granted.

10 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

11 BY MR. ROGERS:

12 Q So, sir, am I correct that in your view the term nigger
13 with an R on the end, used by someone who is not
14 African-American, is a racially derogatory term?

15 A Yes, sir.

16 Q That certainly is the way you would take it if somebody
17 called you that?

18 A Yes, sir.

19 Q Have you ever heard Mr. Sandstrom call anybody that?

20 A No, sir.

21 Q Okay. But you have heard him say nigga?

22 A Yes.

23 Q And in your opinion is that term racially derogatory?

24 A No, sir.

25 Q Have you heard him use that term toward white people?

1 A Yes, sir.
2 Q Or toward Hispanic people?
3 A Yes, sir.
4 Q And also toward black people?
5 A Yes, sir.
6 Q Have you and Mr. Sandstrom used nigga, talking to each
7 other?
8 A Yes, sir.
9 Q Okay. Those are all the questions I have.
10 THE COURT: Cross-examination?
11 MR. KETCHMARK: Thank you, Your Honor.
12 CROSS-EXAMINATION
13 BY MR. KETCHMARK:
14 Q Mr. Carter, on your current incarceration, it's a drug
15 incarceration. You said you're serving 15 years out of
16 Clay County?
17 A Yes, sir.
18 Q I think you also indicated that you have other prior
19 felony convictions that are also drug related?
20 A Yes, sir.
21 Q Do you also have a prior conviction, Mr. Carter, for
22 robbery in the second degree out of Jackson County?
23 A Yes, sir.
24 Q Is there any other felony convictions that you forgot
25 about that you remember now?

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A No, sir.

Q And in terms of your contact with Mr. Sandstrom and his family, I think you said that the last contact with Steven Sandstrom would have been in 2002?

A Physical.

Q Physical contact. You corresponded in letters and things because you talked about a letter you got last year?

A Yes, sir.

Q Have you been locked up continuously since 2002?

A Yes, sir. 2002.

Q Is when you went in and started that?

A Uh-huh.

Q Is that yes?

A Yes, sir.

Q I'm sorry, for the court reporter.

And you said that your contact with

Mr. Sandstrom began at an earlier age because you had contact with his parents, Bonnie and Mike?

A Yes, sir.

Q You were selling drugs to them?

A Yes, sir.

Q And would you agree with me, Mr. Carter, that when you're selling drugs, anybody who has money is a potential friend of yours because they're a potential client?

A I, well, I mean, it's like that for a lot of folks but not

1930

1 me. I'm not like that.

2 Q Well, but you're going to deal with somebody who wants
3 drugs from you and they have cash and you trust them,
4 you're going to deal with them?

5 A Right.

6 Q And just so I'm clear, you never heard Steven Sandstrom
7 use the N word with the E-R, nigger, as the derogatory
8 statement?

9 A No, sir.

10 Q It was only nigga as it relates to a homie or friend?

11 A Yes, sir.

12 MR. KETCHMARK: That's all I have, Judge.

13 CROSS-EXAMINATION

14 BY MR. OSGOOD:

15 Q Sir, I represent Mr. Eye. Did I hear you say that among
16 blacks or close friends that some times the word nigger is
17 used between each other?

18 A With the E-R on it?

19 Q Yes, sir.

20 A No. Unless they're joking but -

21 Q That's what I mean. Joking. Friends. What's up, nigger?

22 You laugh, but, I mean, haven't you heard that?

23 A I mean, yeah. Yeah. Joking, yeah.

24 Q Okay. And you have heard it --obviously, I understand
25 your testimony. It's not the right of a white person to

1931

1 come up and say that to you. It would be offensive?

2 A Yes, sir.

3 Q Because of the historical context of that word?

4 A Yes, sir.

5 Q Now, would you agree with me that more and more that word

6 is --you guys have television where you're at?

7 A Yes.

8 Q Are you familiar with a comedian named Chappell?

9 A Yes.

10 Q Does he not frequently use the word nigger on national

11 television in front of mixed audiences?

12 A Well, he has.

13 Q Many times. Didn't he do it --have you seen the skit

14 where he talks about -

15 MR. KETCHMARK: Your Honor, I would object.

16 MR. OSGOOD: It's common context.

17 THE COURT: Overruled.

18 BY MR. OSGOOD:

19 Q You have heard that word on national television, haven't

20 you?

21 A Yes.

22 Q It's used more and more?

23 A Yes.

24 Q It's on hip hop rap music sometimes, isn't it?

25 A Yes, sir.

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1932

1 Q And so while it may be offensive to you personally, it is
2 being used more widely in certain circles, isn't it?

3 A Yes, sir.

4 Q And if you had a white guy that was really tight and close
5 with a black guy and he was comfortable with him and they
6 knew each other and they're bros or cuzs or whatever you
7 want to call them, he might be apt to use that word?

8 MR. KETCHMARK: Your Honor, I'm going to object.

9 Calls for speculation.

10 BY MR. OSGOOD:

11 Q Would you agree with that?

12 A Yes, sir.

13 THE COURT: Just a moment. Mr. Ketchmark was in the
14 process of making an objection and the objection is?

15 MR. KETCHMARK: Well, it's, one, relevance. It's,
16 two, he can ask him about his personal knowledge. It's a
17 speculative answer about a white guy using it in a context.

18 THE COURT: I'll sustain the objection. The jury
19 will be instructed to disregard the question and answer.

20 MR. KETCHMARK: Thank you, Your Honor.

21 BY MR. OSGOOD:

22 Q I just have one more question for you. The government
23 went over all your prior convictions?

24 A Uh-huh.

25 Q You have to say yes or no, sir.

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1933

1 A Yes, sir.

2 Q By coming down here and testifying, the defense can't file

3 a motion and get your time reduced, can we?

4 A No.

5 Q We can't do a doggone thing for you, can we?

6 A No, sir.

7 Q We didn't put any money in your account up there to buy

8 cigarettes. You can't get cigarettes any more, candy and

9 bubble gum, stuff from the canteen, did we?

10 MR. KETCHMARK: Objection. Asked and answered.

11 THE COURT: Sustained.

12 BY MR. OSGOOD:

13 Q Were you promised anything by Mr. Rogers for coming here

14 and testifying?

15 A No, sir.

16 Q You're doing it because you think it's -

17 A It's the right thing to do.

18 Q Thank you, sir.

19 REDIRECT EXAMINATION

20 BY MR. ROGERS:

21 Q You've been locked up?

22 A Six and a half years.

23 Q Six and a half years with people of all races?

24 A Yes, sir.

25 Q And you've heard white people since you've been

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1934

incarcerated use the word nigger?

A Yes, sir.

Q You've heard them do it in a derogatory way?

A Yes, sir.

Q And you've heard them do it in a more friendly, joking way?

A Yes, sir.

Q And have you heard a white person use that word to a black person in an attempt to get at or irritate or anger a black person?

A Yes, sir.

Q Are there any African-American guards where you are?

A Guards?

Q Yeah.

A Yes, sir.

Q Have you heard white inmates use that word toward African-American guards to try and get them mad so they'll do something stupid?

A Yes, sir.

Q Thank you.

THE COURT: Mr. Ketchmark?

MR. KETCHMARK: No, Your Honor.

THE COURT: Mr. Osgood?

MR. OSGOOD: No, Your Honor.

THE COURT: Thank you, Mr. Carter. You may step

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1935

1 down.

2 MR. ROGERS: May the witness be finally excused?

3 THE COURT: Without objection, Mr. Carter is excused.

4 (Witness excused.)

5 MR. ROGERS: I'll see if my next witness is here.

6 May we approach, Your Honor?

7 THE COURT: Yes.

8 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
9 PROCEEDINGS WERE HAD:)

10 MR. ROGERS: Our next and I believe final witness

11 will be Kenneth Robinson who is not here. He came and they

12 wouldn't let him in the courthouse because he didn't have the

13 correct identification. He went back home to get it and he

14 should have been here by now but he hasn't shown up yet. So I

15 don't know whether you want to take an early lunch or whether

16 you want to send the jury out while we wait for them or have

17 them wait here. Whatever you want to do.

18 THE COURT: Well, I'm not going to keep them here in

19 the courtroom. How long ago did he go home?

20 MR. ROGERS: Gromowsky is outside. Before Mr. Carter

21 began testifying he was already on his way back.

22 THE COURT: Way back here. Where does he live?

23 MR. ROGERS: In the vicinity of Swope Park.

24 THE COURT: Well, I don't suppose it really matters a

25 great deal one way or another. We can break for lunch. We

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1 will be on a schedule where we could do the closings today if

2 this is your last witness. Do you have any rebuttal?

3 MR. KETCHMARK: No. Whatever. Don't want to speak

4 for the defense attorneys, but would be to potentially starting

5 with closing, just the fact that they're going to be here

6 tomorrow. Not opposed if the Court wanted to do the

7 instructions and send them home and have them come back, hear

8 argument first thing in the morning.

9 THE COURT: Especially in a case like this, I don't

10 want to push you to argument before you're ready to give it.

11 MR. ROGERS: Mr. Gromowsky is doing the closing on

12 behalf of Mr. Sandstrom. I think he has been relying on what

13 we said yesterday so I don't think he's ready this afternoon.

14 MR. OSGOOD: I would prefer to have tomorrow morning,

15 Your Honor. I don't have any preference about the

16 instructions.

17 MR. KETCHMARK: If the Court wanted to entertain

18 reading the instructions, which is going to be very voluminous.

19 THE COURT: I will read the instructions today.

20 MR. ROGERS: Mr. Gromowsky advises me that

21 Mr. Robinson called our investigator about ten minutes ago

22 saying he was at the building so I think -

23 THE COURT: Okay. Why don't we, let's just go ahead

24 and break for lunch and we'll come back and hear Mr. Robinson

25 then move directly to the instructions. Then I'll excuse the

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1 jury for the day. And we'll see you back here in the morning.

2 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

3 THE COURT: We have hit a bit of a snag with the

4 final witness for Defendant Sandstrom. So I think what we'll

5 do is go ahead and break for lunch early. When you return

6 we'll hear the testimony of Mr. Robinson. And I think we will

7 then be in a posture where I can go ahead and give you your

8 instructions for phase one. Because of the length of trial and

9 need for some preparation I think we'll then stop for today and

10 let you go about your business, let the attorneys work on their

11 summations, then we'll come back and hear closing arguments in

12 the morning. So we're probably talking about somewhere close

13 to 2:00 you'll be released today. Don't hold me to that.

14 That's my best estimate at the moment.

15 Don't talk about the case now. Don't make up your

16 mind. We'll see you back here at 12:40. We'll be in recess.

17 (The following proceedings were had OUT OF THE

18 PRESENCE AND HEARING OF THE JURY:)

19 THE COURT: Okay. Before we break for lunch I want

20 to have a conversation with Mr. Sandstrom. Mr. Sandstrom,

21 you'll recall what I told you yesterday about your right to

22 testify or your right not to testify. Do you recall all of

23 that?

24 DEFENDANT SANDSTROM: Yes, sir.

25 THE COURT: And you recall my conversation with

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1 Mr. Eye a little bit earlier. You understand that you can
2 either testify or not. That decision is yours to make. I
3 would expect you to consult with your attorneys before making a
4 decision but if you choose to testify you can expect a vigorous
5 cross-examination. No one can force you to testify and
6 ultimately the decision on whether to testify or not is yours
7 to make. Do you understand that?

8 DEFENDANT SANDSTROM: Yes, sir.

9 THE COURT: Knowing all of that, is it your wish to
10 testify in this trial?

11 DEFENDANT SANDSTROM: No, sir, it's not.

12 THE COURT: Okay. Any questions?

13 MR. KETCHMARK: Not from the government.

14 THE COURT: All right. If not, we'll see you back
15 here in an hour. We're in recess.

16 (Noon Recess)

17 (The following proceedings were had OUT OF THE

18 PRESENCE AND HEARING OF THE JURY:)

19 THE COURT: Looks like everyone is here. Alex, you
20 want to bring the jury in, please?

21 (The following proceedings were had IN THE PRESENCE
22 AND HEARING OF THE JURY:)

23 THE COURT: Please be seated.

24 Mr. Rogers, you may call your next witness.

25 MR. ROGERS: Thank you. Defendant calls Kenneth

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1 Robinson.
2 KENNETH ROBINSON, DEFENDANT SANDSTROM'S WITNESS,
SWORN
3 DIRECT EXAMINATION
4 BY MR. ROGERS:
5 Q Sir, could you, please, state your name for the record and
6 spell it for the court reporter?
7 A Kenneth Robinson. That's K-E-N-N-E-T-H, R-O-B-I-N-S-O-N.
8 Q And do you have a nickname that people know you by?
9 A Tank.
10 Q Tank?
11 A Yes.
12 Q How did you get that nickname?
13 A My mother gave it to me at birth.
14 Q So you've always had that name?
15 A Yes.
16 Q Mr. Robinson, do you know Steven Sandstrom?
17 A Yes.
18 Q Could you point him out, please, and tell us what he's
19 wearing?
20 A That man in the blue button up collar shirt.
21 Q Thank you.
22 May the record reflect he has identified
23 Mr. Sandstrom, Your Honor?
24 THE COURT: Yes.
25 BY MR. ROGERS:

1940

Q How long have you known Mr. Sandstrom?

A Ever since he was about ten, ten years old.

Q How did you get to know him.

A I met him in the northeast neighborhood and ever since then we've been getting along.

Q I'm kind of having trouble hearing you and maybe the jury people are. Could you lean forward and speak into the microphone a little, please? I don't know if we can get the microphone to you. We have to move you closer to it.

How did you first meet Mr. Sandstrom?

A In the northeast neighborhood.

Q And did you live there at the time?

A Yes, I was staying down there at the time.

Q And where in general were you living, on what street?

A On Barat.

Q Do you know where he was living at the time?

A On Drury.

Q Okay. Would that be his grandmother's house?

A Yes.

Q And living in the neighborhood, how old are you now by the way?

A How old am I?

Q Yes.

A 26.

Q You're like four or five years older than Mr. Sandstrom?

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1941

A Yes.

Q How would he be a ten-year-old hanging out with a 14, 15-year-old?

A Back then he used to try to but we wouldn't let him. As he got older we started hanging.

Q You say we, was there people other than you that you hung out with on a regular basis there in the neighborhood?

A Yeah. Me and my cousin, Kevin Fisher.

Q Okay. And I assume being your cousin, he's also African-American?

A Yes.

Q And who else?

A And there was a guy, I really don't know them by full names, just first names or -

Q Was there a guy named Hayden Summers that hung out with you and Mr. Fisher?

A Yes.

Q And what is his nickname?

A Bub.

Q Bub?

A Yeah.

Q Was he about the same age as you and your cousin, Kevin?

A Yes.

Q Older than Steven?

A I believe so.

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1942

Q Okay. So there came a time when Mr. Sandstrom was older and even though you guys were also older did start hanging out with you?

A Yes.

Q And did you and Mr. Sandstrom get to be friends?

A Yes. About in 2003 I was kicked out of my mother's house and his mother welcomed me in and I was living with them about eight, nine months, maybe. And they treated me like I was one of theirs.

Q Let me stop you there. You lived with the Sandstrom family in their house?

A Yes.

Q And was Steven living there, too?

A Yes.

Q And who else was living there?

A His sister Stephanie, his little brother and his mother and father.

Q Okay. And where was this?

A At the Bunker Hill trailer home.

Q And where is the Bunker Hill Trailer Park located?

A On 40 Highway.

Q Sort of east of Kansas City?

A Yes.

Q And so that would not be in the northeast neighborhood?

A Huh-uh. No, sir. I'm sorry.

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1943

Q Thanks. And the reason I stop there is because if you don't answer yes or no, it's hard for her to take it down.

Okay?

A Okay.

Q When you were living with the Sandstrom family in the trailer home in the Bunker Hill Trailer Park, where would you sleep?

A I was sleeping in his bed and he sleeps on the couch.

Q So Mr. Sandstrom let you sleep in his bed while he slept on the couch?

A Yes, sir.

Q Would you eat meals with the family?

A Yes, sir.

Q Was there ever any issue about your race and living with these white people?

A Not to my knowledge, no. But one incident me and Bub, he called me the N word, nigger, and Steven kind of got offended when he said it because he seen how offended I got. And he corrected Bub on what he said and ever since then there was no kind of racial problem or anything.

Q Okay. Now, let's --did this incident with Bub who is Hayden Summers occur while you were staying at the Sandstrom house?

A Yes, sir.

Q Did this occur at the house?

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1944

A Yes, sir.

Q And you had known Bub for years?

A Yeah. I knew Bub before him.

Q And so why is he using the word nigger directed toward you?

A He got mad. And I guess he tried to make me mad by saying that.

Q Okay. And who was the most offended, you or Steven?

A Both.

Q Okay. What did Steven do?

A He told Bub he can't be talking like that in his house and Bub kind of, you know, apologized. But I could see he was still mad. But, I mean, Steven, he stood up for me. Let Bub know he can't be talking like that to his company and stuff like that.

Q Now, did that incident destroy your friendship with Bub?

A No.

Q You guys got over it?

A Yes, sir.

Q Okay. Were you ever around Mr. Sandstrom when there were other African-Americans around?

A Yes. Mr. Melvin Carter, I believe his name is and -

Q He would come over sometimes when you were there?

A Yes.

Q Or you would come over when he was there?

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1945

A Yes.

Q And, by the way, aside from the time that you lived with the Sandstrom family in the trailer park did you also go to the Sandstrom home on other occasions?

A Sometimes I see them out and stop and talk to them.

Q Did you ever go over to Steven's grandmother's house, for example?

A Yes.

Q Did you and Mr. Sandstrom ever chase girls together?

A Yes. Well, tried.

Q Tried. I'm not saying you caught them, you just chase them?

A Yes, sir.

Q What kind of girls was Mr. Sandstrom involved with?

A All races. African-Americans, Mexicans, whites.

Q And who is Clarrisa Pace?

A That's my girlfriend's sister.

Q Okay. And who is your girlfriend?

A Janice Abernathy.

Q And Clarrisa is her older or younger sister?

A Older sister.

Q And who is Huberra Abernathy?

A The younger sister.

Q Mr. Sandstrom ever ask you to fix him up with either Ms. Pace or Huberra Abernathy?

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A Yes.

Q Did that work out?

A They didn't want to but I tried.

Q Sir, have you ever been convicted of a crime?

A Yes.

Q And you've been convicted of burglary second degree in Jackson County, Missouri, is that correct?

A Yes, sir.

Q And that was sometime around 2000?

A Yes.

Q And you got suspended imposition of sentence and 3 years probation?

A Yes, sir.

Q And have you been convicted also of drug trafficking?

A Yes, sir.

Q And that, again, in Jackson County, Missouri?

A Yes, sir.

Q And you received a 5-year sentence suspended and 3 years probation for that?

A Yes.

Q That was back in 2004?

A Yes.

Q Are you done with probation?

A August of this year.

Q Okay. Have you been in some point incarcerated in the

1947

1 Jackson County Jail for a period of time?

2 A Yes, sir.

3 Q Did you encounter any guards there who were not

4 African-American but African?

5 A Yes.

6 Q Was there anything different about any of those African

7 guards?

8 A Yes.

9 Q What was that?

10 A They abused their authority and they think they can talk

11 to the inmates any way they want to because we're inmates

12 and they're guards.

13 MR. ROGERS: Could I see Exhibit 117A, please? And

14 could you focus in on the top part?

15 BY MR. ROGERS:

16 Q Do you see where it says, I want some God damn juice. I

17 asked, I need a cup of tea, with a little smiley face.

18 While you're at it, give me head, you African prick.

19 Let me first of all ask you, when you were in

20 the Jackson County Jail was your outgoing correspondence

21 read by the staff?

22 A Yes.

23 Q Okay. If somebody puts that in a letter they know is

24 going to be read by the staff, what would be the point of

25 putting that in a letter?

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1948

1 A To make the staff mad.

2 Q The guard?

3 A Yes.

4 Q Okay. And so this is, obviously, directed at a specific
5 guard?

6 A Yes.

7 MR. ROGERS: Now, if you would do the part down at
8 the bottom next to the signature.

9 BY MR. ROGERS:

10 Q It says, I'm gonna beat this CO's ass tomorrow if he pops
11 off his smart ass mouth again. Fucking nigger, something
12 better watch his cock sucker.

13 Do you see that?

14 A Yes.

15 Q Who is that directed to do you think in the context of a
16 letter sent out of the Jackson County?

17 A The CO.

18 Q And why would you put something like that in a letter
19 knowing that the CO is going to read it?

20 A To make them mad.

21 Q And why would you do that?

22 A Because I figure he's trying to fight them with his mind
23 and words instead of physically so he don't get in no more
24 trouble.

25 Q Okay.

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1949

You can take that down. Thank you.

When you've been around Mr. Sandstrom in his home, on the streets, hanging out with other people, have you ever heard him use the word nigger in a racially derogatory manner?

A No.

Q Have you heard him use the word nigga?

A Yes.

Q Is that common?

A Yeah, that's common. It's just the way we talk.

Q Okay. You say we, meaning -

A White, black, Mexican.

Q Everybody?

A Yes, sir.

Q Who grew up in that culture?

A Yes.

Q Okay. And you don't live in the northeast now, do you?

A No, sir.

Q How long has it been since you lived in the northeast?

A About three years, 3, 4 years.

Q Let me put it this way. Before March of 2005 you had already moved out of the neighborhood, is that right?

A Yes, sir.

Q And during the early months of 2005 did Mr. Sandstrom come to your home outside the northeast to visit you?

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1950

1 A Yes.

2 Q And so did you notice any different behaviors towards you
3 as an African-American than you had always known from
4 Steven?

5 A No change at all.

6 Q Thank you. That's all the questions I have.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. GIBSON:

10 Q Good afternoon, sir.

11 A Hi.

12 Q Now, I'm to understand you are on supervision today for
13 dealing drugs, correct?

14 A Yes, sir.

15 Q Is that methamphetamine?

16 A No.

17 Q Crack?

18 A Yes.

19 Q And while you were staying in the Sandstrom home that was
20 2002, was it?

21 A Yes.

22 Q And did you know Bonnie Sandstrom, I assume?

23 A Yes.

24 Q And did you see Bonnie Sandstrom do drugs in the home?

25 A I knew she was a drug user.

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Q You knew she was a drug user?

A Yes.

Q How about her husband? Did you know him to do drugs in the home?

A Yes.

Q Did you ever sell drugs to them?

A No, sir.

Q Now, Bub, that's Hayden Summers, right?

A Yes.

Q He's a white guy, right?

A Yes.

Q And when Hayden Summers used the N word with you, N-I-G-G-E-R?

A Yes.

Q He was trying to goad you, right?

A Excuse me?

Q He was trying to get your goat? Trying to insult you?

A Yes.

Q Trying to provoke you?

A Yes.

Q Because you found that word offensive?

A Yes.

Q And you do find that word offensive, right?

A Yes.

Q You don't use that in casual conversation, correct?

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1952

1 A Right.

2 Q You don't know Steven Sandstrom to use it in casual
3 conversation among his friends, right?

4 A Right.

5 Q And as far as you know that word is derogatory, correct?

6 A Correct.

7 Q Insulting?

8 A Yes.

9 Q Demeaning?

10 A Yes.

11 Q All right.

12 MR. GIBSON: Now, let's see Government's Exhibit 117,
13 please.

14 BY MR. GIBSON:

15 Q Now, according to you, you have never heard Steven
16 Sandstrom use the word, N-I-G-G-E-R, nigger, is that
17 correct?

18 A Yes, sir.

19 Q Do you recognize the handwriting in that letter, sir?

20 A To be honest, I really don't know what his handwriting
21 looks like so I couldn't.

22 Q Oh. So, you don't recognize who wrote that letter, is
23 that right?

24 A I mean, if you say it's Steven, so I guess it is.

25 Q I haven't said anything, sir. I asked you if you

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1953

1 recognized the handwriting?

2 A No, I don't.

3 Q No, you don't. Okay. But you want to tell the ladies and

4 gentlemen over here, sitting in the jury, what the writer

5 of this letter, whose handwriting you don't recognize,

6 what they meant by that letter. Is that what you're

7 telling us?

8 A I'm pretty sure I know what they meant by the letter with

9 them being an inmate referring to a CO.

10 Q Because you have mental powers, sir?

11 A No, sir.

12 MR. ROGERS: I'll object to this, Your Honor. This

13 is badgering the witness.

14 THE COURT: Sustained.

15 BY MR. GIBSON:

16 Q You just agreed that the use of word N-I-G-G-E-R is

17 offensive, correct?

18 A Yes, sir.

19 Q Clearly, who ever wrote that letter, Steven Sandstrom or

20 whoever it might be, included the word N-I-G-G-E-R in that

21 letter, correct?

22 A Yes.

23 Q And so despite the fact you have never heard him use that

24 in your presence, apparently it's possible that he used it

25 out of your presence, isn't it?

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1954

1 A Maybe.

2 Q Now, let me see if I understand this again. You draw a
3 distinction between corrections officers working as United
4 States citizens in the Jackson County Jail who are of
5 African descent. You distinguish them from
6 African-Americans?

7 MR. ROGERS: I'll object to that as misleading. No
8 showing of citizenship.

9 THE COURT: If he understands the question he can
10 answer.

11 THE WITNESS: I don't understand the question.

12 BY MR. GIBSON:

13 Q Do you believe that non-American citizens are working as
14 corrections officers at Jackson County?

15 A No.

16 Q They're all American citizens, right?

17 A Yes.

18 Q So then my question, again, is, do you draw a distinction
19 between guards who are working at Jackson County who are
20 of African descent, as you explained to Mr. Rogers, versus
21 African-Americans?

22 A I still don't understand what you're saying, sir.

23 Q I didn't understand it either and that's why I'm asking
24 you the question.

25 A Okay.

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1955

1 Q So there is no distinction, is that what you're saying?

2 A I can't give you an answer on a question I don't

3 understand, sir.

4 Q I don't have anything else. Thank you.

5 CROSS-EXAMINATION

6 BY MR. OSGOOD:

7 Q Sir, maybe, black individuals who are from Kenya or places

8 like that who have a strong accent working as guards?

9 A Yes.

10 Q That you identified as African because of their accent?

11 A Yes.

12 Q As opposed to native born American citizens that are

13 black. Was that what you were talking about?

14 A I-

15 Q An ordinary, an individual who speaks like you and I are

16 speaking right now, that you identify as just a black

17 guard at the institution, were there some blacks there

18 that were from Kenya or somewhere like that with an accent

19 you were calling African?

20 A Yes. I mean, I knew they were from some other part of the

21 world but -

22 Q In your mind, at least, they tended to be more aggressive

23 and argumentative and bossy than just the run of the mill

24 black COs working there?

25 A Yes.

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1956

Q Is that what you were trying to say to Mr. Gibson before he started hollering at you?

A Yes, sir.

Q Now, you patched it up with Mr. Summers, didn't you?

A Yes.

Q And you still know him?

A Yes.

Q Still get along with him?

A Yes.

Q And would you agree with me that people make slips of the tongue now and then, say things they later regret?

A Yes.

Q That doesn't reflect their deep seated attitudes toward you or a particular group, would it?

A No.

Q And we all make mistakes?

A Yes.

Q When we get angry we say things we think will get a rise out of somebody?

A Yes.

Q And we say things that --when we're trying to impress somebody else?

A Yeah, that could be. But I still say that it was just a sign of provoking, trying to make someone mad.

Q Exactly. But one time deal comes and goes and passes and

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1957

1 you're buddies again?

2 A Yes.

3 Q Or, at least, you're not angry with each other?

4 A No.

5 Q Okay. Thank you.

6 THE COURT: Mr. Rogers?

7 REDIRECT EXAMINATION

8 BY MR. ROGERS:

9 Q You have no idea, do you, sir, whether somebody has to be

10 a citizen of the United States to work for the Jackson

11 County Jail?

12 A Could you rephrase the question?

13 Q You have never applied for a job at the Jackson County

14 Jail, have you?

15 A No, sir.

16 Q And you don't --even when you were there as an inmate,

17 sit around and talk with the guards about what the

18 qualifications are to get hired there?

19 A Never.

20 Q So you don't know whether they have to be a citizen or

21 not, do you?

22 A No, sir.

23 Q But there were guards who made no secret that they were

24 from Africa?

25 A Yes.

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1958

Q And you were describing your experiences with certain of those guards, is that fair?

A Yes.

Q Okay. Now, you and I went over that letter, Exhibit 116A or whatever it was, 117A I think, before you testified today, didn't we?

A Yes.

Q And you know that's a letter written by Mr. Sandstrom?

A Yes.

Q Signed by him?

A Yes.

Q With the name High-speed, right?

A Yes.

Q Was that his nickname that you have heard before?

A No. No, I haven't heard High-speed but I heard others.

Q Okay. Anyway, and you know that letter was sent to his cousin, Justin Buchanan, is that correct?

A Yes, sir, I suppose so.

Q And you know Justin Buchanan, too?

A Yes.

Q And you know him from growing up in the neighborhood?

A Yes.

Q Okay. You weren't tight with Justin, were you?

A No, sir.

Q But in terms of that letter, is that the first time you

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1959

know about Mr. Sandstrom using the word nigger?

A That's the first time?

Q In a derogatory sense?

A That's the first time I ever heard him use the word period.

Q Okay. And when you saw that in the context of the letter being sent out of the jail and knowing the jail's procedures, did you feel that that was being used in a racial derogatory sense towards that guard?

A Yes.

Q Okay. And do you feel that was being done instead of doing something else to the guard that would have been -

A Yes. I mean, trying to make, like I said, provoke him, trying to make him mad because he knows if he jumps on the guard he'll have another case. So you try to do it mentally and verbally that way, I mean.

Q And is that not an uncommon way for inmates to vent their feelings?

A Yes.

Q Thank you. Those are all the questions I have.

THE COURT: Mr. Gibson?

MR. GIBSON: No more questions, Your Honor.

THE COURT: Mr. Osgood?

MR. OSGOOD: No, sir.

THE COURT: Thank you, Mr. Robinson. You may step

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1960

1 down.

2 MR. ROGERS: May the witness be excused?

3 THE COURT: Without objection, the witness is
4 excused.

5 (Witness excused.)

6 MR. ROGERS: Mr. Sandstrom rests, Your Honor.

7 THE COURT: Does the United States have any rebuttal?

8 MR. KETCHMARK: We do not, Your Honor.

9 THE COURT: Let me see the lawyers at the bench,
10 please.

11 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
12 PROCEEDINGS WERE HAD:)

13 THE COURT: I'm going to ask the record to reflect
14 that you renew your motion to dismiss as a result of the
15 insufficiency of the evidence for the same grounds stated
16 previously in the record. It will also reflect those motion
17 are overruled at this time.

18 MR. OSGOOD: I think you're suppose to make another
19 Bell finding at the close of all the evidence. I assume your
20 findings are the same.

21 THE COURT: Yes.

22 MR. OSGOOD: Taking into consideration the defense
23 evidence.

24 MR. KETCHMARK: I think we need to at some point to
25 make a finding the crimes tied to the 924 violation. On the

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1961

1 record I would ask the Court to make that finding as to Count
2 1, Count 3 and Count 5.

3 THE COURT: I make that finding with respect to Count
4 1, Count 3, Count 5.

5 MR. KETCHMARK: Then the other thing I noticed at
6 lunch, maybe it was caught, but there was one instruction where
7 there was a referencing back that was blank. And I don't know
8 if it was just in my packet. It referenced back on -

9 THE COURT: I think I caught that.

10 MR. KETCHMARK: 25 was the number that was to be
11 inserted in the blank. I just wanted to make certain before
12 the Court got started.

13 THE COURT: I filled in that number this morning
14 before you arrived.

15 MR. KETCHMARK: Okay. That's all I had, Judge.

16 MR. ROGERS: Your Honor, I would also think just for
17 safety that we at this time renew all of our objections stated
18 at both instruction conferences, both this morning and last
19 Friday afternoon.

20 THE COURT: The record will reflect those objections
21 are renewed and restated and re-denied.

22 MR. SANDAGE: And as to Mr. Eye?

23 THE COURT: I make the same ruling with respect to
24 Mr. Eye.

25 MR. OSGOOD: Is there a possibility we could re-read

1962

1 the instruction at the very beginning about evidence admitted

2 against one defendant only?

3 MR. ROGERS: It's in there.

4 THE COURT: It's in this packet.

5 MR. OSGOOD: A repeat. That's fine. I didn't think

6 I saw it.

7 THE COURT: It's not a repeat. It's a restatement of

8 that instruction.

9 MR. OSGOOD: That's fine.

10 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

11 THE COURT: Alex and Steve, would you, please, hand

12 the instruction booklets to the jury?

13 While they are making their way to you, I'm going to

14 remind you of the instruction I gave you two or three times

15 earlier. And that is you have heard statements of Defendant

16 Steven Sandstrom. Those statements can be used only in the

17 case against Mr. Sandstrom, not in the case of against Mr. Eye.

18 MR. GIBSON: Your Honor, may we approach?

19 THE COURT: Yes.

20 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

21 PROCEEDINGS WERE HAD:)

22 THE COURT: I want to be sure that this packet does

23 that. Okay.

24 MR. GIBSON: With respect to the instruction that you

25 just gave to them, there were statements made by Steven

1963

1 Sandstrom in the letter to the effect that Steve and Gary Eye
2 have a plan to put it on Regennia. It was our understanding
3 the Court found that was a statement in conspiracy to obstruct,
4 that statement can be considered against Gary and Stevie.

5 THE COURT: Yeah, that was my ruling.

6 MR. GIBSON: We would ask that you instruct the jury
7 to that effect. It was our understanding we were going to be
8 free to argue that but now it would appear we would be arguing
9 against the Court's instruction.

10 MR. KETCHMARK: Also along the line the Court made
11 the Bell finding with respect to co-conspirator statements as
12 it relates to statements made during the timing of the offense
13 in question, too. And I think that if statements were made in
14 the presence of one, they're, in essence, adoptive admissions
15 against the other. Clearly, we're going to want to argue that
16 as well in terms of the statements that are made before-

17 THE COURT: Are you talking about statements made
18 during the main?

19 MR. KETCHMARK: During the night in question when
20 they're riding around in the car. One is making the statement
21 in the presence of the other, prompting the other to make a
22 statement back, framing the activities, as it's setting forth
23 what they're doing.

24 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

25 THE COURT: Folks, don't start reading yet. Just a

1 moment. I'll catch up to you.

2 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
3 PROCEEDINGS WERE HAD:)

4 MR. OSGOOD: Here's the problem I see. They're
5 requesting where all the evidence is admissible, it is presumed
6 if you instructed them that a particular piece of evidence was
7 not admissible then you did not instruct them on it in that
8 fashion as admissible. You have sustained objections and
9 allowed the evidence in so, therefore, the evidence is in front
10 of them. They can argue it. To go back and tell them and
11 highlight that certain co-conspirator evidence is admissible is
12 not what the rules require.

13 THE COURT: I'm not sure how to instruct them without
14 confusing them.

15 MR. OSGOOD: That's right.

16 THE COURT: I'll let you argue it but I don't want
17 you feeling as though you're arguing contrary to an
18 instruction.

19 MR. GIBSON: That's the situation we find ourselves
20 in.

21 THE COURT: What instruction do you specifically
22 request me to give?

23 MR. GIBSON: Judge, I would submit, specifically,
24 with the piece of evidence that we discussed that there were
25 statements contained in one of the letters indicating that

1965

1 Stevie and Gary had a plan to put the murder on Regennia. And
2 that that can be considered against both of them. There is
3 nothing inappropriate with the Court specifically giving that
4 instruction in reference to a specific piece of evidence.

5 MR. OSGOOD: There is. In 35 years I've never heard
6 of such an instruction. It's presumed if evidence is admitted
7 for some limited purpose then the jury tells or the jury is
8 told it's for a limited purpose.

9 THE COURT: Keep your voice down.

10 MR. OSGOOD: Told for a limited purpose then they
11 presume that anything else is admitted legally and they can
12 consider it. If I got up and argued to the jury that that was
13 under the umbrella of that instruction, then, yes, I would say
14 you tell me sit down, Mr. Osgood. I'm going to instruct the
15 jury on that point and you would instruct me, tell me to stop
16 arguing that. But they're free to argue the evidence that was
17 admitted. That is an exception and it's not under the umbrella
18 of that limited instruction and I'm not going to argue that.

19 MR. KETCHMARK: I think what Mr. Green is pointing
20 out to me is if we were to pull a pattern Eighth Circuit
21 instruction as it sets for the co-conspirator statements and
22 defining that might solve the problem because it would, the
23 statements made in the front and in the back and allow us to
24 argue off that instruction. And I don't know if --I'm not
25 certain if that is in the first eleven instructions. I

1966

1 apologize for the confusion.

2 MR. GIBSON: We have the book, Judge.

3 THE COURT: I think Steve is looking for it.

4 This is what you're asking?

5 MR. OSGOOD: I would object to that on the grounds

6 this is not a conspiracy case and that the Court properly

7 admitted at the time the very limited one or two pieces of

8 evidence that could be considered co-conspirator hearsay. But

9 it's not been a big issue in the trial and that tends to

10 confuse the jury about all of the letters.

11 THE COURT: Would you rather have this one or would

12 you rather tell me to tell the jury they can consider the

13 statement of Mr. Sandstrom, he and Mr. Eye had agreed upon a

14 story?

15 MR. OSGOOD: I'd rather have that one.

16 MR. KETCHMARK: I was pointing out to Steve, I think

17 in this instruction it can be tailored so the conspiracy

18 language isn't used. Commentary says, if there is an aiding

19 and abetting theory, it can be tailored as such, not using the

20 conspiracy language to be confusing. If you find two people

21 acted together, aid and abetted one another, in carrying out

22 and so I think we could. I'll check our packet. I don't know,

23 Judge, if we had a submitted instruction. I would assume we

24 had one tailored that if you want me to take a look, I'll be

25 happy to do so.

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1 MR. ROGERS: On behalf of Mr. Sandstrom I certainly
2 would object to any instruction that singles out the particular
3 statement attributed to Mr. Sandstrom to the exclusion of all
4 the other evidence and reminds the jury of that. I think
5 that's almost like choosing up sides.

6 THE COURT: This all started when John asked me if I
7 was going to repeat that instruction. It was not a part of the
8 instruction I intended to repeat. But because he asked for it,
9 I gave it. And -

10 MR. ROGERS: But if you look at the bottom of
11 Instruction No. 2 that you've already given to them, it -

12 THE COURT: Instruction No. 2?

13 MR. ROGERS: Last paragraph on the first page. It
14 pretty much covers the situation and -

15 THE COURT: All right. I am going to tailor
16 Instruction 5.061 from the Eighth Circuit models to the facts
17 of this case. They don't have a written copy of it. We will
18 prepare a written copy of it and give the instruction to them
19 but that's what I'm going to do.

20 MR. OSGOOD: That's proper. I mean, you made a Bell
21 finding. Obviously, that stands or falls on whether the Bell
22 finding is correct. That's a correct instruction and seen it
23 many times so I don't have a problem with it. I'm not waiving
24 my Bell argument.

25 THE COURT: Okay. We're done.

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1 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

2 THE COURT: In a moment, ladies and gentlemen, we're

3 going to begin reading the written instructions to you

4 beginning with Instruction No. 12.

5 Before we do that I'm going to give you another

6 instruction which will become Instruction 11B and we'll have it

7 typed up and given to you for inclusion in your notebooks after

8 we finish here.

9 This would be Instruction 11B.

10 You may consider acts knowingly done and statements

11 knowingly made by the participants of an enterprise in

12 furtherance of that enterprise as evidence pertaining to the

13 defendant, even though they were done or statements were made

14 in the absence of and without the knowledge of the defendant.

15 This includes acts done or statements made before the defendant

16 joined in the enterprise. For a person who knowingly and

17 voluntarily and intentionally joins an enterprise is

18 responsible for all the conduct of the participants from the

19 beginning of that enterprise. Acts and statements which are

20 made before the enterprise began or after it ended are

21 admissible only against the person making them and should not

22 be considered by you against any other defendant.

23 Turn to Instruction No. 12 and follow along with me.

24 Don't get ahead of me, please.

25 (Instruction Nos. 12 through 16 were read by the

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1 Court.)

2 THE COURT: Let me ask the attorneys to step up a
3 moment, please.

4 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
5 PROCEEDINGS WERE HAD:)

6 THE COURT: That intersection has been referred to as
7 8th and Spruce.

8 MR. KETCHMARK: It is 9th, Your Honor. The alley
9 comes out on 9th Street.

10 MR. OSGOOD: He went around the block.

11 THE COURT: Thank you.

12 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

13 (Instructions Nos. 16 through 56 were read by the
14 Court.)

15 THE COURT: We'll look at a couple of the verdict
16 forms together. I'm not going to read each of them to you but
17 I think you'll find them pretty self explanatory.

18 Verdict Form A, for example, reads. We, the jury,
19 find the Defendant Gary Eye either guilty or not guilty of
20 interfering with a federally protected activity as charged in
21 Count 1 of the indictment and as defined in Instruction No. 24.
22 There are twelve signature lines for each of you to sign and a
23 date line for it to be filled in by your foreperson.

24 Verdict Form B is very similar. We, the jury, find
25 the Defendant Steven Sandstrom either guilty or not guilty of

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1 interfering with a federally protected activity as charged in
2 Count 1 of the indictment and as defined in Instruction No. 24.
3 Again twelve signature lines and a date line.
4 There is an error in Verdict Form D. It should read
5 as follows, we, the jury, find the Defendant Steven Sandstrom
6 either guilty or not guilty of interfering with the federally
7 protected activity as charged in Count 3 of the indictment and
8 as defined in Instruction No. 25. There is a parenthetical
9 note that says, answer the following question only if your
10 finding on this count is guilty. If your finding on this count
11 is not guilty, sign and date this form. We, the jury, find
12 that the defendant and then it should read Steven Sandstrom so
13 please strike through Gary Eye at that point and write in
14 Steven Sandstrom.
15 That paragraph will then read, we, the jury, find the
16 Defendant Steven Sandstrom's conduct did or did not result in
17 the death of William McCay as discussed in Instruction No. 31.
18 And then turn to instruction, I'm sorry, to Verdict
19 Form J.
20 Verdict Form J. We, the jury, find the Defendant
21 Steven Sandstrom either guilty or not guilty of tampering with
22 the witnesses charged in Count 5 of the indictment and as
23 defined in Instruction No. 39. Note: Answer the following
24 question only if your finding on this count is guilty. If your
25 finding on this count is not guilty, sign and date this form.

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1 We, the jury, unanimously find that the Defendant
2 Steven Sandstrom unlawfully killed William McCay with malice
3 aforethought as discussed in Instruction No. 42. A space for
4 you to mark either yes or no.
5 And then, we, the jury, unanimously find that the
6 killing of William McCay was premeditated as discussed in
7 Instruction No. 43. Again a space for you to check yes or no.
8 There are twelve signature lines underneath that.
9 I think you'll find the rest of the verdict forms
10 self explanatory.
11 Does anyone have anything further before we release
12 the jury for the day?
13 MR. KETCHMARK: Not from the government at this time,
14 Your Honor.
15 MR. OSGOOD: No, Your Honor.
16 THE COURT: Mr. Rogers?
17 MR. ROGERS: No, Your Honor. Thank you.
18 THE COURT: Please turn to Instruction No. 8 and
19 follow along with me.
20 We're about to take another recess and I remind you
21 of the instruction that I gave you earlier, during this recess
22 or any other recess you must not discuss the case with anyone
23 including your fellow jurors, members of your family, people
24 involved in the trial or anyone else. If anyone tries to talk
25 to you about the case, please let me know that immediately. Do

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1 not read, watch or listen to any news reports of the trial.
2 Finally, keep an open mind until all the evidence has
3 been received and you have heard the views of your fellow
4 jurors.
5 Folks, we're finished for today. Thank you very much
6 for your attention. Please be back in the jury room at 8:30 in
7 the morning and ready to return for closing arguments. Good
8 night.
9 (The following proceedings were had OUT OF THE
10 PRESENCE AND HEARING OF THE JURY:)
11 THE COURT: Think we're done. See you tomorrow.
12 (End of session)

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VOL Eleven (11)

1 MAY 7, 2008 -DAY 11

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Good morning.

5 We're missing Mr. Osgood and Mr. Rogers. You might
6 grab them if you would, please.

7 All right. David, you mentioned you had something to
8 talk about.

9 MR. KETCHMARK: I did, Your Honor. I just wanted to,
10 and I talked with defense counsel moments ago, but wanted to
11 make an oral motion in limine on what I believe or suggesting
12 to preclude as an improper argument. I know there's been
13 several times throughout the trial where there has been
14 references to state matters. And what I'm fearful of, you
15 know, obviously, we approached every time and the Court
16 sustained the objection on relevancy grounds. I think there's
17 a possibility, I'm not suggesting this would come up but this
18 is a more prophylactic request to preclude any type of
19 reference to a possible state prosecution in the event that
20 they were to acquit these defendants. I think it's improper.
21 It's irrelevant. And it impermissibly would suggest there is
22 some kind of safety net that this jury has in making their
23 deliberations. I think they, obviously, need to focus on what
24 their job is, and deliberate the evidence based on the evidence
25 and apply it to the elements. And whether there could be a

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1 subsequent state prosecution in the event of an acquittal is
2 irrelevant.

3 MR. OSGOOD: I think that I have the right to say if
4 you don't accept their evidence, send us back over to state
5 where it came from. That's in evidence in the case. I'm not
6 going to say there's double jeopardy or no double jeopardy or
7 dual sovereignty or anything like that. But it's in the
8 evidence. If you don't believe their evidence, send it back to
9 the state where it came from, ladies and gentlemen.

10 MR. GROMOWSKY: Your Honor, I would agree with
11 Mr. Osgood. I would also state that I disagree that every
12 objection to the mention of a state court case or prior state
13 court case has been sustained. In fact some of the evidence
14 came in and it wasn't objected to at all.

15 Additionally, as you know, the jury is allowed to
16 take their common knowledge and experience into the jury room
17 with them. Their common knowledge and experience is going to
18 be the same as ours, which is cases like Rodney King and cases
19 like--that is happening right now, cases like Oklahoma City
20 bombing. They were all prosecuted at the federal and state
21 level. The jury knows that. We feel we can remind them of
22 that. It is argument.

23 THE COURT: Whether the evidence was objected to at
24 the time it came in seems to me not to be the issue. The issue
25 is whether it is proper for you to argue to the jury that they

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1 should acquit here so the state can prosecute them. I think
2 that's improper argument. If the evidence here is not strong
3 enough to find the defendants guilty then you should tell them
4 they should acquit and that should be all that you tell them.

5 So the government's motion is granted.

6 MR. KETCHMARK: Thank you, Your Honor.

7 THE COURT: Shall we see if the jury is ready, Eva?

8 (The following proceedings were had IN THE PRESENCE

9 AND HEARING OF THE JURY:)

10 THE COURT: Please be seated.

11 Good morning. Welcome back.

12 Ms. Fees will hand you Instruction 11B. That's the
13 initial instruction I gave you yesterday before I began reading
14 to you. We have converted that instruction to a written
15 instruction and you can insert it into your instruction book.

16 Logically, it would go behind 11A.

17 As I told you yesterday, this morning we will hear
18 closing arguments from counsel. I have, they have requested
19 and I have agreed that they could have up to two hours a side
20 to make their closings to you. The government will begin and
21 the defendants will split their two hours in whatever formula
22 they agree upon among themselves. Then the government will
23 have an opportunity to rebut.

24 Probably at about two hours we'll try to take a break
25 so that everyone is comfortable. And it just kind of depends

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1 on how the arguments go as to when we do take that break. But

2 if you get uncomfortable, let me know and we'll stop.

3 All right. Mr. Gibson, are you ready?

4 MR. GIBSON: Yes, sir. Thank you.

5 Good morning.

6 In the early morning hours of March 9, 2005, William

7 McCay was walking down 9th Street, right here in Kansas City,

8 Missouri, in America, to his place of employment at Aeroform.

9 As McCay walked that public street, taking a route he no doubt

10 had traveled many times before, he had no idea that Gary Eye

11 and Steven Sandstrom were going to take his life. Because he

12 was black. Because he was on a public street. And,

13 ultimately, because, ladies and gentlemen, they didn't want you

14 to hear Mr. McCay's voice. Eye and Sandstrom were playing a

15 game called, nigger, nigger, nigger.

16 But let's back up for a second or rather fast forward

17 from March 9, 2005 to March 16th of 2005. Gary Eye is in

18 custody. Steven Sandstrom is not. Steven Sandstrom is one day

19 away from having been taken into custody. And Eye calls to

20 talk to Sandstrom. And what do we hear? And we play 83D1,

21 please.

22 (The tape is being played.)

23 MR. GIBSON: Pause it, please.

24 Stevie. Here, we go again. Hey, I'm going to play

25 our game tonight. Okay?

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1 Eye. Oh, yeah.

2 Stevie. And I am going to play our game tonight.

3 Eye. That's for real, nigga.

4 The law refers to this as a closing argument. But,

5 ladies and gentlemen, I don't want to argue with you. I don't

6 want to argue at you. I want to reason with you. I want you

7 to explore the facts and apply logic and common sense to this

8 case as we discuss the evidence together.

9 You see a trial is the search for the truth. And the

10 truth is that William McCay was gunned down on a public street

11 for the simple reason that he was born black and had the

12 audacity to find himself on a public street in northeast Kansas

13 City, in an area that these two defendants claim for

14 themselves. More than that, he was shot and killed to subvert

15 the very truth determining process that we are here engaged in

16 today. We can't hear from McCay because they didn't want you

17 to. They certainly did not want McCay to walk through those

18 doors and take that witness stand and tell you about the events

19 of March 9th.

20 Now, let's talk about the charges. And I know we all

21 went through the instructions yesterday. And I'm only going to

22 touch on a few of them. And that's not because I think some

23 are more important than others but it's because we need to

24 explore some of what I expect the defense to say and we need to

25 have a clear understanding of what it is that the government is

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1 required to prove.

2 Could I see Instruction 24, please?

3 Now, ladies and gentlemen, it is important to

4 remember that the law, our law protects us all from us all.

5 Counts 1 and 3 are not about racism. Counts 1 and 3 do not

6 require the government to prove that anyone is racist. No

7 one's views, no matter how repugnant they may be, subject one

8 to a criminal trial in the United States of America.

9 What Instruction 24, regarding the shooting at 9th

10 and Spruce, and Instruction 25, regarding the shooting at 9th

11 and Brighton require is that the government demonstrate that

12 William McCay was selected because of his race. We, as a

13 country, have decided that we will not tolerate selecting a

14 fellow human being for violence, for death, simply because of

15 the pigment of his skin or the accident of his birth.

16 Nowhere in that instruction does it require the

17 government to demonstrate or satisfy to anyone that these two

18 individuals are racists. But, ladies and gentlemen, if not

19 race, why? There is not a shred of evidence that either of

20 these two individuals knew William McCay before they laid eyes

21 on him on March 9th of 2005. Not a shred of evidence. No

22 relationship, no grudge, no dispute, no exchange of words of

23 any kind or any prior relationship whatsoever. If not race,

24 why?

25 Well, the defendant's own words. Gary Eye. You do

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1979

1 one, I do one.

2 Gary Eye. I smoked that nigger.

3 Gary Eye. Nigger was in my hood on my time. My hood

4 on my time. So I smoked his ass.

5 Steven Sandstrom in the car with Vincent Deleon as

6 they drive past the crime scene the same day of the murder,

7 that's where Gary shot that nigger.

8 Circumstantial evidence of intent, corroboration is

9 reflected in the words and the deeds and the vocabulary. And,

10 ladies and gentlemen, I, again, submit to you, if not race,

11 why? Not a single alternative motive has been supplied.

12 MR. OSGOOD: Objection.

13 THE COURT: Step up.

14 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

15 PROCEEDINGS WERE HAD:)

16 MR. OSGOOD: They just shifted the burden of proof to

17 the defense suggesting that we were to supply a motive as to

18 why it happened. That's a constitutional error. Sixth

19 Amendment right not to have to present any evidence.

20 MR. GROMOWSKY: We concur with that, Your Honor.

21 It's a definite comment to get on the stand and defend

22 ourselves.

23 MR. GIBSON: It is not. They don't have to put on a

24 defense. They chose to put on a defense. The government is

25 entitled to put on that defense.

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1 THE COURT: Overruled.

2 MR. OSGOOD: I'll ask for a mistrial.

3 THE COURT: Denied.

4 MR. GROMOWSKY: We concur.

5 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

6 MR. GIBSON: Now, show Instruction 28, please.

7 Now, with respect to Instruction 28, as the Court has

8 already advised you, while the government is required to

9 demonstrate that race was a factor in the selection of William

10 McCay as a victim, it need not be the only factor. The

11 defendants can have other reasons for killing William McCay.

12 Often individuals, as the instruction notes and it's common

13 sense, have multiple reasons for their actions. Indeed, here

14 the government has demonstrated to you that there was, in fact,

15 a significant second motivation at the 9th and Brighton Street

16 shooting. Not only did Eye and Sandstrom want to finish what

17 they started with respect to the shooting at 9th and Spruce,

18 not only were they seeking to terminate William McCay's life

19 because he was black on a public street. But they sought to

20 silence him as a witness. They sought to prevent him from

21 communicating, first, to the authorities then, ladies and

22 gentlemen, to you.

23 Now, ladies and gentlemen, with respect to the counts

24 involving the shootings at 9th and Spruce and 9th and Brighton,

25 the government is required to demonstrate that the defendants

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1 willfully violated, willfully attempted to interfere with
2 William McCay's right to be on a public street because he was
3 African-American. That does not require them to be able to
4 cite the statute number. That does not require them to know
5 the date when Congress passed that law. It merely requires
6 that they knew they were doing something wrong and they knew
7 they were doing something wrong to William McCay that the law
8 forbids. Period.

9 Now, I want to move on to the discussion of Count 5,
10 which also is tailored in with the counts involving the weapon
11 leading to the death of William McCay. And I want to discuss
12 with you what premeditation means. What malice aforethought
13 means and what it doesn't mean.

14 Would you go to Instruction 37, please?

15 Malice aforethought means an intent at the time of a
16 killing willfully to take the life of a human being or intent
17 willfully to act in callus and wanton disregard of the
18 consequences to human life. Malice aforethought does not
19 necessarily imply any ill will, spite or hatred toward the
20 individual.

21 But what do we have here? Gary. You do one, I do
22 one.

23 Stevie to Jonnie Renee. Shit, you going to see a
24 homicide.

25 Gary. It's on site.

1982

1 Gary. Give me the strap.

2 And when Gary utters those words as they're going

3 down the alleyway between 9th and Spruce, everyone in that car

4 knows exactly what the strap is intended for.

5 Instruction 38, please.

6 A killing is premeditated when it is intentional and

7 the result of planning or deliberation. The amount of time for

8 premeditation of a killing depends on the person and the

9 circumstances. The amount of time required for premeditation

10 cannot be arbitrarily fixed. Any interval of time between

11 forming the intent to kill and acting on that intent which is

12 long enough for the defendant to be fully conscience and

13 mindful of what he intended and willfully set about to do, is

14 sufficient to justify the finding of premeditation.

15 Ladies and gentlemen, premeditation can form in an

16 instant as long as it takes the impulse to travel from my

17 brain, down my arm to pull that trigger with the intention to

18 kill, that is premeditation. One trigger pull, a decision.

19 Two trigger pulls, a decision. Three trigger pulls, three

20 decisions. Premeditation does not mean smart. It does not

21 mean sophisticated. It does not mean well executed or complex.

22 And with respect to the attempt or the successful

23 attempt, actually, to silence the witness, to silence William

24 McCay, as the Court has already told you, the government does

25 not have to prove that a particular defendant intended, excuse

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1983

1 me, does not need to prove that a particular defendant intended
2 to prevent communication with a specific law enforcement
3 officer whom the defendant knew or believed to be a federal law
4 enforcement officer or even that a federal investigation had
5 been initiated or was imminent.
6 What are the facts here? The defendants acted
7 quickly. They acted quickly. And they don't get to be
8 rewarded for their quick action and decisive execution of
9 William McCay by arguing, we didn't know there was an
10 investigation. We didn't think there was going to be an
11 investigation. Ladies and gentlemen, no one asked you to leave
12 your common sense outside the courtroom when you were selected
13 as jurors and the law is, generally, common sense.
14 Now, despite all the distractions, despite the
15 misdirections, despite the cacophony of noise intended to cloud
16 and mask what happened here, the facts are these. And I'm
17 going to start with after the point where they've already been
18 north of the river, they've already obtained the purple Jeep
19 and Rios and Eye have already separated from Sandstrom.
20 And if you recall from the evidence, Sandstrom was
21 not at all happy to have been ditched by Rios and Eye and so at
22 some point when they finally start to return or pick up the
23 phone, they agree to meet at Jonnie Renee's on Garner Street.
24 And it's at that point, ladies and gentlemen, that the
25 discussion begins, the ideas are formed, that plans are made.

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1984

1 The very genesis, the very beginning, then at that point.
2 Because Stevie Sandstrom reports to Rios and Eye that he shot
3 at some nigger at 7-Eleven on Prospect. And that he was mad
4 that they weren't with him. As Rios told you, he didn't know
5 if he hit the person he shot at or not. But he was stressing
6 it real hard. And they leave for Sandstrom's house. Where
7 they talk about the incident at 7-Eleven again. Until they get
8 the call to meet Vincent at Jonnie Renee's. And Sandstrom,
9 driving them in the Intrepid, they drive over to pickup
10 Vincent.
11 Now, Vincent is in the car. Now, we have four people
12 in the car. And, again, the discussion about the 7-Eleven.
13 Sandstrom has the gun. And Deleon sees the gun. Sandstrom
14 tells Deleon, I will kill a nigger quick.
15 Eye. You shoot a nigger, I shoot a nigger.
16 Sandstrom. It's not like that, dawg.
17 Eye. You started it up. Let's finish it.
18 Now, this conversation is enough to suggest to
19 Mr. Deleon that perhaps his time is best spent elsewhere. When
20 they steal the vehicle for Deleon, they split up.
21 Eye, Sandstrom, Rios, go back to the Sandstrom's
22 house where they smoke their meth and where Sandstrom still has
23 his mother. And when they get ready to leave, when they get a
24 call to go to another location because they're going to have to
25 pick up Jonnie Renee Chrisp, when they get that call, Stevie

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1 makes sure to have his gun on the way out the door. And,
2 ladies and gentlemen, they bring up the 7-Eleven shooting in
3 the car again. Sandstrom, again, refers to the 7-Eleven
4 shooting.
5 Gary, do you think I hit him?
6 How do I know? I wasn't there.
7 You get to do one. I get to do one.
8 Gary Eye. The next nigger is on site.
9 Now, ladies and gentlemen, when Rios originally
10 talked to the authorities, this was not one of the
11 conversations she wanted to share with the agents. And why is
12 that? Because this conversation already shows what they were
13 intending to do later. They arrive at Inner City Oil. Now,
14 despite, despite Mr. Eye's announcement that the next one is on
15 site and Rios explained to you what that means, despite that
16 announcement, we're not so unsophisticated we're going to start
17 firing wildly while all kinds of people are congregating at the
18 Inner City Oil. Too many present. Too many witnesses.
19 They pick up Jonnie Renee at the Inner City Oil. And
20 in the discussion on the way to Jonnie Renee's house, Jonnie
21 Renee, who is already disturbed when she was riding around with
22 Vincent and he was acting crazy. Jonnie Renee, who just wanted
23 to go home. Jonnie Renee, who was ready to call it a night,
24 believed they're about to pass her house. They're about to
25 pass the turn. Whoa. You're going to pass my house. I want

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1986

1 to go home. I want to get out.
2 Stevie Sandstrom. If you stay with us, you will see
3 something you don't want to see.
4 Or as Jonnie Renee said from the witness stand, shit,
5 you about to witness a homicide.
6 Jonnie Renee. I'm not witnessing anything. You are
7 taking me home.
8 Jonnie Renee made a decision to get out of the car.
9 Jonnie Renee had the opportunity to weigh, to deliberate, to
10 decide whether or not she wanted to participate in this and
11 Jonnie Renee got out of the car.
12 But before she did that, before they get to her
13 house, she, too, sees the gun in Sandstrom's possession.
14 And, ladies and gentlemen, this is also a
15 conversation that Rios did not want to share with the Kansas
16 City homicide or with these agents when she was originally
17 contacted and interviewed. And she told you exactly why. Rios
18 didn't make the same decision that Deleon did. Rios didn't
19 make the same decision that Jonnie Renee did. Rios stayed in
20 the car. But Rios knew, just like everybody else in that car,
21 everybody else in the Intrepid, Gary Eye, Steven Sandstrom knew
22 what was going to happen.
23 Ladies and gentlemen, you didn't hear just about that
24 conversation from Regennia Rios. You heard about that
25 conversation from Jonnie Renee. What does Jonnie Renee tell

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1 you when she's finally dropped off? It's clear from Rios.
2 It's clear from Jonnie Renee. Yes, they're cousins. Yes,
3 they're blood. No, they're not speaking. And, no, they would
4 prefer not to have anything to do with each other. But having
5 heard the conversation in the Intrepid on the way to Jonnie
6 Renee's house, Jonnie Renee goes out of her way to say to Rios,
7 be careful. I love you. Because it is clear what their intent
8 is. It is clear what they are planning to do.
9 Where do they go from there? They leave, again, for
10 Inner City Oil to get Rios some cigarettes. And, again, they
11 approach Inner City Oil. Again, too many people. Too many
12 witnesses.
13 So they decide to head down 8th Street to Leon's for
14 the beats, for the stereo equipment in a car. And they take
15 8th Street. And we asked Jonnie Renee, why did you --excuse
16 me --we asked Regennia Rios why did you take 8th Street? Why
17 did you take 8th Street? Why not 9th? It's the shift change
18 in the police department. That area is crawling with cops at
19 that time of day. We were avoiding the cops. We were
20 planning. We were thinking. We were pre-meditating. We were
21 avoiding law enforcement. Avoiding the cops.
22 But they never get to Leon's. Because, now, as the
23 evidence has clearly demonstrated, now is the moment when
24 William McCay had the misfortune to be seen walking to work by
25 these two defendants.

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1 And Gary Eye says, hit the alley.
2 And what does Steven Sandstrom do? He hits the
3 alley.
4 As they drive down the alley, more conversation. Eye
5 asks Sandstrom for the strap. The gun. There can only be one
6 reason to ask for the gun. They have seen an unarmed man,
7 walking alone on the street by himself. Give me the strap.
8 Sandstrom, egging him on, you don't have the heart.
9 Eye. Give me the strap.
10 The car proceeds to the end of the alley. The end of
11 the alley. Not 15, 20 feet back from the sidewalk. Not 15,
12 20 feet back from the building that borders that sidewalk.
13 They drive to the end of the alley. And Eye puts the gun out
14 the window. Puts the gun out the window, aims it at McCay.
15 Multiple shots. Multiple trigger pulls. Multiple decisions.
16 Give him the first shot. What is his intent on the second? On
17 the third?
18 And you don't just have Regennia Rios telling you
19 there are multiple shots. You have Mr. Thompson, who was at
20 the G & E Cafe. Multiple shots. But Gary is a bad shot with
21 Stevie's duece duece. So he misses. But they don't know that
22 yet. Sandstrom pulls the Intrepid out of the alley. And Eye
23 tells him to hit the block again. And what does Sandstrom do?
24 Exactly what Gary instructed him to do.
25 Ladies and gentlemen, they went back to see their

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1 handiwork. They drive back around the block and back to the
2 9th and Spruce area, back to the alleyway and McCay is not
3 there. McCay is not there. Gary is frantic and makes
4 statements about, I shot him point blank. There's no way he
5 could not be there. Gary says they need to find him. Gary
6 says they need to find him. Discussion, planning,
7 premeditation. Decision making time.
8 Stevie looks at Rios. And Rios says, we could catch
9 a case. He's seen our faces. As Rios told you, he was 4 feet
10 away from the car, 2 to 4 feet away from the car when Gary
11 fired the weapon. They're all surprised that he wasn't hit.
12 We could catch a case. McCay could be a witness.
13 Stevie. You're tripping. You're doing too much.
14 You took it to an all new level. Stevie tells Gary, he was
15 acting stupid. This is way too much.
16 And then the conversation about going back. We need
17 to find him. We could catch a case. Again, it's decision
18 time. It's decision time. What does Sandstrom decide to do?
19 Follow Gary's instructions to the letter. They start driving
20 around looking for McCay.
21 Now, in his opening statement counsel for
22 Mr. Sandstrom conceded that there was a first shooting at the
23 alley at 9th and Spruce. He had to do that because he wants to
24 wave Stevie's statements, you're tripping. You're doing too
25 much. You took it to a whole new level. He wants to wave that

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1 in front of you and say he wasn't on board for this. But what
2 do they really mean? Stevie has done nothing but indicate it's
3 full speed ahead from the moment they started discussing, it's
4 on site. And so to the extent that Sandstrom appears to
5 protest, if only for a moment, what does this really mean?
6 What is the real significance of this conversation? Weighing,
7 deliberating, deciding, choosing to do what? To hunt down
8 William McCay and take his life.
9 But not only, not only do you have that evidence from
10 Sandstrom corroborating there was the first shooting, you also
11 have Sandstrom's letter to Kristina Chirino, which is 131B on
12 the Government's Exhibit list, where if you recall Sandstrom
13 asks Chirino to contact her cousin, Vincent Deleon, and tell
14 Vincent to say, Gary made me turn around, turn around, go back.
15 Stevie's own words in his own hand. Go back to where? It can
16 only be to finish off McCay.
17 The evidence as Sandstrom's counsel put forth in his
18 opening to suggest to you that Sandstrom was not on board with
19 this, means precisely the opposite. The weighing of options,
20 the decision and Stevie follows the plan. Sandstrom begins
21 driving around, following Eye's specific instructions, turn
22 here, turn there, turn right, turn left, looking for McCay.
23 Eventually, approaching 9th and Brighton. About 4 tenths of a
24 mile from the first shooting. Roaming the streets, looking for
25 McCay. McCay, the black man. McCay, the witness. McCay to be

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1991

1 killed.

2 And by the way, while we're at this point, where did
3 this discussion of two minutes come from? There is no more
4 evidence in this record of there being a two minute interval
5 between the two shootings than there is evidence of Eye and
6 McCay rolling around on the ground. Not one witness took that
7 witness stand and testified that there was a two-minute
8 interval between the shots at 9th and Spruce and the shots at
9 9th and Brighton. The statements of the lawyers, mine
10 included, are not evidence no matter how much the lawyers would
11 like them to be.

12 The evidence shows you that Thompson arrived at the G
13 & E Cafe at 6:00 a.m. and hears the shots. He hears the 9th
14 and Spruce Street shooting. The Band-Lugos call 9-1-1 at
15 6:12 a.m., nearly a quarter of an hour later, to report the
16 multiple shots at 9th and Brighton. There was nearly a
17 15-minute window for McCay to walk, run or crawl the 4-tenths
18 of a mile from the first shooting to where he eventually lost
19 his life.

20 And that same 15 minutes, they're looking. They're
21 looking. They're following the plan. They're premeditating.
22 They're weighing. They're deliberating. They're looking for
23 him. We need to find him. And Eye spots him first. Tells
24 Sandstrom to pull over. Everyone knows why the Intrepid is
25 being pulled over. Does Sandstrom say then, no, man, you're

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1992

1 tripping. You're taking it too far. No man. This is too
2 much. What does Sandstrom do then? He pulls over the car.
3 McCay, again, walking on 9th Street. Ladies and
4 gentlemen, on 9th Street, almost within sight of where he
5 works. Almost safe. Almost there.
6 Gary gets out of the car. Gun in the pocket of his
7 hoodie. Approaches McCay. We're not fooling around this time.
8 No shots from the car. Not going to miss this time. Going to
9 be close enough to make sure I put him down is what is going on
10 in Gary's mind. That's why he's out of the car.
11 Rios, who has a view from behind, tells you she sees
12 them meet in the street. Do you know who else told you that?
13 McDaniel saw them meet in the street. You know, who else told
14 you that? Mr. Wright saw them in the middle of the street.
15 Does Gary fire first and then there's a struggle?
16 Does Gary engage in the struggle then there's a shot? Does it
17 matter? Multiple shots. The gun in Eye's hand. And
18 apparently we're suppose to believe that although they didn't
19 end up rolling around on the ground, if they're face to face,
20 engaged in this struggle, McCay is fighting for his life, Eye
21 should be able to hit him three times if there's three shots.
22 Does that make any sense? He hit him once during the struggle
23 as McCay is fighting for his life.
24 And how do we know that? Gary Eye's DNA is under
25 William McCay's fingernails. Gary Eye's DNA is under William

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1993

1 McCay's fingernails.
2 Each shot at that location was a decision. Each shot
3 was an expression of the intent to kill William McCay. Each
4 shot. Rios told you there were multiple shots. Wright told
5 you there were multiple shots. The Lugos, both of them, told
6 you there were multiple shots.
7 McDaniel, who sees this in his rear view mirror and
8 keeps going, was the only one who said he only heard one shot.
9 But he kept going. McDaniel didn't tell you they were rolling
10 around on the ground. Rios didn't tell you they were rolling
11 around on the ground. Wright didn't see that. Because it
12 didn't happen.
13 Now, what happens? Now, what happens? Stevie is
14 watching this, too.
15 Rios. What are you doing? Go get him.
16 And what does Sandstrom do? He goes and picks up
17 Gary. Again, following the plan.
18 He pulls up the Intrepid and Gary gets back in the
19 car, back in the passenger seat. As McCay's life is bleeding
20 away and he stumbles in front of the Intrepid, eventually
21 collapsing over the chain link fence.
22 And then what happens?
23 Well, now, now, it's time to get rid of the evidence.
24 It's time to get rid of the evidence. But as I'm sure you all
25 recall, they don't get rid of all of it right away. But first

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1 things first, let's take care of the Intrepid. Now, who takes
2 point on this? Well, Stevie is driving and Stevie takes them
3 where? Back to his house, where they have the purple Jeep. So
4 Rios and Eye get in the purple Jeep and Stevie leads the
5 caravan over to 23rd and Manchester. Stevie selects the
6 location to burn the Intrepid. Rios told you there was no
7 discussion. They knew what they were doing but they were
8 following Stevie.

9 The two vehicles drive to 23rd and Manchester and
10 under the bridge by railroad tracks, Sandstrom sets the
11 Intrepid on fire. And you know what, ladies and gentlemen,
12 when he comes running back to tell Rios and Eye, I think
13 there's somebody on the train who saw us, do you know what? He
14 was absolutely right. Because you heard from that gentleman.
15 You heard from Mr. Peter Paschetti. And the fire department
16 investigator told you quite clearly that was an intentionally
17 set fire. An intentionally set fire. An intentionally set
18 fire by these defendants to burn that vehicle to destroy the
19 evidence.

20 What else do we know about that scene? The media
21 responded. And I'm sure you all recall why that's going to
22 prove to be important later. The media responded.
23 Where do they go next? Do they split up? Do they go
24 their separate ways? Do they say, hey, man, that was too much.
25 I'm not down for this any more. Catch you later, dawg? No.

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1 They stay together. They stay together and they go to the
2 Stanley house.
3 And what happens at the Stanley house? And how
4 important is this and what does this tell you about the mindset
5 of the defendants? Vincent Deleon told you Gary Eye, in
6 reference to the shooting at 9th and Brighton, I did that shit.
7 Gary Eye. I smoked that nigger.
8 Vincent told you the news reported three black males
9 were suspected to be involved in the shooting. And what is the
10 reaction of Gary Eye and Steven Sandstrom?
11 Well, this is funny. This is hilarious. They're
12 looking for three black males.
13 Stevie Sandstrom. Like it, love it or leave it.
14 They leave the Stanley house with Vincent and head
15 toward Jonnie Renee's.
16 As they drive near the crime scene, ladies and
17 gentlemen, you don't have to roll right up on that crime scene
18 to see the yellow tape. You don't have to be right next to
19 where they put William McCay down to see that yellow crime
20 scene tape. But they drive by it. And they see it and Vincent
21 Deleon told you.
22 Stevie Sandstrom's words, that's where Gary shot that
23 nigger.
24 Eye. Laughing again, here, nigger, nigger, nigger.
25 They are proud of it. They are proud of it. And,

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1 again, Vincent, not quite on board with this conversation.
2 They call ahead to Jonnie Renee's to see if they can
3 go there and hang out for awhile. Get off the streets. Get
4 away from the cops.
5 Eye turns on the news? More coverage of the
6 homicide. Conversation in the Jonnie Renee basement. Again,
7 about what they have just done.
8 And Rios observes, well, if we keep it to the five of
9 us, Stevie, Gary, Regennia, Vincent, Jonnie Renee. We keep it
10 to the five of us, maybe this won't get out. Maybe this won't
11 get so bad. There is, of course, a sixth person who could have
12 told us what happened. His name was William McCay. But they
13 had taken care of that problem.
14 What does Stevie say? As the coverage of the burning
15 Intrepid comes on the T.V., fucked up a good Intrepid.
16 Jonnie Renee. You have got to go. I don't know what
17 you did but you have got to go. Shows them the door.
18 They steal yet another car. And then Eye and his
19 best friend Vincent Deleon end up back at Gary Eye's place.
20 Shower. Get ready for the day.
21 What does Eye say to Vincent then? Me and Stevie
22 were playing, nigger, nigger, nigger.
23 But there are more conversations and you heard them
24 from this witness stand. And, you know what, ladies and
25 gentlemen, the government didn't go to central casting and

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1 select Regennia Rios. The government didn't go looking for
2 Jonnie Renee Chrisp to bring her into this case. The
3 government didn't hand pick Jonathan Chirino and Kristina
4 Chirino or Stephanie Sandstrom to come in here. You know who
5 selected them? Do you know who chose them to be a part of
6 this? Do you know whose friends they are, whose associates
7 they are, whose sex partners and drug dealers they are? Gary
8 Eye and Steven Sandstrom. Their friends. Their associates.
9 Their family, for lack of a better word.
10 Kristina Chirino, Jonathan Chirino came in here and
11 told you about conversations that happened a few days after the
12 homicide. And why is that relevant? They're still proud of
13 it. And they're still acknowledging what they had done. In
14 Kristina Chirino's basement, Eye says, that nigger was walking
15 in my hood on my time so I smoked his ass.
16 And he went further. Couldn't believe he was still
17 there after he shot him the first time. And Kristina starts
18 asking questions.
19 You heard from Rios and Chirino. Walking in my hood
20 on my time.
21 You also heard they specifically referenced the
22 Prospect area. Gary Eye. I don't go over to their hood. They
23 shouldn't be coming over to mine.
24 And Rios in a comment that will haunt her for the
25 rest of her days, says, if Stevie had better aim we would have

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1998

1 had two dead niggers. What is she talking about? She's
2 talking about the 7-Eleven shooting that Sandstrom told them
3 about that started this whole ball rolling downhill.
4 And at that point Stevie gets a clue, let's stop
5 this. No more talk (motioning).
6 Now, let's move to March 17, 2005. They burn the
7 Intrepid. Got rid of that evidence. They cleared out the
8 personal belongs before they set it on fire. They killed the
9 witness to the 9th and Spruce Street shooting. And, obviously,
10 William McCay was not going to be able to testify to what
11 happened at 9th and Brighton. But he can't bring himself to
12 get rid of the gun. That's Stevie's duece duece. It's got a
13 body on it now. I'm hanging on to that gun. That's my gun.
14 He still has it on the 17th. It's his trophy from the killing
15 of William McCay.
16 Jonathan and Kristina Chirino both told you how on
17 the 17th Sandstrom shows up at their house. What does he have
18 with him? The gun. And what follows shortly thereafter? The
19 police.
20 And what happens next? Well, Stevie panics. Maybe I
21 should have got rid of that gun. And I really don't want to be
22 having that gun on me now when they come down in this basement
23 and they grab me. So I'm going to tuck it in the closet.
24 Chirino saw it. Told you about it. Both of them, Jonathan and
25 Kristina. Gun goes in the closet. And Sandstrom sits back

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1 down, waiting for the cops to come downstairs. When the cops
2 ask for names, they ask for ID, what does Stevie do then? In a
3 display of consciousness of guilt, give them a bad name. But
4 you know what? They knew who they were looking for. They were
5 looking for Stevie Sandstrom and they took him. And you heard
6 the conversation after he's taken into custody. He calls his
7 sister, you have to get that gun.
8 So what happens next? Stephanie Sandstrom, now, he
9 put his sister in it. Stephanie Sandstrom has to go get the
10 gun from the house. How do we know that happened? Well,
11 Stephanie Sandstrom told you about that. And, of course,
12 Jonathan and Kristina Chirino, who were there at the time, they
13 told you about it. She picks up the gun from the closet where
14 he deposited it, and following his instruction, tries to get
15 rid of the evidence for him on his behalf.
16 She tosses it in the river over the bridge. When she
17 finally comes clean about that, she leads these investigators
18 right to it. Right to it. You heard from the divers from
19 Lee's Summit Underwater Rescue talk about the recovery. About
20 the painstaking search in the area where Stephanie Sandstrom
21 told you she deposited it. And they just happened to find a
22 .22 caliber handgun, a .22 caliber revolver. After a
23 painstaking search amid other debris, including bowling balls
24 and newspaper machines, they found the gun.
25 But don't just take her word for it or the Lee's

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1 Summit divers. Take Stevie's word for it. Because as you
2 recall in letters, in conversations with others, he announces,
3 it's all bad. They found the gun.
4 Now, ladies and gentlemen, as we told you before we
5 don't have to show that these defendants are racists. But you
6 are not required to be mind readers. You are permitted to look
7 at all of the evidence in the context in which these events
8 took place to determine what was their intent.
9 And in their own words, in their own expressions,
10 what do they tell you? Stephanie Sandstrom told you that in
11 her brother's bedroom she heard Gary Eye say, he shot the
12 nigger. She told you there was no doubt in her mind that's
13 what Eye said. She told you it wasn't possible he had said
14 something else.
15 Eye, again, bragging about it, says, in front of
16 Stephanie Sandstrom, he was in my hood on my time and he tells
17 her he got his points. A reference to the game.
18 From Vincent Deleon, who told you from this witness
19 stand, Gary Eye is his best friend or was. If he could save
20 anybody on this side of the room, it would be Gary. But what
2 did he tell you Gary said? I smoked that nigger.
2 Driving past 9th and Brighton, after the murder when
2 they see the crime scene tape, Stevie Sandstrom, that's where
2 Gary shot that nigger.
2 Vincent, again, told you Gary Eye said, here, nigger,

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1 nigger, nigger.

2 And he also said that McCay died slow. And, you know

3 what, we know that's true because he fought for his life.

4 And the medical examiner told you the reason there

5 was blood in the chest cavity, the reason he bled out into his

6 chest cavity is because the heart kept beating.

7 Now, what? Well, it's looking all bad as Stevie has

8 announced in his phone calls and his letters. Better do some

9 damage control here. We have an R problem. We have a Regennia

10 Rios problem. But Rios doesn't want to be found by these guys

11 or their friends or their associates. So in order to get a

12 message to Rios, Sandstrom selects the person he knows to be

13 her best friend in the world. The person that is so close to

14 Rios that when Rios is trying to distance herself from the

15 shooting, without speaking with her first, she says to the

16 police, I was with Galyean. Knowing that Galyean will back up

17 her story because they're best friend. So if you don't know

18 where Rios is and you want to get a message to her and it's

19 important, Sandstrom knows, the avenue is through Carolyn

20 Galyean.

21 And also of significance when Rios finishes talking

22 to the police, knowing that she's just told them she was with

23 Carolyn during the shooting, calls Carolyn immediately. Tells

24 her, you need to back up my alibi, because as she explains to

25 Galyean, she was with Gary when Gary shot that guy.

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1 Ladies and gentlemen, what these individuals, what
2 these participants, what these people say to each other, when
3 they think it's private, when they think it's going to stay
4 within the group, when they think it's going to stay among
5 their friends and associates, is critical to explain to you
6 what happened here. When Rios is talking to her best friend,
7 they can attack her for the next hundred days, when Rios is
8 talking to her best friend in private, I was with Gary when he
9 shot that guy.

10 Now, Stevie doesn't stop with just the letters which
11 are the specific basis for Count 9. Oh, no. He tries to get
12 word to Rios through Jonathan Chirino and Kristina Chirino.
13 And you heard those recorded conversations. She better get out
14 of the hood. You tell her I'm going to break her face. Over
15 and over he refers to R or Regennia as a snitch. Not a liar.
16 A snitch.

17 But the damage control isn't working out so we've got
18 to go to plan B, C, D. Kill the witnesses. Kill the
19 witnesses. And who does Stevie Sandstrom secure for that
20 little task? Justin Buchanan, who is looking at a November
2 release date and is corresponding with Stevie Sandstrom.

2 May we see 135C, please?

2 Blow it up, top part.

2 I got a paid lawyer. He told me straight up what's
2 going to fuck me. R. But other than that the case is weak.

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1 If you can handle that problem, I'm A-okay. Feel me? You need
2 to come see me, asap.

3 You know, R mom runs the trailer park where I used to
4 live. Either will open eyes. Feel me? A demonstration never
5 hurts. Just let's people know. Keep it real.

6 If you can't find R, Justin, think if we take care of
7 R's mom that will send a message that we need to send?

8 And what is suggested that we should make of these
9 conversations? Stevie was venting. Stevie gets upset.

10 Stevie, when he's bothered by his friends and associates, says
11 things he doesn't mean.

12 You know he probably should have explained that to
13 Justin, if that were the case, because Justin pled guilty to
14 threatening the witnesses. Justin took a hit for Stevie
15 because he knew what Stevie meant and he knew Stevie was
16 serious. Keep it real.

17 Sandstrom tells Kristina Chirino on the telephone
18 that Regennia is a snitch. He's read her 4-page statement.
19 She's a book writer, now. Tell that bitch I'm breaking her jaw
20 and you know what as you heard from the testimony, her
2 statement was 4 pages. He was reading it. He was engaged in
2 damage control.

2 Now, let's talk about the witnesses for a moment.

2 Let's talk about Regennia Rios and Justin Buchanan and Vincent
2 Deleon. You may not like Regennia Rios. You probably

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1 shouldn't. But there were three people in the Intrepid that
2 night. Sandstrom, who owned the gun and was driving the car
3 and who initiated the discussion of killing a nigger with his
4 announcement of what he had done at 7-Eleven. And who egged
5 Gary on and who passed him the strap. Or Gary Eye, the trigger
6 man, who couldn't wait to boast to all of his friends in the
7 hood that he shot the nigger for being in the hood on his time.
8 Then there is Rios.

9 So if we want to know what happened in the car, who
10 are we going to talk to? Crimes conceived in hell, ladies and
11 gentlemen, do not have angels for witnesses. You don't have to
12 like her to know that she's telling the truth. She's
13 corroborated by independent civilian witnesses who heard shots
14 at both locations. She's corroborated by Vincent Deleon and
15 Jonnie Renee, regarding the conversations in the Intrepid prior
16 to the shootings. She's corroborated about the conversations
17 after the murder by Jonnie Renee, Vincent Deleon and the
18 Chirinos, Jonathan and Kristina. She's corroborated by
19 Sandstrom's own sister, Stephanie.

20 Ask yourselves, why would Regennia Rios say that Gary
2 Eye was the shooter if it wasn't the case? Gary Eye is the one
2 she was sleeping with that night. If she's going to put this
2 on anybody, it's not going to be Gary Eye unless it's true and
2 that's what she told Galyean. In March of '05 Gary Eye was her
2 infatuation.

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1 Now, let's talk about Buchanan. And in the letters
2 to Justin, letter after letter after letter after letter,
3 Sandstrom is referring to the R problem and talking about
4 taking care of the snitch. You know what, you don't have to
5 like Justin Buchanan, came in here in prison orange. You don't
6 have to like Justin Buchanan. The letters, Stevie's letters
7 speak for themselves. As Justin told you, and repeatedly tried
8 to warn Stevie, the paper trail is a bitch in court. Buchanan
9 took those threats so seriously he pled guilty to them.
10 Vincent Deleon, you don't have to like Vincent Deleon
11 either. And, of course, he came in here in prison orange.
12 Vincent Deleon, Gary Eye's best friend in the world. Vincent
13 Deleon, selected by Steven Sandstrom and Gary Eye to run around
14 with them that night. Vincent Deleon, who they attack for
15 being involved in a murder that occurred five months after he
16 told the grand jury what he knew about the murder of William
17 McCay.
18 Jonnie Renee Chrisp. She was their drug supplier but
19 that doesn't mean she signed on for a murder. And when it was
20 decision time, she got out of the car.
2 Now, let's talk about the defenses for a little bit.
2 Before trial. Stevie, interviewed by the KCPD. Let's start
2 with the same strategy that Rios tried and failed. We'll not
2 give up the complete truth. We'll deny we were there. But
2 he's caught in his lies. And he eventually puts himself with

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1 the shooter with KCPD. And he explains to Justin, you know, I
2 figure a tampering is better than a murder but it all back
3 fired. So that plan is off.
4 Now, we've got to threaten the witnesses. Stevie
5 Sandstrom to Justin Buchanan. Bro, nobody can find R at all.
6 She's in hiding. Bitch, you can't hide forever.
7 Gary and Stevie together in the plan. Me and Gary
8 got a plan. We're going to put it on Regennia. How you like
9 me now, bitch?
10 Now, let's go to trial. Gary Eye. You know, you
11 were told to hold the attorneys to their openings. I
12 absolutely agree 100 percent. The government told you exactly
13 what we were going to show you through the course of the trial
14 and the government has kept its word. Now, contrast that with
15 rolling around on the ground. That didn't happen. That didn't
16 happen. Not a witness said that. But, by the way, if that
17 doesn't work, you don't buy this, I don't know, is it self
18 defense? Is it defense of others? Is it I got into a fight
19 and I don't know what happened. I didn't have the gun. I
20 really don't know what the defense is. But if that doesn't
2 work, over here in this corner we got, he's not a racist. Or
2 wait. Wait. Here. Let's try this one. Maybe Kansas City 9th
2 Street, maybe that's not a public street. Even though the City
2 of Kansas City comes in the courtroom and tells you, you know
2 what, it is a public street. We maintain it. We pay for it.

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1 We're in charge of it. But maybe you'll be confused about
2 that. That this thoroughfare used by McCay, Wright, McDaniel,
3 Thompson, and the Lugos to get to work, to get home, maybe in
4 fancy land that is a private gated community, without a gate.
5 Without a community. It's a liquor store at that location.
6 Nothing to attack burning the Intrepid. Nothing to
7 suggest that fire wasn't set, the car wasn't burned or that it
8 wasn't evidence.
9 Now, let's go to Stevie. First shooting happened, at
10 least that's what I thought the opening was. But then as I'm
11 listening to the questions during the trial, huh, is it the
12 first shooting happened or did it?
13 Over and over in the opening, you're taking it too
14 far. Rios is the shooter, maybe. Maybe Gary is the shooter.
15 By the way, if that doesn't work I'm not a racist, either.
16 Stevie said the gun was found in his letters but
17 curiously, his lawyers tried to suggest, it's not the gun.
18 Again, no defense on the Intrepid. Nothing about the fire or
19 the evidence. The threats, I didn't really mean it. We've
20 already talked about that.
2 As Steven Sandstrom told Jonathan Chirino in a
2 recorded telephone call as he was being held in custody, if I
2 get out, there's a fucking trick to it. His words. Not mine.
2 The defense witnesses. First, Mr. Eye wants you to
2 give weight to the staffer from the boys home who hasn't seen

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1 him or spoken to him in years and did not even directly
2 supervise him when he was at the juvenile facility. And who,
3 by the way, told them, there are other people who could talk to
4 you about Gary Eye. I'm not the best one. And yet still they
5 parade him in here. I wonder what that was about.
6 Now, they don't want you --strike that.
7 They didn't present anybody to talk about their use
8 of language around March 8, 9 of 2005. The only people who
9 talked about that from the witness stand were the government's
10 witnesses. Their friends, their associates, their sex
11 partners, their drug dealers. But don't believe that.
12 Sandstrom, now, this was an interesting display. We
13 bring in a probation officer from years ago, a juvenile
14 detention center worker from years ago. And we're expected to
15 believe that Sandstrom didn't have the sense or the self
16 control to keep his more vile comments to himself when dealing
17 with the people who have the keys to the cell door.
18 Again, no one from March 8, March 9, 2005 to talk
19 about his use of language then. It's five years ago, seven
20 years ago. These witnesses come in and want to talk about a
2 14-year-old Steven Sandstrom.
2 You don't have to look any further than Stevie's
2 letters to get a flavor for who Steven Sandstrom is.
2 And, finally, nigga versus nigger. You know, Rios,
2 Jonnie Renee, Vincent Deleon, Chirinos, Sandstrom's own sister,

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1 they all told there was a difference between nigga and nigger.
2 You know who else told you that? Eye's witnesses. Tina
3 Wilkerson perhaps put it best when she told you unequivocally
4 that nigger is a derogatory term. And Gary's sister agreed.
5 Nigger is a fighting word, an insult, demeaning. As they
6 demeaned William McCay that day. And, nigga, if you accept
7 what they are selling, nigga is a reference to my friend. My
8 homie. My associate. Someone I know on the streets. None of
9 which is William McCay, when they encounter him on March 9,
10 2005.

11 Can we see 126, please?

12 Stevie Sandstrom's own words in his own choice of
13 symbols.

14 And that takes us back to where we started. On
15 March 9 of 2005 as he stumbled across the street and collapsed
16 on the chain link fence by Lugo's house as his life blood
17 emptied into his chest cavity, William McCay never knew why he
18 had been gunned down. In his final thoughts he must have asked
19 why?

20 Gary Eye and Steven Sandstrom executed William McCay
2 because he was an African-American on a public street in their
2 hood on their time. So in the words of Gary Eye, I smoked his
2 ass, and he did it with Sandstrom's gun. Because McCay was
2 black, because McCay saw their faces, because they could catch
2 a case. McCay never knew why.

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1 But, ladies and gentlemen, you know why. And the
2 question before you, the question before all of you, is what
3 are you going to do about it?

4 THE COURT: You folks comfortable? Anyone need a
5 break?

6 Mr. Osgood?

7 MR. OSGOOD: Thank you, Your Honor.

8 Ladies and gentlemen, in opening statement I told you
9 that I thought the evidence would show certain things and part
10 of what I thought the evidence was going to show was several
11 different types of evidence, direct testimony, circumstantial
12 evidence and evidence of experts. All of that evidence is to
13 be considered by you.

14 One of the issues in the case is going to become very
15 important, which accounts for why the government talked about
16 where these statements that he points to as premeditation. Big
17 issue in the case is, was there a plan to kill William McCay?
18 And the proof of this or the lack thereof, of course, depends
19 on after the fact witnesses who told you quite frankly a number
20 of lies and contradictions. There was Regennia Rios, herself,
21 who said in the grand jury, I fabricated that.
22 Now, she passed on bits and pieces of this as time
23 progressed and it tended to take on a life of its own. And she
24 would tell them things. They would go and confront other
25 witnesses and those witnesses would then deny that was said.

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1 They would lean on them and then that witness would say, okay,
2 well, that was said. The best illustration of that was the
3 young Chirino boy who said that these two agents cussed him,
4 cursed him, threatened him and put words in his mouth. So then
5 they've got his statement. They take that to the next level
6 and give it to the next person.

7 There is a pattern of how this developed into what
8 ultimately, probably, was a simple and chance encounter in a
9 killing at 9th and Brighton. I'm going to come back to these
10 witnesses in a minute.

11 But I want to jump right to what happened at 9th and
12 Spruce. That did not occur. Now, why do I say that did not
13 occur? A number of factors and most importantly I'm going to
14 point to the witnesses that you can believe and the evidence
15 that you can rely on, which has not been impeached over and
16 over and over again. That's the witnesses of the experts.

17 Now, you're going to get an instruction, you've
18 already got it once, in deciding what the facts are, you may
19 have to decide what testimony you believe and what testimony
20 you do not believe. You may believe all of what a witness
21 said, or only part of it or none of it. In deciding what to
22 believe consider their intelligence, the opportunity the
23 witness had to have seen or heard things testified about, the
24 witness's memory, their motives that they may have for
25 testifying a certain way, the manners that they exhibited while

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1 testifying, and whether or not they said something different at
2 an earlier time and the reasonableness of the testimony.
3 That's the Court's instruction. That's the law. You don't
4 have to believe a single word Regennia Rios said.
5 We had an old saying when I first started practicing
6 35 years ago. We probably had to know more Latin than lawyers
7 do today because it's kind of fallen out of favor but there was
8 an old saying that I learned right out of law school. Falsus
9 in uno, falsus in omnibus. False at one thing, false at
10 everything. And I think we have seen a lot of that here today
11 in this case.
12 Now, what can we rely on? We can rely on the DNA
13 evidence and we can rely on the firearms evidence and we can
14 rely on sound reasonable tests performed by experts.
15 Let's go to 9th and Spruce. We know that 9th and
16 Spruce is 4-tenths of a mile from 9th and Brighton. That's if
17 you divide 760 yards in a mile, by .4, we come up with a shade
18 over 700 yards. Seven football fields distance between the
19 two. I'll come back to the time in a minute. And they suggest
20 to you it could have been as much as 15 minutes. We're going
21 to talk about that.
22 What we know about, what do we know about what
23 happened that morning at 9th and Spruce? We know from credible
24 law enforcement witnesses that there were no reports of 9-1-1
25 calls that morning. The sergeant who responded to the crime

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1 scene works that area, said he obviously recalled the shooting
2 at 9th and Brighton. And he recalled no 9-1-1 reports of shots
3 fired at 9th and Spruce, half a mile back up the road.

4 Ms. Rios has told a number of versions of this
5 incident prior to August 5th. And she said first that she
6 wasn't even there. That they came back to the house and told
7 her about what happened at this location. She then begins to
8 fabricate bits and pieces of this. She first says, we pulled
9 into the alley and we stopped. And the gun was handed over.
10 Then later she changes that and says we pulled into the alley
11 and as we were driving down the alley the gun was turned over
12 to Mr. Eye. Where do these quotes that Mr. Gibson so
13 eloquently pounded into you, where do those come from? Before
14 you accept those quotes, you've got to say, wait a minute. Am
15 I buying a pig in a poke here? Where did these quotes come
16 from? Who made these quotes up? And how did they take on or
17 did they take on a life of their own? Did they get better and
18 did they get embellished as time went on in this investigation?
19 So only Regennia Rios is the only one who says Gary
20 said give me the strap. Only Regennia Rios is the one who says
21 they were in the alley. Only Regennia Rios is the one that
22 says that incident actually occurred. What do we know from
23 credible witnesses? Well, she says they were driving down 8th
24 Street and they went to turn on to Kensington, the street the
25 other side of the alley. And that's when they saw Mr. McCay,

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1 she says. And that's when the comment was made, hit the alley.
2 They go over to the alley and they go down the alley.
3 Mr. Gibson made much about, I guess, attacking the
4 experiment suggesting and suggesting we were 15 feet up the
5 alley and therefore we weren't at the location. You'll
6 remember the evidence. Mr. Cayton, the gentleman who worked
7 for the Kansas City, Missouri Police Department, himself, for
8 25 years, trained a lot of the people over there, said he put
9 himself in a position that he equated to where the gun would
10 have been out the window without the car protruding out into
11 the intersection. And that he did his test fire from that
12 location. He said he fired four shots.
13 Now, the testimony from Rios is that and, I'm sorry,
14 from the gentleman at the restaurant was he heard 5 to 7 shots.
15 Now, you'll recall that he testified he was in the
16 restaurant, sitting by the window, having breakfast is what he
17 said the first time. In August, some four months after the
18 incident. So it happens in March. In August, the FBI goes out
19 and investigates and he says he was in the restaurant eating
20 breakfast and he heard the 5 to 7 shots.
21 Now, that's the evidence that there were shots.
22 That's the only so called corroborating evidence that shots
23 might or might not have been fired at that location on that
24 day.
25 Now, they have statements from Rios by this point

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1 that this alley incident occurred. What's the logical
2 responsible, reasonable and professional thing that you do at
3 that point? You've got a woman that's lied to you, said this
4 happened in the alley. You've got a witness that at that time
5 says he was in the restaurant when he heard the shots? One,
6 you would conduct an experiment like we did. And, two, and
7 more importantly, you would take that view from the alley. You
8 saw that view on the photo that they put into evidence, looking
9 out, could see a building over there. You would go over to
10 that building and you would look for bullet holes in that
11 building to determine whether or not five to seven shots had
12 been fired. The FBI agent said he didn't think that was
13 important.

14 The gentleman who worked for the crime lab for 25
15 years said it would be extremely important and necessary and
16 something that they would do based on his experience of 25
17 years as a crime scene investigator. You look for the bullet
18 holes to see whether or not this woman who had lied multiple
19 times at this point is telling you the truth or not.

20 They looked around for some bullet holes. Said they
21 didn't find any. Did they thoroughly search the building? No.

22 That's a item in the case that remains unanswered.

23 They said Mr. McCay stepped off the curb and that's
24 when Mr. Eye fired the shots at him according to Rios.

25 Now, again, she lied about the comments after the

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1 shots were fired. At first she says it was Mr. Eye that said
2 we've got to find him and finish him off because we'll catch a
3 case. Then later she says, upon further pounding and
4 questioning by the FBI, well, it was me that said that. So she
5 continues to change her version of what happened. One, to
6 satisfy them. Two, to extricate herself from her own problems.
7 Three, to protect her friends. And, four, probably just
8 because she doesn't know how to tell the truth.
9 Now, the Judge told you that sunrise was 6:38 in the
10 morning. All of these events are being described as something
11 that they observed and saw and took place. But in reality, it
12 apparently wasn't that light in the morning. So, again, they
13 did nothing to corroborate what she saw in the alley.
14 Now, what did Mr. Cayton do? Our expert? He took a
15 similar weapon with similar rounds and he fired four rounds at
16 some distance into a receptacle that caught those rounds.
17 Mr. Reeder, our investigator, was down at the cafe where this
18 witness was supposedly sitting, having breakfast. He was
19 sitting there with another FBI agent and they were not told
20 when the shots are going to be fired and how many were going to
21 be fired. Mr. Reeder told you, the next thing he knows that he
22 and the agent were surprised when Mr. Cayton and the other FBI
23 agent walked in. They heard nothing. So can you believe, and,
24 again, the elderly gentleman that came in here tried to do his
25 best. I'm not calling him a liar. He told what he thought he

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1 remembered three months previous. But is that credible
2 evidence? Does that outweigh the actual experiment? And
3 counter that against also against his admission there's lots of
4 shots fired in this location all the time. Again, square that
5 with the detective who says there were no shots fired based on
6 9-1-1 reports and calls. So did the shots really take place?
7 I suggest to you, they did not. I suggest it's another one of
8 these things that Rios fabricates as she's building this case
9 of premeditation and the shooting that was prompted because of
10 his race.

11 Now, the time, what does she say happened after that?
12 According to Mr. Gibson, they drove around all over. I guess
13 they drove down to downtown Kansas City and up north of the
14 river looking for Mr. McCay, if you believe him. What they did
15 was, according to her, is and this is where, again, I don't say
16 this is true but this is her version. According to her, they
17 shoot in the alley. They drive around the block right quick.
18 They don't see him. He's gone. And they drive down as fast as
19 they can down to Van Brunt and they take a left on Van Brunt
20 and go up to 8th Street and go straight down 8th Street over to
21 Brighton. So that's a direct route as fast as they can drive,
22 looking for this fellow. And they go directly to 8th and
23 Brighton and take a right and get down to the corner by the
24 pillar. And there's Mr. McCay walking along on the sidewalk.
25 Now, fact, undisputed, cannot be disputed. Mr. McCay

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1 was at that location at 9th and Brighton at approximately 6 to
2 6:12 in the morning, somewhere along in there. But ask
3 yourself, if they drove directly from that alley in a straight
4 line down 9th Street, that's going around the block in a
5 straight line down 9th Street, in an automobile at 6:00 in the
6 morning with no traffic. And they take a left and go up a
7 block and go down another several blocks and take another right
8 again. They get there to the corner. And he's walking along.
9 Again, the description was he's walking, not running. Nobody
10 said he was out of breath. He was at the corner at that point.
11 It had to be 2 minutes or less.
12 Now, if any of you have ever ran track, you know,
13 that --to start with I believe I'm old enough to remember
14 Roger Bannister the Australian broke the 4-minute-mile in the
15 '50s and ran just a few seconds under 4 minutes. That means
16 2-minute-half-mile. That means that Mr. McCay, if it really
17 was Mr. McCay at the intersection up there in the alley, would
18 have been a world class runner, running as fast as he could to
19 get to the corner down there by the time they could get there.
20 And beat them to the corner. According to their testimony he
21 actually beat them to the corner. He out ran the automobile
22 and got down there for the second event. It just didn't happen
23 at 9th and Spruce. She fabricated that like she fabricated
24 everything else. She made it up. It didn't happen.
25 Now, again, if that was Mr. McCay up there as she

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1 said, then he walks down 9th Street everyday, sometimes rides
2 the bus. He goes by the cafe that's just catercorner over
3 there. He knows it's open at that time in the morning. What
4 would be the logical and normal response of any individual in
5 that setting? They would go to the place they know is close,
6 is a safehaven. They can go in and call the police. There was
7 no cell phone found on him so he didn't have a cell phone. He
8 would have gone to the D & E, whatever it is, B & G Cafe and
9 report what happened. Or he would have gone in some other
10 direction. Is it logical to conclude that he would continue
11 his journey down 9th Street to work after having just been shot
12 at? It just doesn't make sense. And it just didn't happen the
13 way that Ms. Rios wants you to believe that it happened. There
14 was nothing that occurred at that intersection up at 9th and
15 Spruce. It just doesn't make sense.
16 Now, what happened at 9th and Brighton? Before I get
17 into that I also want to remind you that the government would
18 have you just lump everybody into a bag, shake it up and pour
19 it out on the floor and say, okay, there's three people there.
20 There is a dead body ergo they're all guilty. End of story.
21 Go back. Find them guilty in ten minutes. Let's all go home.
22 One of the instructions that you'll get, of course,
23 is that merely being present at the scene of an event or merely
24 acting in the same way as others or merely associating with
25 others does not prove the person became an aider and abettor or

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1 a person who has no knowledge of the crime or that the crime is
2 going to be committed or about to be committed, who happens to
3 act in a way which advances some offense, does not thereby
4 become an aider and abettor. So, if, and we're going to talk
5 about what happened down at the other intersection. If Mr. Eye
6 was in a fight with this gentleman and did not know ahead of
7 time that he was going to be shot because of this chance
8 encounter. And that's what I suggest to you, this was far from
9 what Rios tells you, this was nothing more than a chance
10 encounter at 9th and Brighton and what sparked it, maybe we'll
11 never know. But it's undisputed that they were in a fight.
12 Undisputed. What sparked it? Maybe we don't know.
13 But, again, if he didn't know that Rios or
14 Mr. Sandstrom was going to shoot Mr. McCay during the
15 altercation, then he's not guilty of that offense because he
16 was just merely present at the scene.
17 Now, you took an oath as jurors to listen to the
18 evidence, listen to the witnesses and decide the case based on
19 fact and not on emotion. Mr. Gibson got up here and threw a
20 lot of emotion at you. He's very good. And there's a natural
2 tendency to say, boy, I believe all these things that
2 Mr. Gibson is telling me. All these statements these people
2 said, I can take them to the bank. But, again, remember the
2 instructions about the believability of witnesses and their
2 motive to testify and how all this evolved. What can you rely

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1 on to take to the bank beyond any doubt whatsoever? I suggest
2 to you it's the DNA evidence and the gunshot evidence.
3 Let's talk about what happened at 9th and Brighton.
4 What do we know for an absolute certainty? Mr. McCay died at
5 that location and was found on the fence over there with his
6 backpack on the ground. And that his last attempt was
7 apparently to hold himself up on the fence where I suggest to
8 you he got that abrasion, cut himself, grabbing on the fence as
9 he fell to the ground. It is a tragic and terrible event. I'm
10 not here to tell you in any way so ever that it was justified.
11 Gibson suggests I'm going to get up here and tell you this is
12 some justified killing, self defense or something. That's
13 nonsense. You know that's nonsense. I'm not suggesting that.
14 It was a homicide. The question is, was it a premeditated
15 homicide as witness Rios would have you believe or was it a
16 chance encounter that resulted in a fight that escalated then
17 into a tragic killing? Very well not have been premeditated if
18 that's what happened. And did Mr. Eye, himself, know it was
19 going to happen?
20 Now, what does she say happened at the intersection?
21 Well, first of all, she says she took his white hat away from
22 him because she didn't want him to be recognized. One of these
23 other sterling witnesses that they called said he had on a blue
24 hat that morning. White hat. Blue hat. Another discrepancy.
25 Not a big point but it is a discrepancy. She said she slid

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1 down in the car at the first location. At this location, she
2 said she saw what happen. She said Mr. Eye walked out of the
3 car, stepped off the curb and met Mr. McCay at the
4 intersection, put the gun to his chest and pulled the trigger
5 three times.

6 Now, it's very interesting these FBI agents are going
7 around doing reports on people, talking to people, dragging
8 more and more out of them, playing one off against the other.
9 What does the autopsy show? It shows death by
10 gunshot to the chest. That's a medical term. The death was
11 actually a gunshot, and you saw the picture, all of us would
12 call it in the side. One bullet hole in the side. Not in the
13 chest. In the left side between the rib. One .22 caliber
14 hole. And you will have the autopsy that you can take back and
15 read it, look at it. It tells you some measurements from the
16 center line down and round and --but the heading on the
17 autopsy says death by gunshot wound to the chest.

18 What does she tell you happens? She says that
19 Mr. Eye and Mr. McCay meet in the street. And Mr. Eye places
20 his left arm around him, puts the gun in his chest and pulls
2 the trigger three times. Now, she's saying three times. Why?
2 How convenient she's saying three times because what witnesses
2 have they interviewed right at the scene ahead of time, to let
2 her know in her beady little mind there's three shots? The
2 Lugos. The Lugos say there's three shots. Well, three shots?

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1 I'll say three shots. See how it fits together?
2 Now, one of the things I told you is a case is like a
3 jigsaw puzzle. Unfortunately, the picture on this box, on this
4 jigsaw puzzle is what? It's the picture of the shooter. Now,
5 we've got all the pictures, all the pieces of the jigsaw puzzle
6 that seem to fit fairly nicely in and around the edges. But
7 what we're missing and what you have to decide is whose
8 picture, ultimately, shows up in that jigsaw puzzle as the
9 shooter. And did Mr. Eye know that the shooter was going to do
10 it prior to the time that it occurred?
11 Now, question for you. Think about this. If that
12 first shooting occurred as stated, back at 8th and Spruce,
13 4-tenths of a mile away, and Mr. McCay is, indeed, a world
14 class runner and he runs all the way down there and beats them
15 while they're driving as fast as they can in the car to get
16 down there. And he's on the south side of the street, now
17 deciding to walk because he's out of breath because he's run a
18 half-mile or 4-tenths of a mile in two minutes. He's walking
19 along and he turns and sees Mr. Eye standing outside the car.
20 And that's part of the testimony is Mr. Eye was out of the car.
2 What was he doing out of the car? Was he beckoning to
2 Mr. McCay? Was he doing something else? Was he, after a night
2 of drinking and drugs, was he urinating on the street? We
2 don't know what he was doing. But we do know that Mr. McCay
2 apparently steps off and walks over to meet him.

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1 Now, is that the act of a rational human being, who
2 has just according to the government been shot at a half-mile
3 up the road? This same gentleman is going to turn, see the
4 same car and same people and he's going to walk out into the
5 middle of street. What's he going to do? Throttle the guy
6 that just shot him? Go over and have a conversation? He's
7 going to go over and ask, why did you shoot at me? Does that
8 make rational sense that he would get out and walk toward
9 Mr. Eye and Mr. Eye toward him?
10 Now, next question. You're hunting, I'm going to use
11 and there's been a lot of harsh language in this case. And I
12 don't know how else to do it other than like Mr. Gibson and use
13 the harsh language. None of us approve of that language. We
14 were all brought up probably not to talk that way. But it's a
15 fact of life that some people do talk that way and people do
16 say things they later regret. If Mr. Eye is, in fact, looking
17 for a black person to shoot as they would have you believe,
18 does it make sense that he's going to go out and get in a fight
19 with this person first? He wants to beat him up first before
20 he kills him? He wants to go out and have a little fist to
2 cuffs with him before he decides to shoot him? That doesn't
2 make any common sense whatsoever. It just doesn't wash, folks.
2 It doesn't come out in the laundry clean. Why would you go out
2 and get in a fight with this person? Would you get out and you
2 have a 9-shot revolver. You cock it, take 9 aimed shots at the

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1 guy. You have 9 chances to hit him this time. And see if you
 2 can hit him first. The witnesses don't corroborate that.
 3 Now, another point that never came out in the trial.
 4 I never heard anything about it. A 9-shot revolver, if seven
 5 shots were fired at the location that is claimed, somebody has
 6 to take the revolver, pop the cylinder out and dump the seven
 7 empty rounds out of it and put new rounds in it, particularly
 8 if you believe that three were shot at the second location
 9 according to the Lugos and according to Ms. Rios. Seven plus
 10 three is ten.
 11 Now, presumably, if it's five at the other location,
 12 that is five plus three is eight. You're almost out of
 13 ammunition. But we do know there were no spent .22 casings
 14 found in the burned out car. That didn't happen at that
 15 location and it makes no sense and actually what occurred at
 16 the second location tends to support the argument that nothing
 17 happened at the first location. Mr. McCay would not have
 18 gotten off the street and run out to get in a fight with
 19 Mr. Eye if he had known that was going to occur.
 20 Now, Mr. Gibson made much about the fact that I may
 2 have said they were rolling around on the ground. I wasn't
 2 there. I'm not a witness. Neither was he. He wasn't there.
 2 He's not a witness. And the instructions and the judge told
 2 you that what he says and when he gets up here and hollers at
 2 you about, what I holler at you about is not evidence.

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1 And one of the beauties of the jury system, I'm going
2 to tell you, I've been doing this a long time. When you get
3 back there, you twelve folks go back there, you are going to be
4 absolutely amazed with each other when you sit down and start
5 talking about what happened in the case. You all have been
6 taking notes. I noticed that virtually every one of you have
7 been meticulous in writing down things. You're going to go
8 back and start comparing notes and discussing the case. And
9 you'll find the collective wisdom of all twelve of you is going
10 to have an energetic effect. You're actually going to remember
11 things collectively as a group that you would not, perhaps,
12 remember individually. And correspondingly one of you might
13 have something a little wrong and somebody else will correct
14 you. You put your heads together, start talking about it.
15 What happens is the truth sifts out. You will arrive at the
16 truth as to what happened in this case through that process.
17 And it is a wonderful process. And it works. But it requires
18 that you do what you took the oath to do and that's not be
19 guided by emotion and immediate reaction to something that
20 without thinking through thoroughly the facts in the case and
2 discussing it. But it will work if you give it a chance.
2 And that's important to Mr. Eye's case. There is
2 perhaps an immediate response, an emotional response as well.
2 They're all three there and Mr. McCay is dead. They're guilty.
2 Let's go home. That's not your job. Your job is to sift

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1 through the facts and try to determine as best you can whose
2 picture is on the face of that jigsaw puzzle. And if it's not
3 Mr. Eye, he was not the shooter. Then the question is, did he
4 know it was going to happen? Is he in a sense also caught up
5 in something that he had no desire to participate in?

6 Now, again, the shooting occurred almost, if you
7 believe Ms. Lugo, she said she was fixing breakfast at 6 in the
8 morning or few minutes after. And sunrise was not until 6:38 I
9 believe is what the Judge told you. You probably have taken a
10 note on that. So the lighting was not all that great to start
11 with.

12 Now, what does Ms., Mr. and Mrs. Lugo tell you? She
13 said she heard tap, tap, a tap then a tap, tap on her house.
14 She didn't say, significantly, I heard shots. Her house is a
15 lot closer to 9th and Brighton than that alley is to the cafe.
16 And the government is suggesting these guns, a .22 is not all
17 that loud. But she did hear a couple taps or an echo or who
18 knows what. Was it bullets hitting her house? I don't know.
19 Again, they never searched her house as far as she knows to
20 find bullet holes in her house. So we don't know. And
2 Mr. Gibson virtually conceded, we don't know the sequence of
2 the shots that were fired. All we know is what the civilians
2 --I don't want to call them civilians because they're not.
2 People involved in --the parties, the civilian witnesses tell
2 us, which there were three.

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1 She says that her husband rushed downstairs. He
2 testified through an interpreter. They pretty much jelled in
3 their testimony. They thought it was a shot followed by a
4 couple other shots. And that they looked out through the peep
5 hole and Mr. McCay was along the fence line.
6 Mr. Lugo said he saw the car drive around the corner
7 and pull away. And that he heard two more shots as the car was
8 leaving, going east on 9th Street. So he puts two shots
9 occurring after the altercation is over and after the car pulls
10 around the corner.
11 Mr. McDonald on his way to work, when first
12 interviewed, said he drove through the intersection, looked in
13 his rear view mirror, saw a fight going on and then he heard a
14 single gunshot. He later reversed that a little bit and said
15 he might have heard a gunshot then drove through the
16 intersection. That's why I asked the police officer, the
17 detective, the importance of putting down information they way
18 they hear it when they hear it. And he said it's an important
19 part of the incident to him, the detective. He drove through
20 the intersection. Looked in his rear view mirror and saw the
2 fight with Mr. Eye and then heard the shot.
2 Now, again, Mr. Gibson made much ado about the fact I
2 said they were rolling around on the ground. I may have said
2 that by mistake. I'm not a witness in the case. And you'll
2 remember what happened and you'll be able to determine what

1 happened through considering the testimony of all the
2 witnesses. The fact remains, it's indisputable that there is
3 DNA under the fingernails. How did that get there? The expert
4 from the crime lab told us that DNA is normally deposited
5 through fighting and scratching. And it has to be on exposed
6 skin. It was 27 degrees that day. Mr. Eye's DNA is under the
7 right-hand and the left-hand. I believe there was more under
8 the left-hand than the right-hand, which would suggest that he
9 may well have had his arm around Mr. McCay. His left arm.
10 Because that's where most of the DNA was.
11 Now, bullet hole is on the left side. If he had his
12 arm around him this way and his gun is in the right-hand, that
13 puts the bullet hole on the wrong side folks. And we certainly
14 know it wasn't in the chest. So to get it in the chest he has
15 to bring the gun around, swing it around here. It was not a
16 contact wound.
17 What do we know from the experts? What cannot be
18 disputed from both their firearms expert and our firearms
19 expert is that the shot had to have, the fatal shot in the side
20 had to have been fired from a distance greater than 38 inches.
2 36 inches is three feet, of course. Neither of them dispute,
2 after a lot of cross-examination and direct examination, their
2 expert and our expert told you unequivocally that it could not
2 happen the way Ms. Rios said it happened. It just didn't
2 happen at that intersection the way she said it happened.

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1 Mr. Eye did not put the gun in his chest and pull the trigger
2 three times. One, there is only one bullet hole. Two, the
3 bullet hole is in the wrong place. And, three, there is no
4 evidence of a contact shooting. No powder burns. No
5 stipplings, and no powder residue on the clothing. They have a
6 test where even on dark clothing that they spray this chemical
7 on there and they put some kind of photographic paper on there.
8 They lift it off and they can see the spots. Now, on our test
9 we had white linen cloth so you could see the spots. You can
10 take those back and look at them, by the way, and ask for them.
11 The fact remains if it was darker clothes you just apply this
12 chemical, you lift it off and look for the powder burns. They
13 found none, meaning that Mr. McCay was not shot at close
14 contact during that fight by Mr. Eye. It just did not happen
15 that way. Couldn't have.
16 And, again, these two experts, both of them, one
17 works for the state, testified for, works for the State of
18 Missouri, as a criminalist. And the other is a retired 25-year
19 veteran of that same police department, who, himself, just
20 recently testified for the prosecution in Washington DC in a
2 series of case. They're not in here taking sides. They're not
2 hired guns. They're not people that the defense has paid
2 exorbitant fees to to come in here, or the prosecution for that
2 matter, to come in here and testify a certain way. They're
2 testifying as to how they determined the evidence, based on

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1 scientific examination and years of experience.
2 Now, the third fellow, the engineer brought his
3 diagram in here. You remember, he did the diagram himself on
4 the CAD machine. That was Mr. Wright. Mr. Wright says he was
5 westbound in his pickup on his way to downtown Kansas City,
6 going that way. All this, remember, occurred up here, going
7 that way. That didn't make a lot of sense. We know that 9th
8 and Spruce is west of 9th and Brighton. The incident occurred
9 and moved from east, I'm sorry, from west back to east, the way
10 the government has explained it to you. This gentleman was
11 going the other direction, of course, like the other witnesses,
12 on his way to work in downtown Kansas City. What did he say he
13 saw and what diagram did he show you? He said he saw a single
14 person run from the intersection over by the pole, all the way
15 across and around. And he heard a single shot. And next thing
16 he saw was the person over on the fence. He labeled that
17 person as the victim. He never saw two people. He said he
18 thought it was a drive-by shooting. So did the car careen
19 around the corner and pick Mr. Eye up? Or was Mr. Eye already
20 back in the car? Did Ms. Rios shoot him with a pearl handled
21 chrome plated revolver from the back seat where she was at?
22 All of those are serious questions that you have to ponder.
23 Now, the standard here is guilt beyond a reasonable
24 doubt. And the judge has told you that the defense doesn't
25 have to present any evidence whatsoever. There was a

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1 suggestion that the defense did not do its own investigation
2 and didn't take certain steps and do certain things. He kind
3 of suggested to you that we had some burden to present evidence
4 in this case to you. We did present evidence to you because we
5 thought it was credible and believable evidence in the form of
6 expert testimony. But we're not obligated to do that. We're
7 not obligated to bring in witnesses. We're not obligated to
8 prove our innocence. We're not obligated to do a single thing
9 but sit there and require the United States government to carry
10 out its burden under the law.

11 What time did I start, Your Honor?

12 What time did I start, Eva?

13 THE COURT: You have about 20 minutes.

14 MR. OSGOOD: 20 minutes.

15 Time flies when you're doing this and you tend to
16 ramble. I'm sorry.

17 One of the things by the way I didn't tell you. I
18 know I'm just kind of jumping around. I'm Mr. Eye's lawyer and
19 I'm obligated to object when I think an objection is
20 appropriate. And some times the judge tells me I'm right and
2 some times the judge tells me I'm wrong. That's what we go up
2 to these bench conferences about. A lot of times there is an
2 objection about testimony whether it should or not be put in
2 front of you. The Court very, very carefully and
2 conscientiously attempts to be sure you hear only evidence that

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1 you are entitled to hear, that is relevant to the case and
2 proper. Sometimes the jurors tend to say or think, I don't
3 like this lawyer or I like this lawyer better than that lawyer.
4 This lawyer was a butt because he's objecting all the time.
5 It's our obligation as attorneys to object. And my client is
6 on trial for his life here. And I don't want you to in any way
7 whatsoever hold anything against Mr. Eye for something that
8 I've done that might have irritated you. And lawyers do
9 irritate jurors some times and we don't even know it. We don't
10 intend to but it's just human nature. You folks are having to
11 sit there and listen to what is going on but you're at our
12 mercy sometimes. You sometimes think we're wasting your time
13 when we're up at the bench. We do it for a reason. It's to
14 insure you hear facts that are relevant to the case and the
15 Court believes are proper for you to hear. Nothing more.
16 Nothing less. Please don't hold that against Mr. Eye.
17 Some questions that I wrote down for you to ponder
18 and remember the burden is beyond a reasonable doubt. You
19 can't speculate about what happened. You've got to be able to
20 conclude in your own mind that this is what happened on this
2 day at this time under these circumstances. And I think I
2 probably covered most of these but I'll run through them
2 quickly. If McCay had been shot at earlier, why would he
2 approach Eye in the middle of the street?
2 If Eye and others were really looking for a black

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1 person to kill because of race, why first start a fight with
2 him?

3 Based on experts, it was impossible for Eye to be the
4 shooter the way Rios describes it. So who was the shooter?
5 When did they shoot? Why did they shoot? And what was their
6 motive for shooting?

7 Was it to, as Mr. Gibson may have suggested, was it
8 to break up a fight? That's not a legitimate reason. I'm not
9 suggesting in any way whatsoever that is self defense. You
10 have no right to shoot somebody who is involved in a fist fight
11 with one of your friends. But did that happen? We don't know.
12 Been out all night. Could Eye simply have gotten out
13 of the car, as I said, for some simple reason such as relieving
14 himself and that sparked a rebuke with Mr. McCay? But we know
15 Mr. McCay went out and confronted him and they got into a
16 fight. Does that make it plausible that the Eye and the McCay
17 incident was, in fact, a chance encounter? They got into a
18 fight for some unknown reason and it escalated? If that's true
19 then all of this discussion about who uses the word nigger when
20 and where and under what circumstance becomes irrelevant
2 because there was never any premeditation to kill Mr. McCay
2 because of his race. And that, of course, fits the mere
2 presence instruction. That would make Mr. Eye not guilty
2 because he's merely present at the scene.
2 Does the fact that, again, only one bullet being

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1 fired according to some witnesses suggest that the Lugos may
2 have been mistaken. Again, they're not lying but could they be
3 mistaken?

4 If there was more than one shot, who fired it and was
5 it fired as the car was moving around the corner, as the way
6 the other witness told us?

7 Was it, in fact, fired down an open window by
8 Mr. Sandstrom as he leans across with his own gun, his gun
9 which he had disposed of by his sister, and fires through the
10 window and hits Mr. McCay? That's plausible.

11 Or was the back window down and Mr. Rios had a gun.
12 And as the car careens around the corner, she fires a shot at
13 the defendant? I mean at the victim. We don't know. That
14 alone should be reasonable doubt to you.

15 You've got a question, you've got to resolve it in
16 favor of the defendant.

17 Now, Ms. Rios. She is the only person who was at the
18 scene according to her. None of these other witnesses that
19 they traped in here, these drug dealers and meth users and
20 people with prior convictions as long as your arm, none of
2 those people were at the scene. They're all telling you
2 things, again, that evolved and were embellished as this
2 investigation progressed, as the FBI decided that it was a hate
2 crime and they're going to prosecute it in federal court.
2 They're going to bring it over here in this big tall building

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1 and make it a federal hate crime and get the death penalty. It
2 all starts with her, folks. It starts with her first lie in
3 the alley, actually starts with her denial of it and her belief
4 that she's in trouble. What does she do? She's a heavy meth
5 user. We know that. She first tells the police she wasn't
6 involved at all. She sets the stage for future lies. And
7 starts this race scenario early on. She calls up her friend,
8 Carolyn Galyean, and says, I'm going to need an alibi. Warns
9 her that the police department is going to check on this so
10 you've got to be on my side, Carolyn. Got to stick with me.
11 As I said to you, maybe she's the shooter at this point. So
12 she's setting this thing up right away to put it off on Stevie
13 and or Mr. Eye.
14 Other lies she told. She lied about hanging around
15 with the defendants 24/7 for two weeks after the shooting. She
16 lied to the FBI during her May 5th interview. Claimed she told
17 a partial truth but she didn't recall all the lies she told at
18 that interview. Says she first failed to tell about the
19 alleged conversation in the Chirino basement. Incredibly, she
20 claims it was because she was ashamed or some statements she
2 said later, she says that she made a statement she was ashamed
2 so that's why she covered that up. She also said she wanted to
2 protect Jonathan Chirino. Jonathan Chirino is the young boy
2 who is 15, who was upstairs for awhile, came back downstairs,
2 who says that the FBI put words in his mouth, threatened him,

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1 cussed him out, leaned on him, scared him. And then he went
2 along with the same game plan. Okay. Yeah, I heard these
3 comments, too. Can you believe those kinds of witnesses?
4 Can you believe witnesses who repeatedly lie to you
5 like that? She omits Jonnie Renee's involvement. Says she
6 wants to protect her. That's her cousin. She's picking and
7 choosing, folks. She's leading these people around by the
8 nose. And they're gullible. They're believing everything
9 she's feeding them. And every time she feeds them something
10 new, she changes, she adds, she embellishes. She believed that
11 this happened. And they're investigating this as a hate crime.
12 I'll just throw in next time that Gary shot the nigger. Gary
13 smoked the nigger. Each time she says something, their eyes
14 just light up and they accept it. That's just one more lie.
15 She's just going great so she just keeps telling them. She
16 sets up an alibi, admits later the alibi was a lie. She
17 protects one of her friends. She claims that the reason she
18 didn't give these earlier statements was well, she didn't want
19 to admit that it had been planned ahead of time because she
20 didn't want to draw herself into it.
2 Well, on 19th of July she appears before the grand
2 jury under her grant of immunity. This is a several hour
2 session, 86 pages long. She's already been confronted numerous
2 times with lies by the FBI. And she lies, again, in there.
2 Doesn't tell about the alleged comment, on site. That's a nice

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1 comment. That sound good. Well, I'll conjure up this term on
2 site. She says, well, I didn't say that because it would show
3 too much of my involvement. She lies, again, about what
4 happened at the end of the alley. She says, originally she
5 didn't say he saw our faces. Now I'm saying, he saw our faces.
6 Then on September 22nd she decides to take back,
7 probably because it wasn't true, what she said occurred in the
8 Chirino basement conversation. She got little Jonnie Renee in
9 trouble. They came over and cussed him, cajoled him, 15 years
10 old. Took him in the grand jury at age 15 without a guardian,
11 without a lawyer --lawyers can't go in the grand jury. That's
12 the unfortunate thing. But little 15-year-old Jonnie Chirino
13 is in there and after they told them what she said, he said,
14 okay, I'll go along with that, after they threatened him and
15 cussed him. Is that what you want for your government
16 representatives?
17 Then she tries to take it back. She says, well, I
18 made that all up. It's a lie. It's fabricated. At this
19 point, of course, they believe she's married to that
20 conversation and they want her to come back and say that again
21 in the next grand jury session. So what do they do? Do they
22 charge her with perjury? Do they charge her with multiple
23 false statements? No. They charge her with a single count of
24 making a false statement to them or under the false statement
25 statute where she tried to retract this. Then they put her in

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1 the grand jury and she gets on board again. They give her a
2 sweetheart deal. She's doing 5 years. That's all she does.
3 By her own admission, if you believe her, she was involved in a
4 premeditated murder for which she walks away with five years.
5 Ms. Galyean, her best friend, a meth addict. She's
6 the one that got the letter from Mr. Sandstrom. And it's not
7 pleasant for me to stand up here and suggest to you that my
8 co-defendant, that his client is guilty of pulling the trigger.
9 But he is the one that said, I'm a real killer. I'll lay a
10 nigger down quick. He's the one. This is not made up
11 conversation in cars or made up conversations in basements or
12 made up conversation that embellishes the prior conversation by
13 Rios and some of these other people. This is a letter he
14 wrote. This is a letter from the defendant, Mr. Sandstrom,
15 himself, where he says, I'm a killer. You know that. I'll lay
16 a nigger down quick. This is said again after he's concerned
17 about what is going on and how the investigation is focusing on
18 him. His letters to the fellow Mr. Buchanan.
19 You were told and are instructed on what evidence you
20 can consider and not consider. The letters where Mr. Eye is
2 not mentioned in any of those letters, the Judge told you you
2 cannot consider those against Mr. Eye. And Mr. Buchanan
2 admitted that Mr. Eye never conversed with him, didn't know him
2 and they didn't talk on the phone and they certainly didn't
2 exchange letters. It was Mr. Sandstrom who was hiring people

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1 to kill the witnesses. It was Mr. Sandstrom who had a motive
2 to get rid of the testimony in this case. You didn't hear a
3 whole lot of letters or didn't see letters or conversation by
4 Mr. Eye saying he was the killer.

5 Jonnie Renee Chrisp. The cousin who's supposedly
6 estranged from Ms. Rios. Very carefully consider the
7 relationship between these parties. Consider the relationship
8 between Rios and Chrisp. Consider the relationship between
9 Stephanie Sandstrom and Steven Sandstrom. Blood, and it's an
10 old tired cliché but blood is thicker than water. In the final
11 analysis when we've got to pick and choose between our loved
12 ones, our children, our mother or father, our brother or
13 sister, and we've got to choose between them and non blood,
14 we're going to choose blood. And we're going to testify the
15 way that is the best in our own mind to help our blood
16 relative. Consider that when you consider the motives of these
17 witnesses and how they testified. It's Stevie Sandstrom's gun.
18 He's the one who wants the gun disposed of.

19 We've heard the word tweaking so many times I can't
20 count it. Tweaking is when they're all high on meth. I
2 believe it was several of them talked about tweaking and
2 getting high.

2 I think I'll just start to wrap it up here.

2 Mr. Deleon, he's the same situation. He's a convicted
2 murderer. He comes in here and he's charged with a federal

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1 crime of having a gun in his possession, a convicted felon, and
2 kills the next guy. What was his involvement in all of this?
3 That is not all that clear any way. But any way Mr. Deleon,
4 the one who is riding around and again parroting these comments
5 that are taking on a life of their own. I smoked this nigger.
6 I'm the one that did it. All of this is very convenient
7 testimony for the government from these convicted felons.
8 What is his deal to come over here and testify in
9 federal court? He gets to plead to a charge that allows him to
10 go to a federal pen instead of the state pen where he was at
11 and the time is concurrent. He's got multiple prior
12 convictions already. So here's a guy with a murder conviction
13 who comes over here and pleads guilty to something that is
14 meaningless. It's meaningless. He's doing 25 years in the
15 state penitentiary and he pleads to something he can get ten
16 for over here and it runs concurrent. He'll never see a
17 federal probation officer. He'll never see the federal side of
18 what happens after you're released. Because he's, his sentence
19 will expire in federal prison. He'll go back to the state to
20 do the rest of his state time. But in the meantime he's got
21 all the niceties of being in federal custody versus state.
22 Mr. Buchanan, for example, he spends two years, now
23 they're going to get up and tell you about Mr. Buchanan going
24 up to CCA and supposedly Mr. Eye made statements to him and
25 admissions at that point. Well, remember he's gotten himself

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1 in trouble, got his cousin in trouble. He's got to extricate
2 himself out of that situation now. So he gets up to CCA and
3 gets Mr. Eye's paperwork. Then he calls up the FBI and says, I
4 would like to be a witness. That accomplishes two things.
5 One, gets him out of trouble, back in the good graces of the
6 government. And, two, he puts it off on Mr. Eye, that way
7 instead, of his blood cousin, Steve, another relationship to
8 consider.

9 All that having been said, I'm going to sit down in a
10 minute. I'm kind of a history buff and I like to read. I
11 spent a number of years in the military. And so that military
12 history always interests me. And some of what we call captains
13 of the military, I don't mean about by rank, have always been
14 something I like to read about. And George Washington, when he
15 was in the House of Burgesses in Virginia in 1758, long before
16 we were a country, actually lectured the members of the
17 Virginia House of Burgesses about the duties of jurors and the
18 importance of jury service. He went on to become Commander in
19 Chief of the Continental Army, fought a seven-year war, became
20 the first president of the United States. Probably the best
21 because he's the only one who didn't belong to a political
22 party. Do you know what he did after he was president and
23 retired to Mount Vernon? He served on a jury. And after he
24 was done serving on a jury, he served on a grand jury. This is
25 a retired Commander in Chief and President of the United

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1 States, the first one. Somebody asked him about that and he
2 said, well, of all the things I've done in my many, many years
3 the most important thing that I have ever done is serve on a
4 jury. Why did George Washington say that? I submit to you he
5 said that because he knew as the father of our country that the
6 jury is the one thing that stands between the government and
7 its citizens. Ultimately, when a citizen is called to task,
8 the jury stands between the citizen and government overreaching
9 or even government tiering. It's there as a buffer and
10 protection. And it requires you to find the defendant guilty
11 beyond a reasonable doubt. And it require that's the
12 government prove that to your satisfaction.
13 Now, it's going to take real moral courage, folks,
14 for you to go back and accept my argument and say Mr. Eye is
15 not guilty because the government hasn't proven him guilty.
16 You'll probably, if do you that, you'll probably read in the
17 paper criticism. But it requires moral courage. And you took
18 an oath to exercise that moral courage.
19 One of the things I want you to do, there's no rules
20 on this, when you go back, you're going to pick somebody as
2 foreman of the jury. You'll be amazed how easily that will
2 occur. Don't go back and just right off the bat say, who all
2 believes they're guilty or who is innocent and do a straw vote.
2 That puts pressure on people unnecessarily. You're looking
2 around the room, who's got their hand up and who doesn't. I

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1 submit to you, you go back, pick your foreman. And you very
2 carefully start discussing the evidence. Everybody gets their
3 two cents worth in. You talk about it. Go through. And you
4 read these instructions. These instructions are very
5 important. And on that first ballot, take a secret written
6 ballot. Don't put pressure on each other and don't get angry
7 with each other. You're back there to sift through this and
8 find the truth. And as I said, it's going to take moral
9 courage and more moral courage probably than you've ever had to
10 exercise in your life to say not guilty. But if they didn't
11 prove Mr. Eye guilty then, by golly, it's your duty as a
12 citizen, as a person sitting there in that important role, as
13 George Washington described, to do that. And I'm going to ask
14 you to do that.
15 And the other thing is some of you may ultimately say
16 six this way and six that way. Don't give up your strong moral
17 convictions to arrive at a verdict, just to go home, because
18 you think that's the way to get out of the building. If you
19 believe firmly and are convinced beyond a reasonable doubt in
20 something, then vote that way. If you're not convinced beyond
2 a reasonable doubt and you don't believe it happened, don't
2 yield to the pressure to change your vote just to get out of
2 here. And some times juries can't decide those. If you
2 can't -
2 MR. KETCHMARK: Your Honor, I'm going to object.

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1 THE COURT: Sustained.

2 MR. OSGOOD: That's all. Thank you. Find him not
3 guilty.

4 THE COURT: Let's take a break. About 15 minutes.

5 We'll call you back in.

6 (Recess)

7 (The following proceedings were had OUT OF THE

8 PRESENCE AND HEARING OF THE JURY:)

9 MR. GIBSON: Not necessarily critical, don't know how
10 the defense is going to feel about this. We were going to
11 propose that the Court rather than dismissing the alternates
12 outright, dismiss them with instructions not to discuss the
13 case.

14 THE COURT: I was going to do that. And it's my
15 intention to bring them back to hear evidence in phase 2, if
16 there is a phase 2. Then we'll have some margin.

17 MR. GIBSON: We just weren't sure.

18 MR. OSGOOD: You're not going to sequester them while
19 the jury is deliberating?

20 THE COURT: Send them home. Tell them not to -

21 MR. ROGERS: This may not be the time to do it,
22 Judge, but I would object to, and I don't think it's going to
23 happen so maybe it's totally unnecessary. But just to let you
24 know where I'm coming from, should the jury deliberate and
25 return verdicts of guilty as to the capital count and then

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1 during the penalty phase should a juror become disqualified or
2 otherwise disabled, I would object to replacing that juror with
3 an alternate who did not take part in the original guilt phase
4 deliberations.

5 MR. OSGOOD: I probably, in retrospect, would, I
6 would be quickly to seat -

7 THE COURT: I don't think that the same jury has to
8 hear both.

9 MR. OSGOOD: I would be more inclined to go with
10 eleven.

11 THE COURT: We'll deal with that, if we have to.

12 MR. OSGOOD: I would go with eleven before I would go
13 with seating an alternate for the penalty phase.

14 MR. ROGERS: There's no controlling authority in this
15 circuit. There is a Seventh Circuit case that approved of such
16 a procedure. So -

17 THE COURT: Okay.

18 MR. GIBSON: I hope we won't have to cross that
19 bridge.

20 THE COURT: So do I.

2 (The following proceedings were had IN THE PRESENCE
2 AND HEARING OF THE JURY:)

2 THE COURT: Please be seated.

2 Mr. Gromowsky.

2 MR. GROMOWSKY: Thank you, Your Honor.

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1 May it please the Court.

2 THE COURT: Go right ahead.

3 MR. GROMOWSKY: William McCay was not at 9th and
4 Spruce when Gary Eye shot a gun. The government has based its
5 entire case upon the initial premise, the wrong premise, that
6 Gary Eye shot at William McCay in the vicinity of 9th and
7 Spruce on March 9, 2005. But they provided no evidence that
8 this is true.

9 Here are some questions that were never asked of
10 Regennia Rios, their immunized star witness. What did the
11 person look like who was shot at by Gary Eye at 9th and Spruce?
12 What was he wearing? What was his race? How tall was he? How
13 old was he? Here is a picture from the morgue of what this
14 person, Mr. McCay, looked like on the morning of March 9th.
15 Ms. Rios, is this the person you saw at 9th and Spruce? None
16 of those questions were asked. Therefore the defendants had to
17 make the inquiry.

18 You recall that upon cross-examination of Ms. Rios,
19 Mr. Osgood, by Mr. Osgood Ms. Rios conceded that she only
20 assumed that the person who was shot at at 9th and Brighton was
2 also the person that was shot at at 9th and Spruce. When
2 Mr. Rogers then got up and inquired of Ms. Rios, she admitted,
2 quote, honestly, I don't know, end quote, if Mr. McCay was the
2 person shot at near Spruce. Regennia Rios is the only
2 government witness to the Spruce incident. And she told you

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1 that she honestly doesn't know if Mr. McCay was the person shot
2 out there.

3 Aside from this direct testimony there is also other
4 evidence that Mr. McCay was never at 9th and Spruce. First,
5 neither Ms. Rios nor any other government witness explained how
6 Mr. McCay was able to travel the 4-tenths of a mile between
7 Spruce and Brighton in less than the two minutes, that Ms. Rios
8 said it took between the initial shooting and the arrival at
9 Brighton. Mr. Gibson got up here and said, there was no
10 evidence of any two minutes. This is, you know, defense
11 attorney supposition. That's not true. You remember the
12 testimony. Mr. Osgood specifically asked Ms. Rios, how long
13 did it take you from the time of the initial shooting at 9th
14 and Spruce to drive down 9th Street, up Van Brunt one block,
15 over one block on 8th Street, and back down to 9th Street on
16 Brighton. She said less than two minutes. Their witness told
17 us it was less than two minutes.

18 Mr. McCay was a 44-year-old man wearing work boots,
19 not running shoes. He was carrying a backpack as Mr. Ketchmark
20 described in his opening statement, that contained all his
2 worldly possessions, his clothes, his books, his Bible, his
2 hygiene items, his papers. It is simply not possible that he
2 ran 4-tenths of a mile in under two minutes.

2 Second, according to Regennia Rios when she observed
2 Mr. McCay near 9th and Brighton he was walking, not running.

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1 Third, when Gary Eye got out of the car and walked
2 into the middle of 9th Street, Mr. McCay walked out into the
3 middle of 9th Street to meet him. Does that make any sense at
4 all? If he was so afraid of these people that he ran at
5 breakneck speed 4-tenths of a mile away from them, if he was,
6 in fact, the person at 9th and Spruce, why wouldn't he turn
7 around and run back the opposite direction when he saw them the
8 second time. He didn't run away because he wasn't at 9th and
9 Spruce.

10 Fourth, Mr. Rios testified that from where she was
11 sitting it did not look like Mr. McCay was frightened of Gary
12 Eye when Gary Eye approached him and when Mr. McCay approached
13 Gary Eye. He was not afraid of Gary Eye. If he had been the
14 victim of a shooting at 9th and Spruce and the shooter came up
15 to him, he certainly would have appeared afraid.

16 Look at your jury instructions. Mr. McCay's presence
17 at 9th and Spruce is an essential element of Counts 1 and 2 of
18 this indictment. But Mr. McCay was not there. Simply put, the
19 government has failed to meet its burden to prove beyond a
20 reasonable doubt that Mr. McCay was at 9th and Spruce the
21 morning of March 9, 2005. Mr. Gibson gets up here and says we
22 demonstrated. There's no demonstration. They have to prove
23 beyond a reasonable doubt. Consequently, you must find Steven
24 Sandstrom not guilty of Counts 1 and 2 of the indictment.
25 And even if you somehow do believe or become

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1 convinced that Mr. McCay was the shooting victim at 9th and
2 Spruce, the evidence still supports a finding of not guilty on
3 Counts 1 and 2 for Steven Sandstrom.
4 Let's look at the instructions. It will be
5 Instruction 24 when you get back to the jury room and get a
6 chance to look at it again. Basically, it says, to prove
7 Steven Sandstrom guilty beyond a reasonable doubt in Count 1
8 the government has to prove that Mr. Sandstrom acted by force
9 or threat of force, he willfully injured, intimidated or
10 interfered with William McCay. He acted because of the race or
11 color of William McCay. Mr. Sandstrom acted because William
12 McCay was enjoying the use of the streets provided or
13 administered by the City of Kansas City, Missouri,
14 specifically, 9th and Spruce. And that he used a dangerous
15 weapon.
16 Now, because there's been no evidence at all that
17 Mr. Sandstrom was the triggerman in this case, we also have to
18 look at the later Instruction 30, having to do with aiding and
19 abetting. In order to have aided and abetted the commission of
20 a crime, Mr. Sandstrom must have known that the interference
21 with a federally protected activity was being committed or was
22 going to be committed. He must have knowingly acted in some
23 way for the purpose of encouraging or aiding the commission of
24 the interference with the federally protected activity. And he
25 must have acted willfully with the purpose of interfering with

1 William McCay's enjoyment of the use of a public facility.
2 Basically, when the instructions are read together, it must be
3 proved beyond a reasonable doubt to you, the jurors, that
4 Mr. Sandstrom played a significant role in committing an act.
5 That is the shooting of Mr. McCay at 9th and Spruce, that he
6 did so with the specific intent to injure, intimidate or
7 interfere with Mr. McCay and that he had the specific motive.
8 In other words, Mr. Sandstrom acted with the racial animus that
9 they're trying to prove.
10 Let's take a look at what the evidence is and why it
11 shows that he had neither the intent nor that motive.
12 The evidence you heard was that Steven Sandstrom,
13 Gary Eye and Regennia Rios were running around together the
14 evening of March 8, 2005. According to Rios and Vincent
15 Deleon, Steven Sandstrom and Gary Eye did not know each other
16 very well at that point and they had only started hanging out
17 at the end of February. This is now March 8th. The end of
18 February was just a few days before the events that are charged
19 in this case.
20 Ms. Rios testified that she went with Steven and Gary
21 Eye up north of the river to steal a car. She started out
22 driving back to the city with Stevie but then went over and got
23 in Gary Eye's car because Stevie was irritating her. And she
24 wanted to have sex with Gary Eye. They ditched him. That
25 upset Stevie and he continued to call on the cell phones the

1 whole time they were parked and they ignored it.
2 When they did link back up at Jonnie Renee Chrisp's
3 house, Stevie supposedly said he shot somebody at 7-Eleven. As
4 we discussed before, the shooting never took place. This was
5 just Stevie trying to one-up Gary Eye so he could win the
6 approval of Regennia Rios. Also the police investigated the
7 alleged shooting and found no evidence that it ever occurred.
8 Rios, Eye and Sandstrom went back to Mr. Sandstrom's
9 house where they continued to smoke methamphetamine that they
10 had been smoking all day and into the evening. Rios, at least,
11 said she had been smoking all night and had been smoking for a
12 few days straight leading into March 8th and March 9th.
13 Vincent Deleon at some point called them up asking
14 for help to go steal a truck. They met up with him at Jonnie
15 Renee Chrisp's house where Gary and Stevie smoked even more
16 methamphetamine. After they left, Stevie, Gary, Rios and
17 Deleon stole a couple vehicles together. Rios testified that
18 Stevie asked Deleon if he had heard about the 7-Eleven
19 shooting. In response Gary allegedly said something to the
20 effect of, if you get to shoot someone, then I do. And how did
2 Stevie reply? It's not like that, dawg. In other words,
2 Stevie specifically told Gary Eye that he doesn't get to shoot
2 anyone.
2 Deleon said at some point while all this was going on
2 he saw Stevie pull a handgun from his waist. This surprised

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1 Deleon because he had never seen Stevie with a gun before. He
2 asked Stevie why he had the gun. And Stevie said, I have it
3 for protection. And he also supposedly said, I'll kill a nigga
4 quick.

5 Now, the government tried to get Deleon up here in
6 front of you to say that what Stevie said was, I'll kill a
7 nigger quick. But when subjected to cross-examination he had
8 to admit that he could not say beyond a reasonable doubt that
9 he said nigger. That the noise was too loud in the car. The
10 CD was playing. We learned from Ms. Rios that the windows were
11 down while they're traveling. You have the wheel noise. You
12 have the engine noise. He's sitting in the back seat and
13 they're in the front seat having this conversation. And he
14 said that it was probably I'll kill a nigga quick.

15 Let's look at the conversation in context. Deleon
16 saw the gun and asked Stevie why he had it. I've got it for
17 protection. I'll kill a nigga quick. All the witnesses have
18 said that nigga is common street slang and that Steven
19 Sandstrom used it all the time. I have the gun for protection.
20 I'll kill a nigga quick. He didn't say, I have the gun for
2 protection and, oh, by the way, I'll kill a black person if I
2 come upon one. In context what he was saying was that he had a
2 gun for his protection and he wasn't afraid to use it.
2 Anyway, according to Rios, Deleon was dropped off
2 back at Jonnie Renee's house at some point and Stevie, Gary and

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1 Rios went back to the Sandstrom residence to smoke even more
2 meth. In the meantime Deleon and some others went over to
3 Kansas to try to sell some of their own drugs. When they
4 failed to do that, they drove back to Missouri. Now here's
5 where it gets kind of interesting. Ms. Rios and Ms. Chrisp
6 testified that Ms. Chrisp was dropped off at Inner City Oil
7 because Deleon was driving erratically and she was afraid.
8 Deleon, on the other hand, testified that he dropped Ms. Chrisp
9 off at her house. He did not stop at Inner City Oil. He did
10 not drop her off there. He dropped her off at her house. So
11 who's telling the truth? Vincent Deleon.

12 You have to remember that Ms. Rios didn't say
13 anything about picking up Ms. Chrisp until the very end of her
14 part of the investigation. She had been interviewed by police.
15 By the FBI. By members of the U.S. Attorney's Office. And she
16 had testified before a grand jury. She never mentioned that
17 they picked up Ms. Chrisp at Inner City Oil. She claims now
18 that she didn't want the police to go and talk to Chrisp
19 because they might have found out that she said some
20 disparaging things or some bad comments about the morning of
2 March 9th in the presence of Ms. Chrisp.

2 But in her first interviews with police, she told
2 them that she had been at Ms. Chrisp's residence both before
2 and after the shootings on 9th Street. She told them that
2 Ms. Chrisp saw her before and after the shootings. It doesn't

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1 make sense she wouldn't tell the whole story, if, in fact, they
2 picked her up at Inner City Oil.

3 So let's look at this from Ms. Chrisp's prospective.

4 Where would she insert herself into this investigation? As she
5 admitted from the stand during this whole time frame she was
6 facing felony charges in the State of Kansas and Jackson
7 County. I imagine she jumped on board this case so that she
8 could tell those state prosecutors, look, I'm a cooperating
9 federal witness to a murder. Please cut me a break. Now, she
10 admitted that they didn't cut her a break over here in federal
11 court but we don't know what happened in state court. And I
12 submit to you she was using her supposed eyewitness status to
13 gain herself favor there. Rios didn't get along with her
14 cousin to help her out.

15 You don't have to take my word for it because we can
16 look at her testimony. Ms. Chrisp testified that she was
17 picked up by Gary, Stevie and Rios. She said Gary was driving.
18 Everyone else testified that Stevie was driving the Intrepid
19 that night and early morning. She said that Gary was wearing a
20 blue hat. Ms. Rios testified that Gary was wearing a
2 distinctive white hat. The hat was so distinctive, in fact,
2 that when Gary got out of the car at 9th and Brighton she told
2 him to take it off, she put it on her own head and covered it
2 up with the hood of her sweatshirt. Ms. Chrisp said that
2 Stevie told her she was about to witness a homicide. Rios

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1 testified that Gary made that statement. Of course, that
2 little piece of conversation never took place because Chrisp
3 was never in the car.
4 Ms. Chrisp said that she was in the car --that when
5 she was in the car the sun was already up. Remember how she
6 explained it to you here? 12:10 in the afternoon when I asked
7 her the question, what was it like out there that morning? And
8 she said, looked out the window of this courthouse, that's what
9 it looked like. The morning of March 9th. 12:10 in the
10 afternoon. You can see how bright it was. You're able to
11 observe out the courthouse window. She says that's how bright
12 it was on the morning of March 9th.
13 Of course, Mr. and Mrs. Lugo, Brian McDaniel, Joseph
14 Wright, they all told you that it was still dark out at that
15 time of the morning. So why would the government offer
16 Ms. Chrisp's nonsensical, nonsensical testimony? They needed
17 to. Ms. Chrisp is the only person who says that Stevie knew a
18 shooting was going to occur before it actually did. On the
19 stand she initially testified that Stevie said that Ms. Chrisp
20 was about to witness a homicide. But in her interview with the
21 FBI as she admitted to you, she did not know who made the
22 comment. She told the FBI, I don't know who made that comment.
23 She doesn't know because when she got together with Ms. Rios to
24 concoct this story, she couldn't remember what Ms. Rios told
25 her.

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1 Remember, to this point in the trial Stevie had told
2 Gary Eye that he does not get to shoot anyone just because he
3 thinks Stevie did. It's not like that, dawg.

4 He also told Gary that he didn't have the heart to
5 shoot anyone. Further Deleon testified that Stevie was all
6 talk and no action. That Stevie, himself, didn't have the guts
7 to take any action. That he didn't have the guts to do
8 anything.

9 And, in other words, the only evidence that you had
10 heard related to Steven Sandstrom was that he told Gary he
11 wasn't allowed to shoot anyone and neither Stevie nor Gary
12 could do it, even if they had the chance. Combined with Rios'
13 testimony regarding Stevie's honest reaction following the
14 Spruce shooting, the government has presented no evidence at
15 all of Stevie having an intent to shoot anyone, had no evidence
16 at all of malice aforethought and provided no evidence at all
17 of premeditation of any sort. Thus, the Jonnie Renee circus
18 came to town.

19 Anyway, back to reality or at least Regennia Rios'
20 version of it, Rios testified that Stevie, Gary and Rios did
2 eventually end up at Inner City Oil to buy cigarettes. There
2 was at least one African-American person there. Ms. Rios
2 testified that despite the alleged "kill on site" comment
2 attributed to Gary Eye, no one got shot at Inner City Oil. No
2 one talked about it afterward. But Rios said she assumed it

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1 was because there were witnesses there. Of potential interest,
2 Chrisp when she testified said there were no witnesses at Inner
3 City Oil. So if you do think that she really wasn't in the car
4 that morning, the lack of witnesses and the lack of a shooting
5 there would tend to indicate that Gary Eye neither said the
6 comment or if he did say it, didn't mean it.
7 After leaving the gas station the trio drove east on
8 8th Street to Spruce where they were intending to steal some
9 stereo equipment from a car shop. Ms. Rios testified that when
10 Stevie started to turn down Spruce, not complete his turn down
11 Spruce but just as he started to turn down Spruce, Gary said
12 hit the alley, meaning the alley between Spruce and Kensington.
13 Ms. Rios said that this is when she first saw Gary's would-be
14 victim. Presumably Gary saw the person on 9th Street, too,
15 because he ordered Stevie to hit the alley. But there was no
16 testimony that Steven Sandstrom said or did anything that would
17 indicate that he saw anyone a block away down on 9th Street.
18 And what I'm sure you find curious is how either Gary or Rios
19 were able to make out that there was an African-American person
20 down on 9th Street anyway. This was over a block away and
2 legitimate witnesses of the Brighton incident were not able to
2 see anywhere close to that clearly. Let's remember the Lugos
2 at home only a few feet away from the intersection of 9th and
2 Brighton. And they looked out their windows. They saw the
2 Intrepid turning off of Brighton and on to 9th Street. But

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1 they did not see Gary Eye get into the car. Joseph Wright
2 testified that he was less than a block away, when he first
3 came upon the Brighton Street incident. Even after moving a
4 couple hundred feet closer to the event, he still could not see
5 Gary Eye in the street. Even with the benefit of his
6 headlights facing out directly in front of him shining directly
7 on the event as it transpired.
8 So tell me, how did Gary Eye and Regennia Rios
9 supposedly see an African-American man a block away in a split
10 second? Because you have to recall how she described it
11 occurring. She didn't say Stevie turned on to Spruce. We saw
12 the person then he said hit the alley and back out. She said
13 as he began his turn we saw the person clear down the street,
14 over a block away and then Sandstrom straightened the car back
15 out. He hadn't even come close to completing the turn because
16 he was able to straighten the car back out to get back on 8th
17 Street. So it was less than a split second. And in that time
18 they were able to see and identify someone in the dark over a
19 block away. And even if they did see a person down there, they
20 were able to say it was an African-American man when legitimate
2 witnesses under the same lighting conditions and closer and
2 with headlights on were not able to see that clearly.
2 Given all of this, isn't it reasonable to assume that
2 when Gary said hit the block, Stevie just assumed that he meant
2 let's park in the alley when we go hit this car shop and steal

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1 stereo equipment rather than parking out on 9th Street right
2 out in the open where everyone can see it.

3 Going down the alley he supposedly said give me the
4 strap and Stevie handed it over to him. We heard before from
5 Vincent DeLeon, I believe, they were passing the gun back and
6 forth to each other all night long. Regennia Rios is the only
7 one who said Gary said, hand me the strap. Give me the strap.
8 And then you're suppose to believe going down this narrow alley
9 that Mr. Sandstrom, without stopping, kept one hand on the
10 wheel, reached in, pulled up his shirt, reached into a back
11 brace, was able to pull out a gun and hand it over to him, all
12 without having any problems. It seems absurd.

13 Anyway according to Rios they drove to 9th Street,
14 end of the alley where Gary put the gun out the window and shot
15 at someone. While this shooting takes place, Rios is ducked
16 down behind the seat, making it improbable that she actually
17 saw who was shot at. Obviously, she didn't see which way the
18 person ran. Perhaps this lack of ability to see who was shot
19 at explains why the government didn't ask her, who did you see?
20 What did he look like? What was he wearing? What was his
2 race? She did not see the person so she would not have been
2 able to provide that information.

2 Immediately after the shots were fired, according to
2 their witness, Stevie starts freaking out and screaming, you
2 took it too far. You're tripping. You're acting stupid.

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1 You're crazy. You're taking it to a whole new level. This is
2 all the evidence that relates to Counts 1 and 2. So even if
3 you think Mr. McCay was the shooting victim at Spruce, there is
4 no evidence that Steven Sandstrom knew a shooting was going to
5 occur. Again, he told Gary before the events transpired that
6 he could not shoot at anyone. It's not like that, dawg. He
7 thought Gary didn't have the heart to shoot at anyone. He
8 reacted with clear shock and surprise when the shots were
9 actually fired. There's just no way, no other way to interpret
10 it. You're crazy. You took it too far. He was surprised that
11 the shooting even took place.

12 Remember the instructions. The government has to
13 prove beyond a reasonable doubt that Steven Sandstrom had both
14 the intent to commit the act and that he participated in the
15 act with a racial motive. The government has not even shown an
16 intent. If there is no intent then to cause a shooting to
17 occur, then there is no motive for the shooting. They have
18 proven neither intent nor motive as required. Therefore, even
19 if Mr. McCay was the person at Spruce Street, you still must
20 enter a verdict of not guilty for Steven Sandstrom as to Counts
21 1 and 2.

22 Let's turn to Counts 3 and 4. And these counts, the
23 elements of the offenses are the same as described above. It
24 must be proved that Steven Sandstrom aided and abetted Gary Eye
25 in committing the alleged civil rights violations at 9th and

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1 Brighton.

2 What evidence have you heard that Mr. McCay was shot
3 near Brighton because he was African-American? None. The
4 testimony shows that after Steven Sandstrom objected to the
5 initial shooting, he drove around the block as ordered by Gary
6 Eye. Went back up Kensington. Over on 8th Street to Spruce,
7 down Spruce back to 9th Street. Rios said the victim, when
8 they got to 9th Street and Spruce, Gary Eye and Rios were
9 surprised that no victim was laying there in the street. Rios
10 said the victim had to have seen them and they were going to
11 catch a case. She ordered Stevie to go find the victim. As
12 she testified, he told her no. He told them that they were
13 taking it too far. Wasn't going to do it. You're taking it
14 too far. He told them they were tripping. Ms. Rios testified
15 that she was persistent. She also testified that Gary Eye was
16 persistent. Rios also admitted that Gary's gun could have been
17 pointed at Stevie during all of this because she, her vision
18 was obscured by the seat. She testified that the gun could
19 have been pointed at Stevie. Scared. High on meth and shocked
20 about what just happened and sitting next to a person who had
2 just fired a weapon, Stevie pulled out and drove east on 9th
2 Street.

2 Additionally, you saw Rios on the stand. You heard
2 the utter contempt she has for everyone and everything. She
2 lied to the police. She lied to the FBI. She lied to the

1 grand jury. She had no remorse for the shooting. On the
2 contrary, the shooting turned her on.
3 Is there any doubt in your mind that she would have
4 told Gary to shoot Stevie if Stevie hadn't obeyed their orders?
5 After all, she was not going to catch a murder case or not
6 going to catch a shooting case. She didn't care who she had to
7 dispose of to make sure that didn't happen. I don't know if
8 Gary would have shot at Stevie if ordered to by Rios but we
9 have heard that Gary and Stevie had only been hanging out
10 together for a few days. So I'm sure Stevie didn't know if
11 Gary would shoot him either. After all Gary had just shot at
12 some person for no reason. Avoiding a murder charge now gave
13 him reason to shoot again.
14 The testimony then shows Gary Eye ordered Stevie to
15 turn left on Van Brunt, right on 8th Street, then right on
16 Brighton and down to 9th Street where he parked at the curb.
17 Gary got out of the car. Regennia Rios said, give me your
18 distinctive white hat so you don't get recognized. Gary walked
19 into the street to confront Mr. McCay. And as I stated before,
20 Mr. McCay came out into the street to meet him. He did not
2 appear to be afraid of Mr. Eye. Mr. Eye shot Mr. McCay. And
2 Rios told Stevie, what the fuck are you doing? Go pick him up.
2 Remember the testimony? What the fuck you doing? Stevie is
2 still tripping. What the fuck you doing? And it was emphatic.
2 Ms. Rios, when Mr. Rogers asked her, was it emphatic? I don't

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1 know what emphatic means. So he gave her a demonstration. He
2 said what the fuck you doing? Go pick him up. Or was it what
3 the fuck you doing? Quit tripping. Go pick him up. She
4 agreed that it was emphatic. She had to order Steven Sandstrom
5 because he's still in shock. He's still tripping from what
6 happened before.

7 How exactly Mr. McCay ended up shot by Mr. Eye is
8 unclear. Mr. McDaniel's description doesn't match
9 Mr. Wright's. Mr. Wright's doesn't match Ms. Rios'. But from
10 your assessment as to Mr. Sandstrom's culpability, it really
11 doesn't matter. All that matters as to Counts 3 and 4 is,
12 first, whether the government has proven that Gary Eye
13 intentionally shot Mr. McCay because he was African-American
14 and Mr. Eye didn't want him walking down his street. Second,
15 government must prove beyond a reasonable doubt that Steven
16 Sandstrom knew that a race crime was being committed or about
17 to be committed. Third, Mr. Sandstrom must have knowingly
18 acted in some way for the purpose of encouraging or aiding the
19 commission of that civil rights crime. And, fourth, Steven
20 Sandstrom acted willfully with the purpose of interfering with
2 Mr. McCay's enjoyment of the use of a public street.

2 Here the government presented absolutely no evidence
2 that the purpose of the shooting at 9th and Brighton was
2 anything other than the shooting of a witness. Sure, they did
2 present evidence from after the fact that Mr. Eye supposedly

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1 made some comments about killing a nigger. But that is not
2 what happened the morning of March 9th from Steven Sandstrom's
3 perspective. The expressed intent, the expressed intent of
4 Rios and Eye was the killing of a witness. It was not to go
5 down to 9th Street to finish off what they started before and
6 kill a black man. The expressed intent to Steven Sandstrom was
7 we're going to catch a case. We've got to make sure that
8 doesn't happen.

9 Therefore, even if a race crime was being committed,
10 the government has failed to prove that Steven Sandstrom knew
11 it was being committed at Brighton or was about to be committed
12 at Brighton. It failed to prove Steven Sandstrom knowingly
13 acted in some manner, any manner, for the purpose of
14 encouraging the commission of a hate crime. And it absolutely
15 failed to prove he acted willfully with the purpose, with his
16 own purpose of interfering with Mr. McCay's use of 9th Street.
17 Accordingly Steven Sandstrom has to be found not guilty of
18 Counts 3 and 4.

19 Before I get to 5 and 6 which are related to the
20 killing of a witness to a federal offense, there's something
2 else that needs to be discussed and Mr. Gibson hit on it a
2 little bit, tried to just shove it under the rug. And that's
2 the testimony of Jerold Tapscott. Jerold Tapscott was the
2 person who came in here from the Public Works Department to
2 testify before you. And the sole purpose of his testimony was

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1 to prove to you that 9th Street is a public street, maintained
2 and provided for and administered by the City of Kansas City.
3 Mr. Tapscott, initially, testified to exactly that. However,
4 on cross-examination by Mr. Osgood, Mr. Tapscott admitted that
5 he only assumed 9th Street is a public street and that it is a
6 city street. He did no research to determine whether the
7 street had ever been a private street or, if so, if it had been
8 dedicated back to the City of Kansas City. He admitted that
9 Kansas City has been known in the past to maintain streets,
10 only to find out later that they were, in fact, private
11 streets. Jerold Tapscott simply maintains 9th Streets because
12 that's what the guy who had his job before him did. He assumed
13 it's a public street because the guy before him thought it was
14 a public street.
15 That 9th Street is actually a city street is a fact
16 that must be proven beyond a reasonable doubt. The
17 government's sole witness on the issue got on the stand and
18 admitted that his testimony was based upon an assumption. What
19 is synonymous with an assumption? Supposition, conjecture, a
20 guess. I guess 9th Street is a city street? This is a capital
2 murder case. As jurors you should demand that the government
2 actually prove the elements of its case beyond a reasonable
2 doubt. Assuming a fact to be true does not prove it is true.
2 On Counts 5 and 6, and this is where the government's
2 whole case comes tumbling down because it's a house of cards.

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1 As we discussed before, the government's entire case is based
2 upon the wrongful premise that Mr. McCay was the shooting
3 victim at 9th and Spruce. I think we have shown fairly
4 convincingly he was not that shooting victim. Therefore, the
5 government has failed to prove that Mr. McCay was killed to
6 prevent him from testifying, that he was the victim of a civil
7 rights crime at 9th and Spruce. Sadly, when Mr. McCay stepped
8 off the curb at 9th and Brighton he was just someone who was in
9 the wrong place at the wrong time. Mr. Eye may have shot him
10 but he shot the wrong person. Therefore, the government has
11 failed to prove the basic elements of the offense and Steven
12 Sandstrom must be found not guilty of Counts 5 and 6.
13 On the other hand, if you do think the government has
14 proven Mr. McCay was at 9th and Spruce, you still must find
15 Steven Sandstrom not guilty of these counts because the
16 government hasn't proved its case. In order to have aided and
17 abetted Gary Eye and Rios in their mission to avoid catching a
18 case, it must be proved in addition to the other elements that
19 Mr. Sandstrom acted with the intent to prevent William McCay
20 from communicating with a federal law enforcement officer. The
2 government presented absolutely no evidence that Mr. Sandstrom
2 had this intent. To the contrary, the only evidence the
2 government presented related to Mr. Sandstrom's intent was his
2 expressed rejection of Eye's and Rios's plan to find and to
2 kill the assault victim from 9th and Spruce. Mr. Sandstrom

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1 specifically told them they were going too far. Mr. Sandstrom
2 did end up at 9th and Brighton with Eye and Rios but the
3 government has presented no testimony or other evidence
4 supporting a finding that he sat in the car at 9th and Brighton
5 with the intent to keep Mr. McCay from calling a federal law
6 enforcement agent.

7 As instructed, his mere presence at the scene does
8 not make him guilty. And while there is language in the Count
9 5 instruction regarding the commission or possible commission
10 of a federal offense, the aiding and abetting instruction at
11 No. 40 specifically requires that the government prove that
12 Steven Sandstrom acted with the intent to prevent Mr. McCay
13 from communicating with a federal law enforcement officer.
14 Ms. Rios admitted that they thought they had committed a state
15 court crime. Accordingly, even if you believe Mr. Sandstrom
16 had an intent to prevent Mr. McCay from communicating with some
17 law enforcement officer, there's no evidence that he intended
18 Mr. McCay not communicate with a federal officer. If anything,
19 he intended to keep him from communicating with a state court
20 officer. He intended to keep him from communicating with KCPD,
2 not the FBI.

2 Similarly, with regard to Counts 7 and 8 which have
2 to do with burning of the Intrepid mid morning of March 9th.
2 The government has to prove beyond a reasonable doubt that
2 Mr. Sandstrom burned the car with the intent to impede,

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1 obstruct or influence an investigation of a matter within the
2 jurisdiction of the United States, that is the Federal Bureau
3 of Investigation. As you know, the FBI is charged with
4 investigating federal matters. They're in charge of
5 investigating federal offenses. Therefore, to prove
6 Mr. Sandstrom guilty of Counts 7 and 8 the government must
7 prove that in participating in the burning of the car he acted
8 with the intent to impede, obstruct or influence a federal
9 investigation.

10 Now, the government, as Mr. Gibson says, doesn't have
11 to show that a federal investigation was, in fact, pending at
12 that time or that it was even imminent. But it must show
13 Mr. Sandstrom acted with the intent to impede a federal
14 investigation. As previously stated, Ms. Rios said they
15 thought they committed a state court crime. It's reasonable to
16 assume that Stevie and even Gary Eye thought the same thing.
17 There's no evidence regarding what they thought but it's
18 reasonable to assume that they thought the same thing Ms. Rios
19 did because they have the same life experience.

20 It only makes sense then that any intent to interfere
2 with an investigation was an intent to interfere with a state
2 investigation, not a federal one. Put another way, the
2 government failed to prove that Mr. Sandstrom acted with the
2 intent to impede a federal investigation because the government
2 failed to prove that Mr. Sandstrom knew the activities that

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1 took place on the morning of March 9th could be the subject of
2 a federal investigation. Subsequently, I respectfully submit
3 to you that he is not guilty of Counts 7 and 8.
4 As to Count 9, it's alleged that in a letter dated
5 July 31, 2005, to Carolyn Galyean, Mr. Sandstrom threatened to
6 injure Rios because she was cooperating with law enforcement.
7 The government has shown you several letters between
8 Mr. Sandstrom and his cousin, Justin Buchanan. A lot of these
9 letters had some language in it that we don't like. A lot of
10 the letters had language in there about threatening to injure or
11 dispose of Ms. Rios. None of these letters, and I do mean none
12 of these letters are relevant to Count 9. Count 9 is based
13 solely on the letter of July 31, 2005 from Steven Sandstrom to
14 Carolyn Galyean.
15 Now, Mr. Sandstrom did say in the letter that he was
16 going to beat Rios' ass and he was going to use his fist. He
17 did say it. We can't hide from the words. We can't deny those
18 words. But Carolyn Galyean testified that this so-call threat
19 was not a threat at all. It was simply Stevie venting. Just
20 like she had seen Stevie vent with Ms. Rios in the past and in
2 person. She told you that they argued like cats and dogs. And
2 when they did, they threatened each other all the time. Rios
2 threatened to kick Stevie's ass. Stevie threatened to kick
2 Rios' ass. Nothing came of it. Nobody's ass got kicked.
2 Never did. If Regennia Rios' best friend is convinced and

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1 convinced enough here to come into court under oath and tell
2 you that Stevie really posed no threat at all to Regennia, then
3 we should listen to her rather than the arguments and
4 interpretations or the government's argument regarding the
5 meaning of the letter. Carolyn Galyean's testimony is
6 evidence. The government's interpretation of it, the
7 government's arguments about it is not evidence. Her testimony
8 is. Their argument is not. Therefore, we request you find him
9 not guilty of Count 9 as well.

10 Now, I worked through all the counts. Now, I'd like
11 to touch on a couple areas that may prove useful to you in your
12 deliberations or may be interesting to you during your
13 deliberations.

14 I'm not being critical of the prosecutors in this
15 case. Mr. Gibson got up here and said, we can't pick our
16 witnesses. I didn't go to central casting and pull Rios out of
17 there. Sometimes the government is stuck with the witnesses
18 they're stuck with. But, really? The likes of Rios, Deleon,
19 Chrisp, Galyean and others is beyond belief. This is a capital
20 murder case. Every one of these folks has lied or changed
21 their statements and testimony from one police interview to the
22 next. From one grand jury session to the next. From one
23 meeting with the Federal Bureau of Investigation to the next.
24 Then they get on the stand at trial and lied or changed their
25 testimony yet again. And this is despite the fact that these

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1 very witnesses all had either been given immunity or cut
2 sweetheart deals with this government to get up here and tell
3 you the truth about what took place on March 9th.
4 I say this to you to reinforce the idea that you get
5 to decide whom to believe. You get to decide whom to believe
6 and you get to decide how much of what they say you do believe.
7 But given all of the lies throughout this entire investigation,
8 all the way through trial from all of these witnesses, one
9 wonders whether you can ever have any confidence in any guilty
10 verdict in this case.
11 Next, if all these after the fact statements
12 supposedly made by Gary Eye about killing a nigger really took
13 place, then where are the credible or the believable witnesses
14 to them? You heard from Rios and Deleon, the Chirinos, that
15 other people were present when these supposed comments took
16 place. If there truly were witnesses to these alleged
17 statements, then why didn't the several members of the Stanley
18 family testify? Why didn't we see David Eagle or his family
19 member or his girlfriend? Why didn't we see Nessa Deleon? One
20 can only surmise that either the credibility of these witnesses
2 was somehow worse than the witnesses you saw, which is
2 doubtful, or their testimony would not have supported the
2 witnesses the government marched in here in front of you.
2 Again, the failure to call these supposed witnesses calls into
2 question the credibility of the very witnesses the government

1 did call.

2 Related to this, this whole, I'm going to kill a
3 nigger on site comment, how do we know this either didn't
4 happen or Gary Eye didn't mean it? We know it because
5 Mr. Gibson in his direct testimony with Ms. Rios specifically
6 asked her, were there other pedestrians on the street that
7 morning? Her response, yes. We know it because there was
8 African-Americans at Inner City Oil according to Ms. Rios.
9 According to Ms. Chrisp, if she was actually there. No one got
10 shot at Inner City Oil. Ms. Rios said that after they had left
11 Inner City Oil and no one had been shot, she assumed Gary Eye,
12 if he said it, didn't mean it.

13 Mr. McDaniels, who is a credible witness, came in
14 here and told you that every morning when he drives to work
15 down 9th Street, there are pedestrians hanging out on 9th
16 Street. These pedestrians were African-American. They were
17 Mexicans. They were white. There were plenty of targets of
18 opportunity if Gary Eye was really going to shoot someone on
19 site.

20 Let's talk about this chrome plated gun. The
2 government's witnesses are the ones who testified about the
2 description of the weapon. All of them said it was chrome
2 plated. Every single one. Kristina Chirino said she thought
2 it had a brown handle. Stephanie Sandstrom who went and picked
2 up the gun, took it, put it down in front of her, wrapped it in

1 two diapers took it and threw it off a bridge, said it had
2 ivory handles. You saw the gun they brought into this
3 courtroom. It's a .22. Sure. It's a revolver. Sure. It's a
4 black gun. It's not chrome. It has black handles. Not brown.
5 Not ivory. Even if you want to somehow believe that because it
6 was in the water for awhile all the chrome suddenly fell off
7 it, we've got 55 Chevys out there with chrome grills and chrome
8 bumpers still bright and shiny. Somehow because it went into
9 the water in the Little Blue River, all the chrome fell off it.
10 Even if you want to believe that part of it, sitting in the
11 river certainly didn't change the color of the handle. It
12 didn't turn ivory into black plastic. It didn't turn brown
13 into black. That gun they have in that cooler is not the
14 weapon. So when Mr. Gibson gets up here and says that
15 Mr. Sandstrom commented in a letter or a phone call that they
16 got the gun, do you really think they took the gun over to
17 Mr. Sandstrom in the Jackson County Jail and said, hey, do us a
18 favor. Confirm this is the weapon. They didn't do that. He
19 said they got the gun because the police reports he saw at that
20 point said they recovered the gun.
2 You've also got to remember when they were searching
2 for the weapon out there in the water, they found the gun
2 that's in the cooler and the FBI told them, keep on looking.
2 That isn't chrome. That gun is not the weapon that was used in
2 the killing of Mr. McCay. I don't know why they would even

1 bring it into this courtroom.
2 Finally, I want to take a minute to talk to you about
3 who Steven Sandstrom is. The government has done its best to
4 paint a very negative picture of him by bringing in these
5 letters between him and Justin Buchanan, his cousin. In
6 cross-examining Mr. Buchanan, we were able to show some of the
7 letters did not mean what the government initially proposed
8 that they meant. A lot of the language in there was that of a
9 kid locked up in jail, facing life in prison or death and he
10 was scared and he was striking out. And you have to remember
11 that these letters were all written well after the events of
12 March 9th. They do not accurately reflect who Mr. Sandstrom
13 was on the morning of March 9th.
14 I believe Ms. Kristina Chirino and Stephanie
15 Sandstrom testified that Mr. Sandstrom was bothered by what had
16 taken place. Ms. Chirino specifically remembered he was acting
17 odd, acting like something was wrong. She also testified that
18 Mr. Sandstrom cried about the events that took place on
19 March 9th. He cried about those events.
20 Further, we brought in witnesses to talk to you about
2 Mr. Sandstrom's formative years. So if he was racist, if he
2 was leaning toward committing a racial crime or civil rights
2 violation, the initial problems in his personality would have
2 shown up during these formative years. Who did you hear from?
2 You heard from the Family Court people. Mr. Gibson tries to

1 dismiss them because they didn't know who he was March 8th.
2 Because they hadn't seen him in a few years. But they're
3 important because they were there, they were witnesses to his
4 formative years. What did they tell you? They told you
5 Mr. Sandstrom was a good kid. That he tried hard in classes
6 that were taught there at Family Court. That he did well in
7 those classes. And that he preferred hanging out with
8 African-American kids. Had the opportunity to hang out with
9 the white kids in his house. Didn't do it. Hung out with the
10 African-American kids. Made up poetry with the
11 African-American kids. Made up rap songs with the
12 African-American kids. Kept a beat on the table so they could
13 make up these rap songs. Hung out exclusively with the
14 African-American kids.
15 You also heard from Mr. Sandstrom's friends. And
16 these are people that did know him all the way up until March
17 of 2005. They told you that he hung around African-American
18 people his entire life. Other people who said that, the
19 government's own witnesses, Rios, Galyean, Deleon, Chirino.
20 They all said that Stevie Sandstrom hung out with
2 African-American people. That he had no problem with
2 African-American people. That he never expressed a concern
2 about African-American people taking over his neighborhood.
2 Probably preferred it that way. He preferred dating minority
2 women. You heard a couple different witnesses including his

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1 sister say that he dated almost exclusively African-American
2 women and Hispanic women. He didn't date white girls. Only
3 black girls and Hispanic ones.

4 Tank Robinson told you the Sandstrom family welcomed
5 him into their house when he had nowhere else to go. The
6 Sandstrom family, the people who trained and raised Steven
7 Sandstrom, the people who instilled in him his beliefs,
8 welcomed into their home an African-American person to live
9 with them and they treated him as family. Steven even gave up
10 his bed so that Tank had a place to sleep. Then Stevie went
11 and slept on the couch.

12 Tank also told you about a friend of his, a white
13 friend of his, called Tank a nigger. And it really upset Tank.
14 But who else did it really upset? According to Tank, it upset
15 Stevie Sandstrom. He called the other person on it. How dare
16 you disrespect my friend. How dare you disrespect my house by
17 calling my friend a nigger. He called him on it. That's who
18 Stevie Sandstrom is. He was as offended as Tank and he stood
19 up for him.

20 So how did Stevie Sandstrom end up on March 9, 2005?

2 I said earlier that Mr. McCay sadly was in the wrong place at
2 the wrong time. This is true of Mr. Sandstrom as well. Of

2 course, Mr. Sandstrom put himself there. We can't deny that.

2 But he had been hanging out with Gary Eye for only a few days.

2 He didn't know who Gary Eye was. He did not know what Gary Eye

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1 was capable of. He had no way of knowing that Eye and Rios
2 were going to act the way they did the morning of March 9th.
3 He put himself in the car with them, that is true. But he had
4 no control over what transpired and his mere presence in the
5 car is not enough to imply guilt. His mere presence there, he
6 put himself there but his mere presence there is not sufficient
7 to find him guilty of any of the counts charged.
8 You're tripping. You have taken it too far. That
9 reaction defines Mr. Sandstrom on the morning of March 9, 2005.
10 He is not and should not be defined by the actions of the other
11 people at the scene. We ask that you return verdicts of not
12 guilty on all counts. Thank you.
13 THE COURT: Mr. Ketchmark?
14 MR. KETCHMARK: Thank you, Your Honor.
15 Ladies and gentlemen, I ask you to do what, exactly
16 what Mr. Osgood asked you to do in the opening statements.
17 That's hold us to our evidence. Don't go off and speculate and
18 conjecture and have discussions about, gee, is it possible that
19 Mr. Eye gets out to urinate? Is it possible there were words
20 exchanged across the street? Is it possible that aliens came
2 down in a UFO and did this or somebody comes riding in in
2 another vehicle and shoots Mr. McCay? The law doesn't require
2 you to check your common sense at the door. Take it back there
2 with you and remember that what we say is not evidence. The
2 evidence is what happens when somebody walks in this courtroom,

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1 they walk up the steps. They sit down. They raise their hand.
2 They take an oath and they answer questions. And they answer
3 questions of who ever calls them and then they have to answer
4 questions from the other side.
5 And ask yourself, ask yourself, and remember when I
6 talked with you, I said, who are our witnesses? His best
7 friend. It's his sister. Did any of them say they want to be
8 here? Did any of them come in here skipping up to the witness
9 stand? Not a one of those people wanted to have to take that
10 stand. But you know what? Do you expect these agents when
11 they're doing their investigation to accept a lie? Is that
12 what you expect, you expect the FBI, sir, you tell me, were you
13 ever around when they were talking about the shooting?
14 No, Special Agent, I was not.
15 Thank you, sir. Go on about your business.
16 That's not how it works. That's not what we expect.
17 We expect a thorough investigation.
18 The other thing that's interesting and I get confused
19 because when you look at the strategies, it's is this all
20 trumped up because these agents have, we must have a race
2 crime? Is that what is at play here? Because I kind of hear
2 that as an overarching theme here at points. Who is getting
2 all of these witnesses attorneys? Who? It's the government.
2 Who's not dealing with witnesses without their attorneys
2 present? It's the government. So ask yourself, if this is all

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1 some trumped up desire to get and make a race crime, why get
2 attorneys involved? Why not take this gun that Mr. Osgood
3 makes or Mr. Gromowsky makes such a big stink about that he
4 says is ridiculous to be brought into this courtroom, why not
5 throw this in front of Stephanie Sandstrom and say, is this the
6 gun? Ms. Chrisp, is this the gun? Well, you know what, this
7 gun is in the river for three months. Some witnesses describe
8 it as a chrome-plated or chrome handle or chrome whatever
9 they're suggesting. But ask yourself, why do we not do that?
10 Because this is a truth-seeking mission, ladies and gentlemen.
11 This is a situation where if somebody remembers they're wearing
12 a blue hat, somebody remembers they're wearing a white hat or
13 Gary's driving versus Stevie is driving, that's okay. Because
14 what you have to do is look at the instructions. And don't
15 just listen to what the attorneys tell you the instructions
16 are. Don't just listen to the parts that they want you to
17 hear. There's instructions that tell you, Instructions 3 and
18 15 that talk about how do you evaluate witnesses. How do you
19 listen to what they said? And the part that Mr. Osgood doesn't
20 finish is and the extent to which the testimony is consistent
2 with the other evidence that you believe. And Instruction 15
2 gives you other factors to consider in evaluating a witness's
2 testimony.
2 And there's this discussion about reasonable doubt.
2 Well, what is reasonable doubt? There's an instruction on it.

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1 You've read it. The Court has given it to. It's Instruction
2 17. It tells you that you use your common sense.
3 Now, this discussion about when does the sun come up?
4 You heard testimony the sun comes up at 6:39. And there's talk
5 about all this happened earlier. And I submit to you, how can
6 they see that? Common sense, ladies and gentlemen. What is
7 sunrise? What is dawn? What is daybreak? Does the sun have
8 to be breaking up over the horizon before it's light enough?
9 Use your common sense.
10 The other thing that is interesting and with
11 Mr. Gromowsky, his opening statement that Mr. Gibson talked
12 about with this notion of you're taking it too far, dawg.
13 You're tripping. And these conversations that Mr. Gromowsky
14 wants to talk about that first shooting at Spruce. And
15 Mr. Gibson points out, you know what, those statements, they
16 actually show a situation where he's thinking, he's deciding.
17 And so then they come back and now they say in closing
18 argument, well, where is the evidence that was Mr. McCay? So
19 now, I'm scratching my head because I'm confused. Do we have
20 two intended victims here? Is that what the suggestion is?
21 But they go down the alley and there is this first shooting
22 that happens. And Ms. Rios doesn't say, she says it's a black
23 man. Says that they see him as the car starts to turn. Look
24 at the aerals. All of the evidence that has been admitted can
25 go back. And you can ask for it and I suggest that you do.

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1 And ask yourself, as they're looking down the street at, as
2 they're going to Leon's, why is she even telling, why is she
3 telling the government they're going to Leon's? Why is she
4 telling the government about Stevie making statements about
5 you're tripping, dawg, if Ms. Rios is only about pleasing the
6 government? Why is that even there? I'll tell you why.

7 Because it's the truth.

8 Now the statement about her cousin, Ms. Chrisp, and
9 whether she's going to Inner City Oil or not at Inner City Oil
10 and Mr. Deleon not mentioning it. Yeah, Mr. Deleon didn't
11 mention it. And you can consider that when you're evaluating
12 it and I want you to. And you can also consider Mr. Deleon
13 saying that I kept Ms. Rios out of it when the Kansas City
14 Police Department was doing the investigation because she
15 wasn't involved. And then when there was this push on
16 Mr. Deleon about the game that was being played, nigger,
17 nigger, nigger, and I know it's offensive and it should be.
18 But when there's this discussion, he tells the Kansas City
19 Police Department. You remember my questions of him? He tells
20 the Kansas City Police Department that back in March when
2 they're investigating this. There's no FBI involved at that
2 time.

2 And then there are suggestions about, well,
2 Mr. Deleon, you're here because you're going to stay in the
2 federal pen. You get to have this wonderful lifestyle. You

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1 get T.V. You've won the right to have recreation. You've won
2 the right to this. You've won the right to cable television.
3 All these things to suggest that's what's motivating him. And
4 if you remember my questions of him and the timeline, he's in
5 front of a federal grand jury in March of 2005. And, yeah,
6 Mr. Deleon is not an angel and he has trouble himself that
7 resulted in him getting a murder conviction that happens in
8 October. If you remember, I asked the question, did you have a
9 crystal ball to see what was going to happen in the future?
10 Because when he's telling the federal grand jury in March or,
11 excuse me, in May, his homicide hasn't happened. And this
12 suggestion that that's what is motivating him to come in
13 here --and you remember when I talked with him, it was his
14 motivation is because he had gotten word that he was being
15 labeled a snitch and he ended up in the Missouri prison system.
16 He was going to get shanked. Now, he didn't suggest that
17 because he has to be the big stoic inmate. And you can
18 consider what promises we made to him. But look at the time
19 line.
20 This suggestion about, going backwards, about who is
2 Steven Sandstrom? Steven Sandstrom gives up his room to an
2 African-American, Tank Robinson, who came in here. And you'll
2 remember his questioning about the letter, that he said, well,
2 I didn't really know who wrote that letter. I never heard
2 Stevie use the N word. Not once did you hear a witness come in

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1 here from the defense who said that either of these two
2 defendants used the word nigger.
3 Tina Wilkerson, in fact, tells you that that is
4 fighting words. If my mother said nigger, I would be offended.
5 And nigga, with the A, which was the subject of a whole lot of
6 discussion early in the trial, if you remember, is a term
7 referred to, as Tina said, for homie, friend, cuz. And I asked
8 her, well, if you're walking down the street and you see
9 somebody you don't know, would you say nigga? She said, no,
10 that would be offensive.
11 Steven Sandstrom. Look at the letters. Read the
12 letters. Read the parts about Steven talking about that rug,
13 Alvin Brooks. While you're at it, give me head, African prick.
14 Suck my sweet little white dick, you African bastard. But
15 these are not African-Americans, who are black. These are
16 guards from Africa as Mr. Robinson would have you believe.
17 I'll give you the good news, in a letter to his cousin, I'm
18 still white. The letters with I'll write to her and I'll be
19 sure not to say, coal haulin' nigger, swastika. Those are
20 letters that Mr. Sandstrom is penning with his own hand, ladies
2 and gentlemen. And Mr. Gromowsky suggests to you, well, that's
2 not what is going on March 9th. But yet they want you to
2 believe this parade of witnesses who come in here, who haven't
2 seen him in, I think one guy initially said 94-95, then maybe
2 he was corrected. He said, I really can't remember. These are

1 letters that are written.

2 And the other thing is to suggest he's been blowing

3 off steam. This is just Mr. Sandstrom being Mr. Sandstrom.

4 And then you asked Mr. Buchanan about that. Mr. Buchanan said,

5 I sure wouldn't write that stuff in letters when I'm charged

6 with what he's charged with. He can't help himself.

7 Look at the threats. Mr. Gromowsky asked questions

8 about the language of the threats and suggesting, well, this is

9 just him blowing off steam. And look at the time and the date

10 and the progression and the ever intensing need to get

11 Regennia. And it's not that she's lying. That's not what the

12 letter said. It's because she's snitching.

13 This discussion about all of these statements that

14 the government is bringing to you, Ms. Rios, Vincent Deleon,

15 Jonathan Chirino, Kristina Chirino, Stephanie Sandstrom, do you

16 know what, they're right. They're absolutely right. Because

17 those are the family and friends. Those are the people that

18 they are comfortable speaking around, comfortable acting

19 around. It's not the Joseph Wrights or the Joseph Thompsons of

20 the world. Those are the people that they're going to talk

2 like that in front of. We don't pick our witnesses. But you

2 can bet that when the FBI learns about the witnesses, they're

2 going to do what they need to do to get to the truth.

2 And this discussion about Jonathan Chirino and these

2 agents swore at you, these agents did this, these agents did

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1 that. What did Mr. Chirino repeatedly say? In the beginning I
2 was lying and they were upset and then I told the truth. And
3 every witness that we called, that they were provided with an
4 opportunity to say, this is how I was treated by the FBI. This
5 is the manner in which they treated me and it was bad, wasn't
6 it? That wasn't their testimony. These witnesses, who these
7 agents helped secure attorneys for them.

8 The other thing that's interesting to note and we
9 talked about it briefly with several of the witnesses. But the
10 suggestion that the FBI is so motivated by how they're going to
11 go about doing this investigation and push this into a hate
12 crime. And I talked about Mr. Deleon's testimony about the
13 game to the Kansas City Police Department. You also remember
14 when Ms. Rios was talking about it and her video statement was
15 gone over, she talked about the statements Mr. Eye made about
16 the fact that they don't belong in our neighborhood or that's
17 what the motivation factor was and talks about the northeast.
18 That's all coming at Kansas City when they're investigating
19 this as a garden variety homicide.

20 Another thing about Mr. Sandstrom's letter,
2 Mr. Gromowsky suggested you can't look at those when you're
2 looking at the charge on Count 9. Those letters, the other
2 letters, you can view under consciousness of guilt and what his
2 intent is as it relates to that. Yes, that one Count 9 is the
2 July 31 letter of 2005. And as this agent testified the

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1 indictment was returned on September 29th and there was more
2 information that was coming out, more information that was
3 concerning that resulted in another threat investigation,
4 additional subpoenas and more of these letters being discovered
5 that ultimately results in Mr. Buchanan getting charged.
6 Turning to the issue, the tampering instruction, the
7 killing of a federal witness, Instruction 39. And
8 Mr. Gromowsky talks about this. And the language that is there
9 and the Court read it to you is that you're instructed the
10 government need not prove that a particular defendant intended
11 to prevent communication with a specific law enforcement
12 officer whom the defendant knew or believed to be a federal law
13 enforcement official, or even that a federal investigation had
14 been initiated or was imminent. If you find there was a
15 possibility that a witness would communicate with a federal law
16 enforcement official and that the particular defendant's
17 conduct prevented the communication from occurring, then you
18 may but are not required to find the second element of that
19 offense established.
20 To suggest that it was a state assault or a state
2 homicide and that's what was being prevented, the law does not
2 reward people who act quickly. The fact that they made the
2 decision to hunt down Mr. McCay after the miss at 9th and
2 Spruce, they're not rewarded for that. You look at their
2 conduct and their intent and that's what you focus on.

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1 Now, this suggestion, repeatedly, about the two
2 minutes and Mr. Gromowsky suggested, well, the two minutes
3 comes up through Ms. Rios. Well, the two minutes comes up
4 from --this two minutes comes up from Mr. Osgood's repeated
5 questions. Remember what the evidence is, ladies and
6 gentlemen. Questions and statements of attorneys are not
7 evidence. What do you hear about the 9th and Spruce? Well,
8 you hear from Mr. Gromowsky, it happened, but apparently it's
9 not Mr. McCay. So then I guess they go down to kill somebody
10 and did they get it wrong? Boy, I bet they feel stupid. It's
11 not reasonable. It doesn't make sense.
12 Mr. Eye, shoots at him point blank. And, yeah, he
13 misses. You heard the agent say, he's a trained firearm
14 instructor, that that's not surprising. But what else do you
15 hear? You hear that Mr. Thompson eats breakfast every morning
16 Monday, Wednesday, Friday. Gets there about 6:00. And he
17 heard a gunshot. There was a dispute. Did you hear the
18 gunshot on March 9th? And there was some bantering back and
19 forth about that.
20 And, again, ladies and gentlemen, ask for the
2 exhibits and you'll see a 302 which is an FBI report of the
2 interview with Brenda Thomas. And it talks about the time
2 being 6:00 in the morning. It talks about on the morning that
2 the man was killed at 9th and Brighton, a customer, Joe, last
2 name unknown by her, but because of good work they found out

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1 who it was, came in and reported approximately 6:00 a.m. that
2 Joe made the comments regarding gunshots. She went outside the
3 cafe to look around. Now, why would she go outside the cafe
4 and look around if it's not the day in question? So, then
5 there was the suggestion, well, no police that looked at that
6 location. There was no crime scene. Did Mr. Thompson call
7 9-1-1?

8 And talking about this whole issue on the ballistics
9 and the ballistics test that was being done and the failure to
10 look at these buildings. And I think the description, looking
11 for a .22 is like a needle in a haystack. That's even assuming
12 it hits a building. Sitting in a car, pointing a gun up and
13 firing. And the most important thing that Mr. Cayton told you
14 I think is that where a bullet goes is the direction the muzzle
15 is pointed. So at 9th and Brighton when I asked him if someone
16 is struggling for their life and trying to push that gun away
17 from themselves, they could be fired at more times than that? He
18 said, yes. Same thing, shooting up as you're sitting in the
19 car, that bullet goes sailing high, doesn't hit anything. But
20 they would expect that the FBI is going to commit hundreds of
2 officers go out and scour these buildings, top to bottom to
2 look for that small little pin prick that may or may not be
2 there. But you know what? They do. They go around and ask.
2 They ask the business owners, were you open? Was anybody there
2 that could have heard these shots? And they find Mr. Thompson.

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1 And they do an investigation. And they run down, locating him.
2 And this suggestion about the two-minute-mile, the
3 two-minute-mile. There is no evidence about that, ladies and
4 gentlemen. The evidence is at 6:00 a.m. Mr. Thompson, whether
5 he's inside the restaurant or outside the restaurant, he
6 remembers one thing and one thing distinctly, I heard shots.
7 He tells her. That's at 6:00.
8 They talk about driving around, hitting the block,
9 looking for McCay. He's not there. There is a discussion at
10 that point what do we need to do? And Gary Eye says, we need
11 to go find him. There is some more discussion and this is
12 where the, dawg, you're taking it too far. You're tripping,
13 comes in with Mr. Sandstrom. But they would have you believe
14 all that just basically doesn't happen because there's this,
15 they're not even going to talk about hitting the block but
16 driving down as fast as they can, down to Van Brunt, over and
17 around and back. Why are they doing that, ladies and
18 gentlemen? They realize that they missed. They're talking
19 about what they're going to do. They decide to hunt him down.
20 And if you're looking for somebody, do you expect Mr. McCay is
2 just going to continue down 9th Street? Do you expect he's
2 just going to go straight down 9th Street. They want to talk
2 about the G & E Cafe, maybe he could have gone to the G & E
2 Cafe. What he was thinking at that point we don't know and we
2 never will.

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1 Is it reasonable to assume he's like, I'm getting out
2 of here. I don't know why I got shot at but I'm not staying on
3 this street. He bolts over and goes down. Running there.
4 Then as he's getting back to the point where he feels like he's
5 going to be safe, within yards of his work, he comes back on
6 9th Street, only to be unfortunate that his path once again
7 crosses with these defendants.
8 I'm lost a little bit on this Tapscott and the City
9 of Kansas City. My recollection from Mr. Tapscott was when he
10 came in and testified, he said the City claims the streets.
11 The City maintains the streets. The City claims them as
12 assets. So it's because there this question out there about,
13 well, maybe there was a gated community and this was deeded to
14 the City. Did you ever think about that? Reason and common
15 sense, ladies and gentlemen. Mr. Thompson drives on 9th Street
16 to the restaurant that's open and operates on 9th Street.
17 McDaniel, not McDonald, McDaniel is driving to work on 9th
18 Street. It's a major thoroughfare. Reason and common sense.
19 The gun. Again, I talked about it once before but
20 Stevie Sandstrom, he keeps it. Now, to suggest this isn't the
21 gun that was used, he didn't want the gun on him when the
22 police came. He called his sister and you heard that call to
23 get rid of it. He told her where he hid it. And he tells in
24 the letters and the calls about the divers finding the gun and
25 it's just a really, really, really, really bad day for

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1 Mr. Sandstrom. It just so happens where his sister takes them
2 and shows them where she disposed of the weapon, that the FBI
3 gets the sun coming down on them that day, I guess, because it
4 just so happens there's a .22 in that river. Not a .38. Not a
5 .45. It's a .22. Reason and common sense.

6 The other thing is the statement about in the call,
7 where Stevie is talking about it's one of two things, and you
8 can listen to the calls. You can ask for them. But when he's
9 talking to Stephanie when he's arrested and in jail the first
10 time and he talks about--listen to that call again. And he's
11 saying homicide wants to talk to me. It's all good. It's all
12 bad. It's one of two things. Don't say nothing. And then
13 starts talking about not having the gun on him. And the
14 statement about bye, bye, Stevie. And she says, well, what are
15 you talking about bye, bye, Stevie anyway? And then the
16 discussion. And the call about, if I'm getting out, there is
17 going to be a trick to it.

18 Now, ask yourself this, one of two things.

19 Mr. Sandstrom knows about the 7-Eleven shooting because he's
20 talking about it repeatedly on that night. Did I hit anybody?

2 Gary. I don't know. I wasn't there.

2 One of two things. There's that and there's this
2 incident with Mr. McCay. And if he didn't know --that's the
2 other thing is when you look at the instructions there are
2 several instructions on aiding and abetting that was touched

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1 upon. And it's important that you understand that mere
2 presence at the scene of an offense does not make one guilty.
3 Presence can be considered as a factor. But if you're present
4 and you have knowledge and you, yourself, are involved in
5 aiding and abetting that by providing a gun, by driving a
6 vehicle, then you're guilty.

7 Mr. Gromowsky's discussion about, well, this is
8 really a state case therefore under Counts 7 and 8. And this
9 burning of the vehicle that, I guess then that that's not
10 really because there's not a federal crime. But for it to be a
11 crime at all, Stevie had to have known state or federal and so
12 by what he tells you about Counts 1 through 6, he's saying his
13 client is not guilty so why is he's suggesting when you get to
14 Counts 7 and 8, it's a state crime. He's either guilty as the
15 counts are laid out or he's not guilty as the counts are laid
16 out and that's what you need to decide. And I do encourage you
17 to take the instructions and the law and weigh it -

18 MR. GROMOWSKY: Your Honor, may we approach?

19 THE COURT: Yes.

20 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
21 PROCEEDINGS WERE HAD:)

22 MR. GROMOWSKY: Your Honor, he's made a clear
23 misstatement of the law there regarding how these counts are
24 lumped. Some of them could have been not even at the scene
25 ever and still be charged with and convicted of burning a

1 vehicle and obstructing justice. So to imply they have to,
2 that they can't be guilty or not guilty on the earlier counts
3 and still be found guilty on the later, that is a misstatement
4 of the law.

5 MR. KETCHMARK: I'm merely responding to his argument
6 Counts 1 through 6, Stevie was not involved. He was merely
7 present. Counts 7 and 8, those are state cases, not within the
8 jurisdiction of the FBI. I don't think it's any misstatement
9 of the law or mischaracterization. I'm simply rebutting the
10 inference he's making. And I find the arguments he's making
11 with respect to Counts 1 and 6 are not consistent with his
12 argument he's making on Counts 7 and 8.

13 THE COURT: I don't believe it's a misstatement of
14 the law but if it is, the jury has the instructions. I trust
15 them to read them. Objection overruled.

16 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

17 MR. KETCHMARK: The other thing that's interesting in
18 Mr. Gromowsky's argument and his opening statement is he wants
19 to pick and choose. He liked Ms. Rios when statements are made
20 by her that somehow, he thinks, helps his client. But if they
2 hurt, oh, no, she's a liar. She's a liar. And what I'm asking
2 you to do is weigh her testimony. Challenge it with the other
2 testimony. Lay it on top of the other statements and the other
2 people that are there.

2 And that's another point is this discussion about

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1 other witnesses being present. And he talks about the Stanleys
2 and he talks about Jessica Eagle and David Eagle. And make no
3 mistake about it, ladies and gentlemen, they subpoenaed
4 witnesses themselves that came in and testified. They have
5 every right to use the Court's subpoena power that we do. And
6 to suggest that because we didn't bring those witnesses in some
7 how they don't help our theory of the case, you can bet that if
8 they thought it helped their theory, those people would have
9 walked in here and taken the witness stand and testified just
10 like -

11 MR. GROMOWSKY: Objection, Your Honor.

12 THE COURT: Overruled.

13 MR. KETCHMARK: They would have come in and taken the
14 witness stand and testified. And to suggest that somehow we're
15 hiding those people from you when they have the right to bring
16 them in, is wrong.

17 The Jonnie Renee circus comes to town according to
18 Mr. Gromowsky. Well, looking at his argument, yeah, Ms. Renee
19 says she had Gary driving the vehicle. And when you're looking
20 at that, ask yourself, is that a situation where, is that an
2 intent to deceive you? To make you see something false? Or is
2 that just her recollection? And then the instruction tells you
2 that people perceive things and remember things differently.
2 And more importantly this suggestion that she has
2 matters pending in Jackson County or Johnson County, Kansas,

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1 and even though the government here and she says, we did
2 nothing for her on those. Mr. Gromowsky says, I submit to you
3 that she let the state know, I'm cooperating with a federal
4 investigation, give me consideration. She didn't testify to
5 that. And more importantly, if you think that happened, you
6 think they're dumb enough over there that they're going to say,
7 gee, we're going to take your word for it, Ms. Chrisp. There's
8 not going to be a phone call made? Ladies and gentlemen, don't
9 check your reason and common sense. Don't let confusion muddy
10 the truth.

11 And the truth is simple. And it's sad. That on
12 March 9th, Defendants Eye and Sandstrom with Rios in tow tried
13 to kill, shoot, wound, Mr. McCay at 9th and Spruce. But they
14 missed. And, unfortunately, compounding the situation, they
15 take it the next step and they hunt him down and they kill him.
16 The other thing that's interesting, too, on
17 Ms. Chrisp is, well, if you believe Regennia was trying to
18 protect her, why is she mentioning her in her first police
19 interview? Remember when I had Ms. Chrisp on the stand and I
20 said, Ms. Chrisp, when you talk to people from law enforcement,
2 who did you talk to? I talked to Special Agents Gothard and
2 Janke. Did you ever talk to Kansas City. No. But apparently
2 they would have you suggest that because her name was mentioned
2 and her name was mentioned about in the paragraph where they
2 said, and it was read by Ms. Rios with Mr. Gibson, about why

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1 are you here? Tell us what happened. Basically she said we
2 went here, we smoked some meth, stole some cars, did this over
3 here at Jonnie Renee's and that's pretty much it. What she
4 left out, and ask yourself this, too, with Ms. Rios, when you
5 look at her testimony and look at the lies, lies, lies, as they
6 would suggest to you, what she's omitting is things that make
7 her look bad. Now, yes, she is immunized and why she did it,
8 only she knows. But she's not attributing and making up
9 information. She's omitting facts that make herself more
10 culpable or that put people like Jonathan Chirino, who she
11 doesn't think should be involved, under the scope, the
12 microscope.

13 And the suggestion that these witnesses, Ms. Rios is
14 I guess now looking at the autopsy report and supposedly these
15 are the agents providing her with a copy of the autopsy report
16 because there's discussion about is it the side or is it the
17 chest? Did one witness come in and say that they were provided
18 with reports by anybody? In fact, they said just the opposite.
19 That's not how it happened, Mr. Osgood. Mr. Sandage.
20 Mr. Gromowsky. Mr. Rogers.

2 MR. OSGOOD: Object to him suggesting me, personally,
2 Your Honor.

2 THE COURT: Overruled.

2 MR. KETCHMARK: The other thing and Mr. Gibson
2 mentioned this on Mr. Sandstrom and his knowledge in the letter

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1 where he pleads with Kristina to go to his cousin, to her
2 cousin which is Vincent Deleon, and tell him to come into court
3 and say Gary made me go back. You don't go back unless
4 something happened the first time. So this suggestion that
5 there's no first shooting, it doesn't make sense. Mr. Thompson
6 hears it.

7 And their ballistics experiment, Mr. Cayton wasn't
8 trying to lie but he's getting his facts from them. He doesn't
9 know what the testimony is. He gets a summary, goes out and
10 does the test in a manner that he thinks is the way to do it.
11 But he told you that sound travels in the direction that it's
12 being projected. And when a bullet is fired, sound is going to
13 travel that way. So when you're firing into a poly-filled
14 tube, it's going to trap the sound. And the sound is going to
15 be projected down. Versus, if you're at the end of the alley
16 sitting in the direction, pointing the gun at a person on the
17 sidewalk in the direction of the G & E Cafe. And the
18 suggestion of their investigator, Mr. Reeder. Well, what did
19 Mr. Reeder tell you? Mr. Reeder said, well, I'm at the G & E
20 Cafe and I'm sitting there like Mr. Thompson is suppose to be
2 having breakfast. I'm talking continuously. Did you know
2 Mr. Thompson was supposedly by himself? Well, why are you
2 talking continuously? Well, that's what I was instructed to
2 do.

2 Let's talk about some of these questions. And

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1 Mr. Osgood kind of did the quick fire. What about this? What
2 about this? What about this? When he's talking about the
3 shooting at 9th and Brighton, what about the fact that he's
4 approaching from the street. And if he's been shot at before,
5 why does he go in the street? Why does he fight with him? Why
6 this? And why that? I'm sure you remember. Well, let me
7 answer some of those for you or at least provide answers that
8 the evidence would suggest is reasonable. You have a guy who's
9 within walking distance of his work. Knows something happened
10 up the street. Doesn't know why. He's almost there. It's
11 close enough that he can see who it was and as he's going there
12 he sees a person get out of the vehicle that matches the
13 description. And he's got two choices at that point, ladies
14 and gentlemen. He can either turn and engage or he can run
15 from somebody with a gun at his back. What's reasonable?
16 And this suggestion about, well, what about the
17 fighting? McDaniel came in and said in no uncertain terms his
18 recollection is that he's driving and somebody from the north
19 steps out in front of him to the point he has to slow down.
20 The north side of the street is the side of the street that
2 they were on. And then talks about driving past, hearing a
2 shot before he looks up and sees a struggle.
2 And this suggestion of the DNA and how this somehow
2 exonerates or plays in the favor of Mr. Eye. Ladies and
2 gentlemen, they can kill Mr. McCay to prevent him as a witness.

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1 They can burn the vehicle. They can throw the gun in the
2 river. But what he can't get rid of is the genetic material
3 that is left underneath the victim's fingernails as he's
4 fighting for his life after being shot, beginning to bleed out
5 at 9th and Brighton. That, ladies and gentlemen, is something
6 he cannot do. So then he's left with the decision of embracing
7 it. And compelled pursuant to a court order. That's where the
8 DNA comes from. The suggestion about breaking up a fight or
9 urinating, where is the evidence of that? Look at the
10 evidence. Don't listen to argument.
11 Suggesting that the eyewitness's accounts are
12 incorrect because they're confusing or they don't see it
13 correctly. We bring in to you witnesses who have information
14 so you can put it together. Now, what McDaniel sees is
15 different than what Wright sees. But if you remember McDaniel
16 sees it before it's happening and as he describes driving away,
17 he doesn't stop. He doesn't call 9-1-1 either, I don't
18 believe. But as he's driving away he says, other cars are
19 coming up and one appears to be stopping. Enter, Mr. Wright.
20 He sees and remembers things differently. They're not
21 inconsistent.
22 The number of bullet holes, the number of shots, the
23 need to reload and, again, there's nine shots. Let's talk
24 about how many shots were fired at this location, how many at
25 that location. I don't remember how Mr. Osgood got his math of

1 ten. Did they reload? I don't know. Possible. Does that
2 mean that they're going to leave the casings? We're going to
3 burn the Intrepid. Strip everything out but we're going to do
4 this. Let's eject those shell casings and leave them on the
5 floor of a car that we're going to destroy because we don't
6 want it found as evidence.
7 You can destroy a car. You can throw away a gun.
8 You can even kill the man. But unless you're going to get down
9 an use a scaping tool and get out the very DNA material that
10 links you, he was married to being in a physical altercation
11 with McCay at that point. Somebody who there's no evidence to
12 suggest from anyone, Ms. Rios said, didn't know, hadn't never
13 seen him before. It comes back to the question Mr. Gibson
14 asked you, if not race, why? Why?
15 Ladies and gentlemen, we've been talking to you a
16 long time. And Mr. Osgood ended with the discussion of the
17 important role you all have. You know what? There's one thing
18 he and I do agree about and that is that you do have an
19 important role. I've had discussions in the past with some of
20 my former bosses and the discussion is about the power that we
21 bring to file charges, to come into court. And we do. But
22 ultimately, ladies and gentlemen, in every criminal case, in
23 every trial, this is where our power stops. This is where the
24 power is handed over to you because that's the system of
25 justice that we have. You have the power, now, to look at the

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1 law, to look at the facts, assess who you believe and why you
2 believe them. And if you do, at the end of the day I'm
3 confident that if you find and seek the truth wherever you find
4 it, it will lead you to only one just conclusion. That on
5 March 9, 2005, Mr. McCay, an African-American man, was doing
6 nothing wrong other than walking down a public street on his
7 way to work. And he had the misfortune of coming across these
8 two individuals and his life was taken. They took his life
9 because he was a black man. Because he was on a public street.
10 And to silence him as a witness. And I'm confident once you
11 get done, you will return the appropriate guilty verdicts.
12 Thank you.

13 THE COURT: Mr. Quatrocky and Ms. Drew, you are the
14 remaining alternates on this jury panel. In a moment I'm going
15 to excuse you, however, I am not going to release you because
16 it may be necessary to call you back for phase 2. So the
17 admonishment that I have given you repeatedly throughout the
18 trial about not discussing the case, not reading or watching or
19 listening to any news reports about the case continues. And
20 should there be a phase 2 of this trial then Ms. Fees will call
21 you and tell you when to be back because you will need to
22 participate in phase 2.

23 Thank you very much for your time and your attention
24 and for the moment you are excused.
25 In a moment we are going to recess and you will begin

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1 your deliberations. I suggest that perhaps the first thing you
2 might consider would be the election of one of your group as
3 the foreperson. That person will preside over your discussions
4 during your deliberations and speak for you here in court.

5 Lunch will be provided to you. You can work through
6 lunch or not.

7 The manner in which you conduct your deliberations is
8 entirely up to you. You may take breaks when ever you feel the
9 need to take breaks. However, your discussions about this case
10 should stop until all twelve of you are together. You
11 shouldn't go off in small groups and discuss it separately
12 because each of you need to know what the others are thinking
13 and what the others are saying.

14 If you should be unable to reach a verdict by 5, or
15 verdicts by 5:00 p.m. today, I want you to go home. You'll be
16 dismissed directly from the jury room. You won't need to come
17 back in here. Go home and get a good night's rest. Be back in
18 the jury room at 8:30 tomorrow morning and resume your
19 discussions at that time.

20 While you are apart from one another, you should not
21 discuss the case with anyone else. You should discuss it only
22 with one another until your work with us is completed. And
23 further you should not watch, listen or read any news reports
24 of the trial while you are apart. Your decisions must be based
25 solely upon the evidence which you have heard here in court and

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1 which you've seen and solely upon the instructions that I have
2 given you.

3 If you wish to review any of the exhibits, let me
4 know. Identify those exhibits by number, if possible. That
5 will help us retrieve them more quickly. If not, describe them
6 as best you can and the exhibits will either be sent to you in
7 the jury room or it may be necessary to bring you back in the
8 courtroom to look at some of the exhibits. But in any event,
9 we'll make those exhibits available to you. Some of the
10 exhibits have been referred to but have not been offered or
11 admitted. And unless an exhibit has been admitted into
12 evidence, I will not be able to provide it to you.

13 Well, I have told you repeatedly that you should not
14 discuss the case and you should not make up your mind. I tell
15 you now that you must discuss the case and you must make up
16 your mind. We'll be in recess until we hear from you.

17 (At 12:45 p.m. the jury retired to deliberate its
18 verdicts.)

19 (The following proceedings were had OUT OF THE
20 PRESENCE AND HEARING OF THE JURY:)

21 THE COURT: All right. In a moment we'll go ahead
22 and recess. John, you had something.

23 MR. OSGOOD: Your Honor, I did. I want to renew once
24 again, an objection, Griffin versus California, burden
25 shifting. I did not open the door to other witnesses. I

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1 believe Mr. Gromowsky did, unfortunately. But in rebuttal the
2 prosecutor said that I had the power to subpoena. He said they
3 had the power to subpoena witnesses, to bring them in here to
4 testify. If they were going to testify favorable for us, we
5 certainly would have called them. And the inference being that
6 we failed to produce evidence. And, arguably, yes, co-counsel
7 or co-defendant's counsel opened the door. But I certainly
8 didn't make any such statements during closing argument. And
9 therefore I move for mistrial on the basis of burden shifting
10 under Griffin v California.

11 THE COURT: Do you want to respond?

12 MR. KETCHMARK: I think the record is abundantly
13 clear, Your Honor, on the progression of how the statements
14 came in and the government's response. I don't think we did
15 anything inappropriate. I think the Court's ruling was
16 appropriate to overrule the objection.

17 THE COURT: If the objection had been made at the
18 time the argument was made, it would have been denied. It is
19 denied now. The motion for mistrial is, likewise, denied.

20 MR. GROMOWSKY: Your Honor, on that same topic when I
21 made the objection, I didn't state a cause until we started to
22 move up. You told us overruled. I want to make clear for the
23 record it was a burden shifting objection in the event the
24 appellate court, obviously, is not going to be able to tell.

25 THE COURT: I assumed that's what the objection was,

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1 Mr. Gromowsky, and it was on that basis that I denied it.

2 MR. GROMOWSKY: Thank you, Your Honor.

3 THE COURT: I'm not going to require you to stay in
4 the courtroom. But be no more than five minutes away from the
5 courtroom. Be sure that Eva knows how to get in touch with
6 you. And so if we need to produce exhibits or there are
7 questions, I want to respond to those promptly and not force
8 the jury to wait.

9 At some stage, while I'm not assuming there will be a
10 second phase, I think we need to be prepared for the second
11 phase. We have proposed mitigators from Defendant Eye. We do
12 not have proposed mitigators from Defendant Sandstrom. Can you
13 provide those to us, Charlie?

14 MR. ROGERS: I was going to work on them this
15 afternoon. I do not anticipate the jury will be done by 5.

16 THE COURT: I do not either. But let's go ahead and
17 get those in. Then we'll finish up our work on the
18 instructions and so you can review and study and look over
19 them.

20 Anything further, folks? Okay. We'll be in recess.

21 (End of session)

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25

1 IN THE UNITED STATES DISTRICT COURT

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16 United States Department of Justice

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25 Proceedings reported by computer stenography; transcript produced
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1 MAY 8, 2008 -DAY 12

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: I wanted to visit with you about some
5 scheduling issues.

6 (A discussion was had off the record.)

7 (At 9:00 a.m. the Court received a note from the
8 jury.)

9 (The following proceedings were had OUT OF THE
10 PRESENCE AND HEARING OF THE JURY:)

11 THE COURT: Okay. This should be on the record.

12 MR. ROGERS: Do we need the defendants?

13 THE COURT: I'd like to have them in here.

14 All right. On the record now. We have a request
15 from the jury signed by Kevin Whitworth. He asked for Item No.
16 300, that's the long distance aerial photo, I believe, that
17 shows Aeroform. He asked for Exhibit 186, if the whole letter
18 was admitted. And it was. 186A and 186B. He asked for those
19 if the whole letter is not sent back. But if we send back 186
20 then I interpret the note to mean they don't need 186A or 186B.
21 He asks for phone calls from Eye and Sandstrom, the Jackson
22 County Detention Center phone calls.

23 Does anyone know that exhibit by number?

24 MR. KETCHMARK: Does it just say phone call?

25 THE COURT: Says phone calls between Eye and

1 Sandstrom from the Jackson County Detention Center.

2 MR. ROGERS: I think there's only one.

3 THE COURT: I only recall one.

4 MR. KETCHMARK: We can--83D1, Your Honor.

5 THE COURT: All right. So Exhibit 300, Exhibit 186

6 and Exhibit 83D1 can be provided.

7 Do we want to bring them in to listen?

8 MR. KETCHMARK: That's what I was going to ask.

9 We've got in a couple of variations because we were trying to

10 anticipate this. One is the way we presented it was in

11 Sanction. We can have that, since they're only asking for that

12 particular one, I think the easier way to do it would be, I

13 think we have that in just a Windows media file and then we

14 have a transcript that's not synced but those are what were

15 combined to make 83D1. So we could send that back, a copy of

16 the transcript, a copy of the call then provide them with a

17 computer or something to play it on, if you want to do it in

18 that fashion.

19 What we have done, I was thinking at some point they

20 might ask for everything. We have a computer that is scrubbed,

21 with just Sanction. Well, we can do it in a number of formats.

22 We could provide it where if the Court wanted to bring them in

23 and they could listen to it here or we could provide them with

24 just a copy of that call on a Windows media file with the

25 transcript that was combined to make 83D1. So there's a number

1 of varieties.

2 THE COURT: You folks have a preference?

3 MR. OSGOOD: I don't want them having the transcript

4 alone. The law is very clear they're not entitled to the

5 transcript. All they're entitled to is just the phone call.

6 If you want to send back just the phone call on some device to

7 play it on, that's fine. Otherwise, if you want, if the

8 government wants them to see the transcript in sync, I think we

9 need to bring them in here.

10 MR. KETCHMARK: Only thing I might add, Judge, is

11 that I think the law is clear in the notes on the transcript

12 and it says if there is no dispute or objection as to the

13 authentication of the accuracy of the transcript, which there

14 was not here, the transcripts can go back. And the transcript

15 in this case, obviously, is part of the exhibit because it is

16 linked to the call. So I do think the Court has the discretion

17 and it would be proper to allow them to have the transcript

18 with the call. And there was not any dispute and there was

19 actually an agreement at the bench with respect to the

20 transcripts, that they were accurately reflected.

21 MR. OSGOOD: --the one I'm talking about is the one

22 originally set out by the Eighth Circuit about an 8 point

23 criteria about the use of transcripts.

24 THE COURT: I'm just going to bring them in. I'll

25 bring them in for that because I also need to tell them that I

1 can't comply with their next two requests. And those are
2 Regennia Rios' transcript. This one, not grand jury
3 transcript. They're evidently asking for transcript of
4 Ms. Rios' testimony in this trial. And I'm not going to do
5 that. If there are specific portions of that testimony they
6 would like to have read back to them, we'll bring them in and
7 read it back. And the same request for Vincent Deleon.
8 So when I bring them in to play 83D1, I will tell
9 them that there are no transcripts of the testimony at this
10 time. And if there are specific portions of the testimony that
11 they want to hear read back to them, we'll try to identify
12 those, we'll try to locate them. But I'm not going to get in
13 the business of creating entire transcripts on the spur of the
14 moment.

15 MR. KETCHMARK: We'll run downstairs, Your Honor,
16 Ms. Marko is getting the computer. I'll get 300 and 186. Or
17 do you want me to, I guess I could send, I don't know when
18 you're bringing them in. We'll get the computer up here as
19 quickly as we can for 83D1.

20 THE COURT: Let's try to do it in ten minutes or so.

21 MR. KETCHMARK: Okay. We can do that.

22 THE COURT: This note by the way will be Court's
23 Exhibit 3 and made a part of the record.

24 (The following proceedings were had OUT OF THE
25 PRESENCE AND HEARING OF THE JURY:)

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1 MR. KETCHMARK: I was just --when we went and pulled
2 the exhibits, Your Honor, I have 300 which is the aerial
3 photograph of the 8th and Spruce location. 186, the original
4 letter in its entirety. And then what I was pointing out and I
5 told defense counsel is the 83D1 is the portion of the call
6 that Mr. Gibson used in his closing. There is a second portion
7 that is 83D2, which is also a part of that same call between
8 these two defendants. And I assume, obviously, they weren't
9 asking what was referenced in closing so they would be wanting
10 both of those portions.

11 THE COURT: That's my interpretation. The note says
12 phone calls between Eye and Sandstrom from Jackson County
13 Detention.

14 MR. KETCHMARK: I believe that is the only call that
15 was admitted between both parties.

16 THE COURT: So it would be 83D1 and 83D2?

17 MR. KETCHMARK: That's correct, Your Honor.

18 THE COURT: All right. This is not the picture that
19 I think they were describing. Item number 300, question mark,
20 the one that includes Aeroform dash largest. So that's the one
21 from the greatest distance.

22 MR. KETCHMARK: And it's a photograph versus the
23 Google map? Because we have -

24 MR. ROGERS: I think the photograph that was in the
25 series that shows the Sandstrom house.

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1 MR. KETCHMARK: Those are the diagrams. That's the

2 Google map.

3 THE COURT: There was a photograph.

4 MR. KETCHMARK: There was a photograph, too.

5 THE COURT: 300 series. Looks like 302. 302 is the

6 one looking west on the street.

7 MR. KETCHMARK: That's correct.

8 One of the other things the parties were discussing,

9 Your Honor, is the best method, obviously, the Court's bringing

10 them in. But the discussion about everybody being here,

11 everybody being out. And I think that we're in agreement,

12 meaning, obviously, defense counsel and the government, that it

13 would be better if we weren't here so they can feel free to

14 view it and discuss because it's really part of their

15 deliberations. And it's more of a technical issue in terms of

16 how they have to have it presented to them.

17 THE COURT: I've done it both ways but you're right

18 the jury will be more comfortable if you're not here.

19 MR. ROGERS: I'm fine with not being here but my

20 only, I don't know what you call it, maybe hesitation, maybe,

21 is a good word. Is that if it's going to be played back for

22 them by Ms. Marko who has been sitting at the prosecution table

23 as part of the prosecution team, that sort of tilts the playing

24 field although she's played back stuff when I asked her to.

25 THE COURT: That's right. She has played back

1 exhibits at the -

2 MR. ROGERS: She's sitting at the prosecution table

3 so I'm wondering whether the court staff could be shown how to

4 push the button and make it work?

5 THE COURT: Really, Charlie? No. I'm going to let

6 her do it.

7 MR. ROGERS: Okay.

8 THE COURT: 302.

9 MR. KETCHMARK: I think Mr. Green's got it. No, they

10 went to pull it up. Elsie, can you pull up 302? Make sure

11 it's the one everyone is thinking about.

12 Is that the one, Judge?

13 THE COURT: I believe that's the one.

14 MR. KETCHMARK: That's the biggest aerial that we

15 have.

16 THE COURT: Okay. You folks want to leave the

17 courtroom, now?

18 (Counsel and parties left the courtroom.)

19 (The following proceedings were had IN THE PRESENCE

20 AND HEARING OF THE JURY:)

21 THE COURT: Good morning.

22 In response to your note, the exhibit I believe that

23 you are requesting is Exhibit 302. That is the one looking

24 west on 9th Street and includes the Aeroform building. So

25 Ms. Fees will give that to you and you can take it back to the

1 jury room and inspect it at your leisure.
2 Exhibit No. 186, you asked to see the entire letter
3 if it has been admitted. It has been. So that letter will
4 come back to you as well.
5 And because you have the entire letter then I assume
6 you don't need Exhibits 186A and 186B which are excerpts from
7 that letter and so I have not provided those to you.
8 We are going to play for you in just a moment the
9 phone calls linked to the transcript of the, actually there's
10 one phone call and two separate parts, I think, aren't there,
11 Ms. Marko?
12 There are two separate parts to it. One is Exhibit
13 83D1 and one is Exhibit 83D2. And we will play those for you
14 sequentially in just a moment.
15 You have also asked for the transcripts of the
16 testimony of Vincent Deleon and Regennia Rios. We don't have
17 those transcripts. And it would take a considerable amount of
18 time to get them for you. However, if there are specific parts
19 of their testimony that you would like to have read back to you
20 and you can identify those for us, we'll try to find those
21 portions and then read them back to you and we'll bring you
22 back in the courtroom for that purpose.
23 The note from Mr. Whitworth is marked Court's Exhibit
24 3 and will be made a permanent part of the record.
25 And now, Ms. Marko, if you would play 83D1 and you

1 can watch your monitors.
2 (The tape is being played.)
3 THE COURT: Then 83D2.
4 (The tape is being played.)
5 THE COURT: Would you like to hear or see either of
6 those again?
7 Both?
8 All right. Let's begin a second time with 83D1.
9 (The tape is being played.)
10 THE COURT: And 83D2.
11 (The tape is being played.)
12 THE COURT: Like to hear either of them again?
13 Anyone?
14 Okay. You may go back to work.
15 (The jury returned to the juryroom and the counsel
16 and parties returned to the courtroom.)
17 (The following proceedings were had OUT OF THE
18 PRESENCE AND HEARING OF THE JURY:)
19 THE COURT: Just so you'll know, we played both of
20 those clips twice.
21 Steve is handing you a set of proposed instructions
22 for the penalty phase for Gary Eye. The instructions for
23 Steven Sandstrom would be very similar but changing the name,
24 obviously, where necessary and any other individual specific
25 references would be changed. But, otherwise, this is what I

1 would propose for your consideration that we use during the
2 second phase. And we'll give you as much time as you need to
3 digest it. Want to say 11:00? If you need to look at some law
4 books then that will give you a chance to do that.

5 They have a note.

6 MR. KETCHMARK: Do you have their proposed
7 mitigators?

8 (A discussion was had off the record.)

9 (At 9:40 a.m. the jury sent a note to the Court.)

10 THE COURT: Now, we have a note. Another note which
11 will be marked as Court's Exhibit 4 and made a part of the
12 record, signed by Kevin Whitworth and dated. We need
13 clarification on using an instruction not mentioned in the
14 verdict form. Does aiding and abetting apply to malice
15 aforethought regarding Instruction 37? We have confusion on
16 this matter.

17 Suggested responses?

18 MR. GIBSON: I believe the answer to that question
19 is, yes, Your Honor.

20 MR. OSGOOD: I don't believe that's the answer to
21 that question. I believe the answer is you have all the
22 instructions I have given you and it's your duty to read them
23 all, consider them all, take them into consideration and your
24 answer is within those instructions. Otherwise, I think the
25 answer is no.

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1 MR. ROGERS: I think as I remember, I don't have it
2 in front of me, as I recall it I'm pretty sure the answer is
3 no. In other words, I think each, each defendant has to have
4 that particular mental state as set forth in Instruction 37 to
5 be found guilty of that level of the offense. Is that what
6 Instruction 37 says?

7 MR. OSGOOD: Your Honor, could you read that note one
8 more time, please?

9 THE COURT: We need clarification on using an
10 instruction not mentioned in the verdict form. Does aiding and
11 abetting apply to malice aforethought regarding Instruction 37?
12 We have confusion on this matter.

13 MR. ROGERS: Looking in context, Judge, I'm looking
14 at Instruction 35 which talks about aiding and abetting with
15 regard to using a firearm during and in relation to a crime of
16 violence as set forth in Count 3. Okay?

17 Then you have Instruction 36 which says if you find a
18 particular defendant guilty of using a firearm during and in
19 relation to a crime of violence as charged in Count 4 of the
20 indictment, you must next determine if the government has
21 established beyond a reasonable doubt the following additional
22 elements. First, that the defendant unlawfully killed William
23 McCay with malice aforethought and, second, that the killing of
24 William McCay was premeditated.

25 Then Instruction 37 defines malice aforethought and

1 Instruction 38 defines premeditation.

2 So it seems to me that Mr. Osgood's initial answer is

3 probably the only one you can safely give unless you want to

4 refer them specifically to Instruction 36.

5 MR. OSGOOD: I object to drawing more emphasis to one

6 instruction at the expense of another. I think the request I

7 made is the proper way. I have never in past experience seen

8 the Court focus on a particular instruction at the expense of

9 others without re-reading the entire packet of instructions.

10 MR. KETCHMARK: I think along that line though, if

11 the Court were to suggest that if they, the instructions are to

12 be taken into context as a whole and not singling a particular

13 instruction out, then they might be able to figure that if they

14 look at 35, 36, 37, sequentially, that might suggest without

15 suggestion to look at this particular instruction but the

16 instruction packet as a whole sets forth what the law is and

17 that's -

18 MR. OSGOOD: You agree with me.

19 MR. KETCHMARK: Well -

20 MR. ROGERS: He hates to admit it.

21 THE COURT: Well, here is a proposed response. I am

22 unable to assist you beyond the instructions you already have.

23 You must consider all the instructions and in particular those

24 bearing on Count 4.

25 MR. KETCHMARK: No objection from the government with

1 that, Your Honor.

2 MR. OSGOOD: I agree to that one.

3 THE COURT: Charlie, are you in agreement as well?

4 MR. ROGERS: I'm sorry. I have no objection to that

5 instruction, Your Honor.

6 THE COURT: All right. The response that will be

7 sent back is, I am unable to assist beyond the instructions you

8 already have. You must consider all of the instructions and in

9 particular those bearing on Count 4. That's Court's Exhibit 4

10 and we'll be in recess until we hear from the jury again.

11 (Recess)

12 (The following proceedings were had OUT OF THE

13 PRESENCE AND HEARING OF THE JURY:)

14 (At 10:05 a.m. the jury sent another note to the

15 Court.)

16 THE COURT: We have another note from the jury. This

17 will be Court's Exhibit 5.

18 Request for evidence is the caption at the top,

19 caption at the top. Regennia Rios transcript, the very

20 beginning of testimony talks about Defendant Eye states, if you

21 get to do one, I get to do one. This entire statement.

22 Referring to that conversation.

23 Then also Vincent Deleon transcript, the part

24 concerning Vince and Sandstrom and others riding together and

25 the trip to Raytown to steal a car. The return trip back.

1 I'll give this to Cynthia to help her locate the
2 portions of the transcript.

3 MR. OSGOOD: Your Honor, would you read that once
4 again, please?

5 THE COURT: Regennia Rios, very beginning of
6 testimony talks about Defendant Eye states, if you get to do
7 one, I get to do one. This entire statement referring to that
8 conversation.

9 Vincent Deleon transcript, part concerning Vince and
10 Sandstrom and others riding together and the trip to Raytown
11 area to steal a car. Return trip back.

12 MR. OSGOOD: I object to reading portions of the
13 transcript like that without reading the entire transcript of
14 each witness from beginning to end, including
15 cross-examination. I believe it overemphasizes some testimony
16 over other testimony and there's no way to put it in
17 perspective and give it balance, by just reading testimony
18 itself. They have to rely on their notes and their collective
19 wisdom and that's what the trial is about.

20 MR. KETCHMARK: And, Judge, Mr. Deleon, he was on
21 Monday the 28th because he was the afternoon of, we took a few
22 minutes from Friday. I believe he ended Monday the 28th and
23 then carried over to the morning of the 29th.

24 THE COURT: It was Monday the 28th. Thank you.

25 MR. OSGOOD: Ms. Rios was Thursday, Your Honor.

1 THE COURT: May 1.

2 (A discussion was had off the record.)

3 THE COURT: All right. Listen to this and see if you

4 think it is an appropriate response. Upon further

5 consideration, I must decline your request. I am concerned

6 that the transcript would serve simply to confuse. The

7 testimony requested is contained at various locations and the

8 direct examination should not be re-read without also reading

9 the cross-examination on the same points.

10 You must rely upon your own notes and your collective

11 recollection of the testimony.

12 MR. KETCHMARK: Your Honor, I would respectfully

13 suggest that, I don't like confusing. I think it would be more

14 appropriate to generically say, it's the Court's recommendation

15 or belief that you need to rely upon your collective

16 recollection and recall any specific witnesses testimony. And

17 I'm unable at this time to provide you with a transcript as

18 requested. I think to suggest that it would be confusing or

19 needs direct or cross, I think it muddies it more than needs to

20 be done. It's just easier to give, at this point, I'm sorry

21 that I'm not able to provide you with copies of the transcript

22 as requested. You need to rely on your collective recollection

23 of the witnesses testimony.

24 MR. OSGOOD: I like your note, personally.

25 MR. ROGERS: Me, too, Judge.

1 MR. OSGOOD: I think your response is an accurate
2 reflection of the record and the law, Your Honor.

3 MR. KETCHMARK: I think what is at play, Judge,
4 they're trying to remember and by highlighting the transcript
5 is confusing it makes them confused and they're not really
6 trying to get to what the testimony is. I don't think it's
7 necessary.

8 MR. OSGOOD: If you have heartburn about the word
9 confused, maybe we could say various witnesses have given
10 various accounts of what occurred.

11 THE COURT: Could we just send them your closing
12 argument?

13 MR. GROMOWSKY: I do have it in written form, Judge.

14 MR. KETCHMARK: Judge, in the prior packet that went
15 back that was Instruction No. 4, I think, talks about the fact
16 that it might not be practical for the court reporter to read
17 back lengthy testimony. So I know there is an instruction the
18 Court already gave them, telling them they probably would not
19 be able to have transcripts and would have to rely on their
20 collective recollection.

21 THE COURT: The note that I will send back in
22 response is, upon further consideration I must decline your
23 request to have portions of the transcript read to you. The
24 testimony you request is found in various locations and it
25 would be inappropriate to give you the direct examination

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1 without also giving you the cross-examination, the redirect and
2 recross on the same points. You must rely upon your collective
3 recollection, assisted by your notes.

4 Signed, timed and dated.

5 MR. KETCHMARK: No objection.

6 MR. ROGERS: No objection.

7 MR. OSGOOD: No objection.

8 THE COURT: That will be the response to Court's
9 Exhibit 5.

10 We probably should postpone our discussion about the
11 instructions until what time? 1?

12 MR. KETCHMARK: That's fine, Judge.

13 THE COURT: Till 1:00 p.m?

14 All right. See you at 1.

15 (Recess).

16 (The following proceedings were had OUT OF THE
17 PRESENCE AND HEARING OF THE JURY:)

18 THE COURT: Thank you. Be seated.

19 The marshals may be bringing in the defendants. Do
20 you want to wait or move forward?

21 MR. ROGERS: I think we can move forward.

22 MR. SANDAGE: We can move forward.

23 THE COURT: All right. You've had an opportunity to
24 look through the instructions for phase 2.

25 David, do you want to start?

1 MR. KETCHMARK: I will, Your Honor.
2 I have had an opportunity to review the Court's
3 proposed instructions. There are a number of mitigating
4 factors the government would take issue with. And I guess I
5 would like to preface my remarks by we, obviously, just looked
6 at them briefly this morning, started talking to some of the
7 other people in our office who have done capital litigation and
8 looked at some of the case law.
9 I have concerns, obviously, the first four I know are
10 statutory. I have concerns about some of the other ones
11 because I think that there are several where a particular
12 mitigation point is broken down. And I think in speaking with
13 Mr. Whitworth there is authority that suggests that they need
14 to be consolidated as one particular mitigator instead of being
15 broken down into multiple forms. Now, I can't give the Court
16 the one in particular but I note some of them are dealing with
17 the family and the nurturing and things of that nature like 6,
18 7 and 8 concerns me in terms of splintering that off and saying
19 the same thing in a slightly different fashion.
20 With respect to a couple on the others, further down,
21 Judge, on No. 12, the age and the development of the brain and
22 things of that nature, I don't think that's a proper mitigating
23 factor. And I think that's another way to try to advance the
24 Roper argument that the Court previously rejected.
25 And then on 15 and 16, I don't think those are proper

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1 subjects of mitigating evidence. That's really just residual
2 doubt. And I started doing some of the initial research on
3 that and I think the cases are abundantly clear that that's not
4 something that they are entitled to present. And some of the
5 cases are United States versus Caro and it's at 483 F2d 513.
6 There's a nice discussion where the district court in that
7 basically did a rejection on a residual doubt instruction and
8 it provides some cites in there to several of the Supreme Court
9 opinions, basically, noting that it's inappropriate and that
10 they cite to the Franklin opinion which is a Supreme Court case
11 at 108 Supreme Court 2320 where basically they found that the
12 petitioner has no 8th Amendment right to have a capital jury
13 consider as mitigating factors in a penalty phase alleged
14 residual doubt about his guilt and the identity as murderer.
15 I guess I bring this all up to suggest there are
16 several mitigating factors. We are happy to provide a trial
17 brief or a motion in opposition to set out better and more
18 succinctly our position and the reason why we think the law is
19 supportive of our position. I don't know that we need to be in
20 a position where we have to, in my opinion, I guess, resolve it
21 this afternoon in light of the fact that we're looking at
22 Monday. So my request would be to note preliminarily that
23 there are issues we have with some of the mitigations. And I'm
24 more than happy to get a more succinct trial brief or motion in
25 opposition setting forth what we believe is a correct statement

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1 of the law and why certain ones of the proposed non-statutory
2 mitigating factors would not be supported as being submissible
3 as part of the Court's instructions.

4 THE COURT: All right. Mr. Sandage.

5 MR. SANDAGE: Your Honor, I kind of think reverse. I
6 think some of the mitigating circumstances that the Court lists
7 in the proposal combines things I wanted separated out. So the
8 government wants to combine -

9 THE COURT: We did do some of the consolidation.

10 MR. SANDAGE: I think it's mitigating circumstances
11 is what I believe the evidence would come in to support a
12 verdict of life for my client. It's our right to propose that
13 to the jury by combining and putting ands or commas makes a
14 jury to consider them as a whole where I believe for Mr. Eye
15 they need to be considered separately. Again, I would propose
16 the same thing the government said. I'd be happy to lay that
17 out. Before I came here today I was looking through them all
18 and there were so many and I didn't think you wanted to listen
19 to that so I was going to do a trial brief if that's what the
20 Court wanted.

21 I think residual doubt is allowed. I think Supreme
22 Court of Lockhart versus McCree says that. 476 U.S. 162 is the
23 general cite, specifically to page 181. The leading case on
24 allowing residual doubt on mitigating circumstances, United
25 States versus Davis. And that's 132 Fed. Supp. 2, 455. An

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1 Eastern District of Louisiana case, 2001. So I'll be happy to
2 brief that as well. But I think that might be in the best
3 interest of all parties if we're able to expand on that in the
4 trial brief.

5 MR. KETCHMARK: Only thing I might add on that,
6 Judge, is the Davis opinion is expressly rejected in the Caro
7 opinion that I had suggested. And the Lockhart opinion is also
8 discussed where the Supremes discussed in the Franklin decision
9 and clarifying their opinion. And also Oregon versus Guzek,
10 which is at 126 Supreme Court 1226. So bottom line is there is
11 a lot of law out there on these issues. I think if we could
12 have an opportunity to organize cohesively our positions
13 respectively, probably better for the Court and better sitting
14 down and digesting the information instead of listening to us
15 ramble on all night.

16 THE COURT: Okay.

17 MR. ROGERS: I'm going to ramble on that after a
18 minute, Judge. But I think, first, I want to turn to some of
19 the maybe easier parts. Turning to, by the way the reason I do
20 want to later on address the issue of proper submission in
21 mitigating factors, I understood the Court to say this morning
22 that these instructions with regard to Mr. Eye are pretty much
23 what you're thinking about giving for Mr. Sandstrom as well.

24 THE COURT: Yes. Obviously, there are individual
25 differences but, yes.

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1 MR. ROGERS: Okay. First let me turn to E4, there is
2 a typographical error in the second line. The word by is
3 bifurcated into two. B space Y.

4 THE COURT: Got it.

5 MR. KETCHMARK: Allegedly also misspelled before
6 that.

7 THE COURT: In Steve's defense these were thrown
8 together rather hurriedly.

9 MR. ROGERS: I was blaming it on the government,
10 Judge.

11 In paragraph No. 1, two different places, it just
12 reads awkwardly to me to say victim, comma, William McCay,
13 apostrophe s, comma, personal characteristics. I think
14 grammatically speaking, I think maybe the appositive has to
15 agree with the word to which the noun, which it is an
16 appositive but just strike victim entirely. I don't think it
17 takes away from anything. I think it probably, if anything, is
18 more respectful of Mr. McCay. I don't know that we have to
19 emphasize victimhood because I don't necessarily think that's
20 the point of their presentation. So I would think it would
21 read better if that wasn't there. That way we don't have to
22 worry whether there's an apostrophe on both or where the comma
23 goes or things like that.

24 Instruction E9. Fourth line down. It says mental
25 state or mental state and surely that's not what you meant to

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1 say. State or states?

2 THE COURT: States. Second will be plural.

3 MR. ROGERS: Okay.

4 With regard to E10. I'm sure the Court had before it
5 a proposed instruction. I submitted it a couple weeks ago
6 with, I think, a more accurate definition of substantial
7 planning and premeditation. Including language patterned after
8 the sentencing guidelines about the amount of planning and
9 premeditation being more than is normally required. And so I
10 would, I understand this is, in fact, the pattern instruction
11 and I want to confess, as Mr. Gibson has accused me earlier, to
12 having been on the sub committee which drafted pattern
13 instructions. And this is an argument I made at that sub
14 committee which was rejected by that sub committee. But having
15 said that, I still think that for it to be a narrower of the
16 class of capital defendants eligible for the death penalty, it
17 has to be something significant. And I think that there, I
18 think that, for example, if you were looking at just a
19 sentencing guidelines issue, you were looking at more than
20 minimal planning. We can all agree that the normal English
21 word minimal is lower than substantial and yet more than
22 minimal planning requires more planning than normally required
23 for the commission of this offense. So I think for substantial
24 planning to be a statutory aggravator and the only statutory
25 aggravator alleged, I think it has to be significantly more

1 than minimal. I think it has to be. So that's why I think
2 this is not a sufficient instruction. That's more of an
3 assuming the Court considered my earlier and rejected for the
4 record kind of deal.

5 THE COURT: Okay.

6 MR. ROGERS: E11 in the third paragraph, once again,
7 victim is put before Mr. McCay's name both times. Once again,
8 I don't think that's necessary.

9 At the second page of E11, the second paragraph talks
10 about future dangerousness. And has the Court ruled in
11 connection with Mr. Sandage's pretrial motions, maybe mine too,
12 I think both of us raised this. I think I probably stole it
13 from him. But future dangerousness is, if the choices are
14 between death or life in prison, future dangerousness must be
15 future dangerousness while incarcerated while serving a life
16 sentence.

17 Now, I do understand there are some capital counts
18 where that is, those are not the only options presented to the
19 jury although realistically speaking those may be the only
20 options because I would imagine that from the context of this
21 case if there were findings of guilt of any death eligible
22 offense a sentencing under the guidelines would probably
23 indicate a life sentence, especially if you're talking about
24 more than one count of conviction.

25 But having said that, I think that certainly if there

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1 is, in fact, a conviction under Count 5, I believe it is, that
2 carries only a choice of life or death, that this should be
3 modified to require a finding of future dangerousness while
4 incarcerated in accordance with the Court's earlier order.
5 Skipping Instruction E13 for the moment.
6 And E14, first paragraph, 8th line. Probably
7 should say aggravating factor or factors. I think it's
8 possible they may find more than one.
9 Now, to the issue of mitigation. Let me first start
10 with the concept of residual doubt because the Davis case has
11 never been overruled. One district court and another district
12 court. And I think that if you draw any lesson from that that
13 is that you, as the district judge, are probably in the best
14 position to make the call. Neither Lockhart nor, what's your
15 other case, David? Franklin. Yeah. Those are both habeas
16 corpus cases, talking about the constitutionality of a state
17 death penalty scheme, which either does or does not mandate
18 consideration of residual doubt as a mitigator. And so I don't
19 think that they control.
20 I think that to say that Texas can have a scheme that
21 does not require the jury to be instructed on residual doubt as
22 a mitigator, within the --of the 8th Amendment does not mean
23 that is not a proper mitigator to be submitted in this case.
24 And I don't think there's any case which says that you don't
25 have the authority to submit that as a mitigator in this case.

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1 I think it should be tailored to the facts of the
2 case which I think the instruction, the proposed mitigating
3 factors 15 and 16 are. And so I think that that, I don't see
4 that there's anything improper about it.

5 In general, as regard to mitigators and, obviously,
6 if there's going to be more time for briefing, more time for
7 briefing. But I think the briefing will boil down to it's
8 discretionary with the court. I can tell you that in the case
9 I tried in this Circuit in the Northern District of Iowa that
10 residual doubt was submitted as a mitigator.

11 THE COURT: Judge Bennett?

12 MR. ROGERS: Judge Bennett. Hawkins was the name of
13 the case and it hasn't been decided in the Circuit yet. And
14 it's a long time since we tried it.

15 THE COURT: Is that an issue before the Circuit?

16 MR. ROGERS: No. Because it was submitted as a
17 mitigator, we have no complaint.

18 THE COURT: What about the United States?

19 MR. ROGERS: They're not cross appealing, Judge,
20 strangely enough. I don't know whether it was an issue in the
21 co-defendant's appeal which may have been decided, Johnson was
22 the name. I wasn't involved in that trial so I don't know what
23 her appeal was.

24 Back to the general concept of mitigators, Your
25 Honor, basically, the definition is a mitigating circumstance

1 is any circumstance tendered by the defendant, any
2 characteristic of the defendant or the offense tendered by the
3 defendant as a reason to impose a sentence other than death. I
4 don't think there's any dispute about that definition. And, in
5 fact, the evidence is the mitigating factors which the
6 instruction language, introductory language is the mitigators
7 which the defendant asserts is proved by the greater weight of
8 the evidence are, and it lists them. That sounds to me like
9 the defendant is to assert what he thinks he has proved, if
10 it's a characteristic of him or a characteristic of the
11 offense, that he asserts as a reason for returning a sentence
12 other than death.
13 So it sounds to me like if you want to do a bunch of
14 little ones or a couple big ones, it ought to be the
15 defendant's call because that's what he's asserting to prove.
16 To combine things that the defendant does not necessarily think
17 should be combined as mitigators would have two repercussions.
18 First of all, it would risk a finding by a juror who says,
19 well, I believe A, B and C. I believe that turning to No. 6,
20 as an example, I believe he was born into a family plagued by
21 generations of alcoholism and drug abuse. And--but I don't
22 believe the lack of employment is really mitigating. I don't
23 think that's a reason to give a sentence other than death. And
24 so if those are -
25 THE COURT: Would you be happier if those phrases

1 were joined in the disjunctive, plagued by generations of
2 alcoholism or drug abuse or inner family violence or lack of
3 employment and this history tends to indicate?

4 MR. ROGERS: That would meet that particular
5 objection. But it would play right into the next one which is
6 that if it's not something by combining them which makes a
7 juror or jurors less likely to find that mitigating factor to
8 exist, it then tends to reduce the weight of the mitigating
9 factor.

10 And, Judge, you correctly pointed out to me during
11 voir dire that an example that you had given a potential juror
12 was a real life story. And it was an incredibly powerful
13 mitigating story. But you did it by giving detail and detail
14 and detail and detail, rather than one big global gloss. And
15 that's why I think that to put the factors which a defendant
16 has chosen to separate out as individual mitigating
17 circumstances together in a big global gloss, tends to deprive
18 those factors of their force and impetus and weight that the
19 defendant hopes the jury will assign to them. And the jury is
20 already instructed it's not the number of circumstances or
21 number of factors. It's the weight that is assigned to the
22 aggravators and mitigators. And so having said that I think
23 that it ought to be the defendant's call to phrase the
24 circumstances that the defendant wants to tender to the jury as
25 a reason for imposing a sentence other than death.

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1 The other issue, I think that the government took,
2 the other factor that the government took issue with was No.
3 12, the age of 18. As I recall the Court's order, the Court
4 denied Mr. Eye's motion to bar the death penalty on this basis.
5 And, obviously, if this were a Welker versus Simmons kind of
6 claim, it would be a claim to bar the death penalty. But there
7 is certainly nothing wrong with age as a mitigator. And with a
8 mitigator which explains the significance of age as the
9 mitigator. In fact, in the State of Missouri, doesn't matter
10 how old you are, the age of the defendant at the time of the
11 crime is an automatic statutory mitigator. And everybody gets
12 that instruction because everybody has an age. But here I
13 think this explains it and it shows the mitigating nature of
14 the age of the defendant. In fact, I think we have submitted a
15 similar type of mitigator although developed for Mr. Sandstrom.
16 I think that there is a difference between the
17 government's claim that this is not a properly submitted
18 mitigating factor which I think boils down to is it a
19 characteristic of the defendant or the offense and that's when
20 you get into the residual doubt debate. But, and the claim
21 that defendant should not be permitted to divide big mitigators
22 into little mitigators. Like I said, it's not the number.
23 It's the weight. And the defendant should be permitted to
24 submit them in the manner that the defendant and his counsel
25 determine tactically enhance the chances of the jury giving

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1 them significant weight that might result in a verdict other
2 than death.

3 Questions?

4 THE COURT: Thank you.

5 MR. KETCHMARK: Judge, if I might, just a couple
6 points Mr. Rogers raised. But, first I would note, is on the
7 issue of future dangerousness. Charlie, obviously, correctly
8 noted that some of the counts potentially have punishment
9 ranges that can be recommended of less than. And the other
10 point that I think is significant is evidence that's been
11 presented in the guilt phase is, regardless of being locked up
12 there were efforts made, particularly by Defendant Sandstrom to
13 reach out from behind bars and harm people. And so to me
14 suggesting you're restricted or curtailed to only potential
15 harm as it relates to correctional officers when there's
16 conduct present in this case with respect to plots to harm
17 witnesses, kill witnesses. That is reaching out from behind
18 bars and that is potential future dangerousness.
19 I think what is more important, too, and I know we
20 had talked about briefing the issue and I intend to do so. But
21 I also want to point out on the issue of the residual doubt in
22 the Caro opinion that I referred the Court to, they
23 specifically reject the Davis argument. They do note that
24 Judge Bennett in Hawkins allowed for the residual doubt but
25 also pointed out that there was no detailed explanation given

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1 for the Court's decision. And, basically, it appears the Court
2 simply relied on Davis. They do an excellent breakdown of why.
3 I cited the Court to it suggesting how the Court and the
4 Supreme Court broke down the residual doubt issue as set forth
5 in Franklin. And, basically, what they said is in Franklin the
6 defendant there argued that the Lockhart decision that
7 Mr. Sandage referred to entitled him to the instruction. But
8 after reviewing previous decisions of plurality, the Franklin
9 Court found to the contrary. And this is the Supremes saying
10 this Court --prosecutors to have such doubts considered as
11 mitigating factors. And then they also note in the Oregon
12 versus Guzek case that the Supremes, basically, reaffirmed that
13 it is never held that the 8th Amendment provides the defendant
14 with the right to present residual doubt at a capital
15 sentencing hearing. The court however stopped short of
16 rejecting all 8th Amendment residual doubt claims by refusing
17 to decide whether residual doubt evidence is actually
18 unconstitutional --concurring opinion Judge Scalia did just
19 that --definitively ruled against residual doubt claims to
20 emphasize how skeptical the Franklin Court had been of the
21 propriety of the residual doubt as a mitigating factor. And
22 there is a very good detailed analysis of the case law and
23 Supreme Court opinion on this, and focusing it back into the
24 Federal Death Penalty Act and the notion of the mitigators as
25 set forth. And talks about the need to focus on mitigation

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1 being the defendant's history, defendant's character and things
2 of that nature. And that residual doubt, the overarching
3 argument I think that is there as well is the Court is going to
4 in the standard instructions give the reasonable doubt
5 instruction and that's basically what the burden is. And to
6 allow the residual doubt as a mitigating factor, you're
7 basically saying, I know you can find reasonable doubt and
8 that's the law, but what they now can argue is that if you have
9 something between, as Mr. Rogers so eloquently put in the small
10 panel, something between reasonable doubt and all doubt and he
11 called it that residual doubt area, they're trying to play up
12 to that portion. And it's really an improper burden shifting
13 or requiring the government to go beyond what the law requires
14 which is reasonable doubt. And, again, I'm merely providing
15 this because Mr. Rogers went into a more detailed explanation
16 of kind of his position and I wanted the Court to know that
17 there is a substantial amount of discussion out there on that
18 particular point.

19 THE COURT: Who was the judge in Caro?

20 MR. KETCHMARK: Caro? It appears it was out of the
21 Western District of Virginia. And says, Chief Judge Jones. I
22 can just give the Court this copy if you like.

23 And I think Mr. Gibson had something to add. He was
24 handling more of the Roper related issues. He may have
25 something to add on that particular point as well.

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1 MR. GIBSON: Good afternoon, Your Honor.

2 THE COURT: Good afternoon.

3 MR. GIBSON: I'm sure Mr. Rogers is going to express
4 some shock and surprise but I actually agree with him
5 wholeheartedly on two points. One is the definition of -

6 THE COURT: He's not half as surprised as I am.

7 MR. GIBSON: One of which is the definition of
8 mitigating factors which is other factors in the defendant's
9 background, record or character or any other circumstance of
10 the offense. In other words, the specific defendant or the
11 specific offense.

12 With respect to the age issue, here's how Mr. Rogers
13 handled it in his proposed mitigating factor. At 23, Steven
14 Sandstrom was only 19 years old at the time of the offense,
15 period. I don't have an argument with that. But here's how
16 Mr. Eye handled that fact. At 12, in the one he submitted. At
17 the age of 18, people's brains have not fully matured. Well,
18 how that would be a reference to Defendant Eye, I don't know or
19 where that sweeping conclusion is coming from, I don't know.
20 It is however an invitation to undermine the finding that the
21 defendant was, in fact, biologically 18 at the time of the
22 offense which would be contrary to Roper. That factor goes on.
23 For people like Mr. Eye who, for people like Mr. Eye, in other
24 words, individuals other than Mr. Eye, who they are, we don't
25 know. Who used street drugs for many years. By the time

1 they're 18, who, again in the plural have had very little
2 encouragement, guidance, modeling --and have had no praise and
3 love from their families. All of which is stating the same
4 factors that they put in 6, 7, 8, 9, 10, and then, again, in 13
5 where they address the controlling temper and non-violent
6 conflict is much greater. This lack of maturity tends to
7 indicate that the defendant should not be sentenced to death.
8 I don't disagree that Mr. Eye should be able to argue
9 that his age is in some way a mitigating factor. And if the
10 jury chooses to accept that, then the jury chooses to accept
11 that as a non-statutory mitigator. However the way Mr. Rogers
12 handled it would be the correct way to handle it, rather than
13 assume facts which aren't in evidence and which don't apply or
14 which apply to individuals other than Mr. Eye. And which is
15 essentially a regurgitation of the argument they made on the
16 Roper issue to try and come up with a contrary finding that the
17 defendant is not, in fact, an adult at the time of the crime
18 which is not an appropriate argument to make.
19 THE COURT: There's --Go ahead.
20 MR. KETCHMARK: Sorry, Judge. Mr. Whitworth just
21 brought in, there is out of the Eastern District of St. Louis
22 in United States versus Robert Bolden, Senior, it's not on
23 appeal yet but the residual doubt issue was briefed extensively
24 there. The Court sided with the government's view and excluded
25 residual doubt as a non-statutory mitigating factor and,

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1 obviously, I will incorporate probably and cite to that. That
2 was brought in to me just now by Mr. Whitworth.

3 THE COURT: Obviously, there is plenty of meat on the
4 table. When do you think you could have something to me in
5 writing?

6 MR. KETCHMARK: When would the Court like it?

7 Probably a better question.

8 THE COURT: Well, soon as possible.

9 MR. KETCHMARK: We could have it first thing tomorrow
10 morning if that would be enough and we can go work on it right
11 now. Soon as we get done I can get something filed.

12 THE COURT: I think rather than have you filing and
13 having defendants respond, I'd like for you to just give me
14 what you think I need to consider simultaneously. So let's say
15 by 9 tomorrow morning.

16 MR. KETCHMARK: We can do that.

17 THE COURT: Is that okay with everyone?

18 All right. Thank you for your comments. I will
19 carefully consider them along with any additional.

20 MR. ROGERS: I have some additions on the verdict
21 forms.

22 THE COURT: Okay.

23 MR. ROGERS: And I understand why you've got it like
24 this. And it makes a certain amount of sense to have it like
25 this. But it seems to me redundant with regard to the findings

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1 of the age of the defendant and the requisite mental state, to
2 repeat those for each count. It would seem to me that if there
3 was more of a consolidated verdict form that had those
4 preliminary findings and then had the weighing of statutory
5 aggravators and mitigators, finding and weighing of statutory
6 and non-statutory aggravating factors and mitigating factors as
7 to each continue it might be a more logical way to proceed.

8 THE COURT: Okay. Let me think about it.

9 MR. ROGERS: Because it's the same statutory, well,
10 actually statutory aggravator, too. There's only one that
11 supposedly was.

12 MR. KETCHMARK: Judge, I would propose that we do it
13 in the fashion the government proposed and how the Court has
14 tendered it. It's not like it's confusing. It might require
15 them to check a yes and the foreperson to sign but to me it
16 keeps the record a lot cleaner. Especially with respect to the
17 mental state. As the Court is aware Count 3 just now resulting
18 in death potentially opens up a capital offense on the civil
19 rights violation. And so there is going to have to be, I mean
20 I understand Charlie's position saying, well, on the killing of
21 the witness and the 924C because those have the malice
22 aforethought and the premeditation. But that's not a part of
23 Count 3. And I just would hate to blend it altogether because
24 they want to not have to check a box, yes, and sign their name.
25 Seems to me to be more concise. And why we did it in the

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1 fashion we did it is because of the penalty that is at stake.

2 And if there is a returning of a death finding as to any

3 particular count, I don't want any ambiguity in the record. It

4 is very clear, very succinctly set out and that's why we even

5 submitted the verdict director we did in the form. And the

6 Court already gave those in the guilt phase where the acting in

7 concert, aiding and abetting liability is set forth. And it

8 made the packet a lot longer but made the appeal record much

9 stronger. And so I would strongly oppose any request to

10 consolidate so they don't have to check yes, the foreperson

11 have to sign on age, mental state or aggravating factor.

12 THE COURT: All right.

13 MR. SANDAGE: On Instruction, proposed E10,

14 Mr. Rogers talked and he submitted an instruction that you

15 would likely consider and reject. This one for the record, I

16 want to join in Mr. Sandstrom's request for that instruction as

17 previously offered.

18 THE COURT: The record will show that you join.

19 Okay. We'll be in recess until the jury needs us.

20 (Recess)

21 (At 2:30 p.m. the jury returned to open court with

22 its verdicts.)

23 (The following proceedings were had OUT OF THE

24 PRESENCE AND HEARING OF THE JURY:)

25 THE COURT: Thank you. Be seated, please.

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1 I am informed that the jury has reached its verdicts.

2 In a moment we'll bring the jury in and I will review

3 the verdicts to make sure they're in proper order. And then I

4 will read the verdicts.

5 This is an emotional time for everyone. And I

6 understand that. However, I have to insist that everyone

7 control their emotions. And if you believe that you are going

8 to be unable to do that, I'll ask you to leave the courtroom

9 now. And if it turns out that you are unable to do that, you

10 should leave immediately. And if not, the court security

11 officers will escort you from the courtroom.

12 I assume the parties want the jury polled upon

13 publishing the verdict?

14 MR. ROGERS: Your Honor, as I recall the verdict

15 forms were to be signed by each individual juror?

16 THE COURT: That's correct.

17 MR. ROGERS: With that understanding, Mr. Sandstrom

18 does not request the jury be polled.

19 MR. OSGOOD: We do not either, Judge.

20 MR. KETCHMARK: Government doesn't either.

21 THE COURT: The parties waive polling.

22 Let's bring the jury in.

23 (The following proceedings were had IN THE PRESENCE

24 AND HEARING OF THE JURY:)

25 THE COURT: Please be seated.

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1 Mr. Whitworth, are you the foreperson?

2 THE FOREPERSON: Yes, Your Honor.

3 THE COURT: I'm told that the jury has reached its
4 verdicts?

5 THE FOREPERSON: Yes, we have, Your Honor.

6 THE COURT: Would you, please, hand the verdict forms
7 to Ms. Fees?

8 The verdict forms are in proper order.

9 I will now read the verdicts.

10 Verdict Form A. We, the jury, find the Defendant

11 Gary Eye guilty of interfering with a federally protected
12 activity as charged in Count 1 of the indictment. Signed by
13 all twelve jurors and dated this day.

14 Verdict Form B. We, the jury, find the Defendant

15 Steven Sandstrom not guilty of interfering with a federally
16 protected activity as charged in Count 1 of the indictment.
17 Signed by all twelve jurors and dated.

18 Verdict Form C. We, the jury, find the Defendant

19 Gary Eye guilty of interfering with a federally protected
20 activity as charged in Count 3 of the indictment.

21 We, the jury, find the Defendant Gary Eye's conduct
22 did result in the death of William McCay.

23 Verdict Form D. We, the jury, find the Defendant

24 Steven Sandstrom guilty of interfering with a federally
25 protected activity as charged in Count 3 of the indictment.

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1 We, the jury, find the Defendant Steven Sandstrom's
2 conduct did result in the death of William McCay.
3 Verdict Form E. We, the jury, find the Defendant
4 Gary Eye guilty of using a firearm during and in relation to a
5 crime of violence as charged in Count 2 of the indictment.
6 Signed by all twelve jurors and dated.
7 Verdict Form F. We, the jury, find the Defendant
8 Steven Sandstrom not guilty of using a firearm during and in
9 relation to a crime of violence as charged in Count 2 of the
10 indictment. Signed and dated.
11 Verdict Form G. We, the jury, find the Defendant
12 Gary Eye guilty of using a firearm during and in relation to a
13 crime of violence as charged in Count 4 of the indictment.
14 We, the jury, unanimously find that the Defendant
15 Gary Eye unlawfully killed William McCay with malice
16 aforethought. The word yes is written in.
17 We, the jury, unanimously find that the killing of
18 William McCay was premeditated. The word yes is written in.
19 Signed and dated.
20 Verdict Form H. We, the jury, find the Defendant
21 Steven Sandstrom guilty of using a firearm during and in
22 relation to a crime of violence as charged in Count 4 of the
23 indictment.
24 We, the jury, unanimously find that the Defendant
25 Steven Sandstrom unlawfully killed William McCay with malice

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1 aforethought. The word yes is written in.
 2 We, the jury, unanimously find that the killing of
 3 William McCay was premeditated. The word yes is written in.
 4 Signed and dated.
 5 Verdict Form I. We, the jury, find the Defendant
 6 Gary Eye guilty of tampering with a witness as charged in Count
 7 5 of the indictment.
 8 We, the jury, unanimously find that the Defendant
 9 Gary Eye unlawfully killed William McCay with malice
 10 aforethought. The word yes is written in.
 11 We, the jury, unanimously find that the killing of
 12 William McCay was premeditated. The word yes is written in.
 13 Signed and dated.
 14 Verdict Form J. We, the jury, find the Defendant
 15 Steven Sandstrom guilty of tampering with a witness as charged
 16 in Count 5 of the indictment.
 17 We, the jury, unanimously find that the Defendant
 18 Steven Sandstrom unlawfully killed William McCay with malice
 19 aforethought. The word yes is written in.
 20 We, the jury, unanimously find that the killing of
 21 William McCay was premeditated. The word yes is written in.
 22 Signed and dated.
 23 Verdict Form K. We, the jury, find the Defendant
 24 Gary Eye guilty of using a firearm during and in relation to a
 25 crime of violence as charged in Count 6 of the indictment.

1 We, the jury, unanimously find that the Defendant
 2 Gary Eye unlawfully killed William McCay with malice
 3 aforethought. The word yes is written in.
 4 We, the jury, unanimously find that the killing of
 5 William McCay was premeditated. The word yes is written in.
 6 Signed and dated.
 7 Verdict Form L. We, the jury, find the Defendant
 8 Steven Sandstrom guilty of using a firearm during and in
 9 relation to a crime of violence as charged in Count 6 of the
 10 indictment.
 11 We, the jury, unanimously find that the Defendant
 12 Steven Sandstrom unlawfully killed William McCay with malice
 13 aforethought. The word yes is written in.
 14 We, the jury, unanimously find that the killing of
 15 William McCay was premeditated. The word yes is written in.
 16 Signed and dated.
 17 Verdict Form M. We, the jury, find the Defendant
 18 Gary Eye guilty of destroying a tangible object with the intent
 19 to impede, obstruct or influence a federal investigation as
 20 charged in Count 7 of the indictment. Signed and dated.
 21 Verdict Form N. We, the jury, find the Defendant
 22 Steven Sandstrom guilty of destroying a tangible object with
 23 the intent to impede, obstruct or influence a federal
 24 investigation as charged in Count 7. Signed and dated.
 25 Verdict Form O. We, the jury, find the Defendant

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1 Gary Eye guilty of using fire to commit a felony as charged in

2 Count 8 of the indictment. Signed and dated.

3 Verdict Form P. We, the jury, find the Defendant

4 Steven Sandstrom guilty of using fire to commit a felony as

5 charged in Count 8 of the indictment.

6 Verdict Form Q. We, the jury, find the Defendant

7 Steven Sandstrom guilty of retaliating against a witness as

8 charged in Count 9 of the indictment. The form is signed by

9 all twelve jurors and dated this date.

10 May I see the attorneys, please?

11 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

12 PROCEEDINGS WERE HAD:)

13 THE COURT: It's my plan to release them, admonishing

14 them as we have done repeatedly. Is there anything else you

15 want me to do before telling them to report back Monday

16 morning?

17 MR. KETCHMARK: Nothing from the government.

18 MR. ROGERS: Nothing on behalf of Mr. Sandstrom, Your

19 Honor.

20 MR. OSGOOD: Nothing, Your Honor.

21 THE COURT: Thank you.

22 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

23 THE COURT: Ladies and gentlemen of the jury, you

24 have completed your work on phase one. There will be now be a

25 phase 2.

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1 What I think we will do is recess for the rest of
2 this week and let you take some time to yourselves, get rested
3 up and return at 8:30 Monday morning at which time we will then
4 move into phase 2 of the trial of which you'll be asked to
5 recommend a punishment for the defendants.
6 The two alternates will be recalled and they will
7 join you during the presentation of the evidence here in phase
8 2.
9 The defense has requested and I have agreed that we
10 will handle the defendants, during the punishment phase or
11 during the second phase, separately. We will first hear
12 evidence on both aggravating factors and mitigating factors
13 with respect to the charges against Mr. Eye. You will then
14 deliberate on a punishment for Mr. Eye. And then we will
15 return and hear evidence on aggravating factors and mitigating
16 factors for Mr. Sandstrom. And then you will retire and make
17 your decision with respect to Mr. Sandstrom. That's a little
18 different arrangement than what we had led you to believe would
19 happen during voir dire. But I think it is an appropriate and
20 reasonable way for us to proceed.
21 Thank you very much for your hard work. We'll see
22 you at 8:30 Monday morning.
23 We are --oh.
24 I need to, this is important because there will very
25 likely be media coverage of what has happened here today so I'm

1 going to re-read Instruction No. 8 to you.
2 We are about to take a three-day,
3 three-and-a-half-day recess so I remind you of the instruction
4 that I gave you earlier. During this recess or any other
5 recess you must not discuss this case with anyone including
6 your fellow jurors, members of your family, people involved in
7 the trial or anyone else. If anyone should try to talk to you
8 about this case, please let me know that immediately. Do not
9 read, watch or listen to any news reports of the trial. Do not
10 read, watch or listen to any news reports of the trial. Keep
11 an open mind about the issues which remain for you to decide.
12 Thank you. We'll see you Monday morning at 8:30.
13 (The following proceedings were had OUT OF THE
14 PRESENCE AND HEARING OF THE JURY:)
15 THE COURT: We will look at your briefing on the
16 instructions. Shall we plan to get together tomorrow morning
17 to finish those up?
18 MR. GIBSON: Perhaps tomorrow afternoon?
19 THE COURT: We have two other hearings scheduled
20 tomorrow afternoon.
21 MR. KETCHMARK: In fairness to the defense the issue
22 on the residual doubt, I have received the brief that was filed
23 in St. Louis and it's very detailed. I can get mine filed in
24 short order this afternoon but I don't know if they want an
25 opportunity to digest it. And I hate to put them in a position

1 where we can get our information before the Court but it takes
2 them longer. So I don't know, if the Court would entertain -

3 THE COURT: Well, we can do it late tomorrow
4 afternoon.

5 MR. KETCHMARK: We can do it when ever. We'll get
6 our position before the Court shortly this afternoon. But I
7 don't know if the defendants needs additional time.

8 MR. SANDAGE: Tomorrow afternoon, Your Honor.

9 MR. ROGERS: Tomorrow afternoon.

10 THE COURT: All right. We have a 1:30 and 2:15.

11 Shall we plan on 3:00 tomorrow?

12 MR. KETCHMARK: That's fine.

13 MR. ROGERS: Your Honor, in light of the verdicts as
14 to Count 5, I assume the issue of future dangerousness is
15 pretty much -

16 THE COURT: It's in play, oh, yeah.

17 All right. Thank you, folks. See you tomorrow.

18 (End of session)

19

20

21

22

23

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25

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1 MAY 9, 2008 -DAY 13

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Good afternoon. Have a seat.

5 Do I have a roomful of unhappy people?

6 MR. OSGOOD: We're just ducky, Your Honor.

7 THE COURT: I think everyone is unhappy.

8 What you have is a revised set of instructions for

9 phase 2 for Gary Eye. Additionally, we have tried to put

10 together a set of mitigators for Steven Sandstrom. These just

11 came off the printer and I don't represent that to be our final

12 and best effort although it's close.

13 And, Steve, you can give that to Charlie and John.

14 The changes can be summarized or generalized, I

15 think, in two different categories. First, I have considered

16 Mr. Eye and the government's briefing with respect to the issue

17 of whether the Court should instruct on residual doubt.

18 Secondly, I have considered the comments made orally and also

19 the briefing with respect to the identification of mitigators

20 for Mr. Eye.

21 As to the issue of whether I will instruct on

22 residual doubt and permit argument on residual doubt, I have

23 concluded that I will not. The --and without rehashing

24 everything that has been said or written about it, I'll simply

25 say that I do not believe that it is required constitutionally.

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1 Secondly, I think it is inconsistent with the definition of
2 mitigating factors in the Death Penalty Act and for that reason
3 I decline to do it. I also think that it elevates the burden
4 of proof requirement for the government. My decision on
5 residual doubt is final although I will certainly allow you to
6 protect your record on that issue for the Court of Appeals.
7 As to the specific mitigating circumstances, I'm
8 guessing that I have displeased everyone with what I have done
9 but I have tried to give Mr. Eye and Mr. Sandstrom an
10 opportunity to argue either their individual characteristics or
11 the circumstances of the offense as applied to each of the
12 defendants to the jury. It is far more than what the United
13 States wants. It is less than what each of the defendants
14 want. I have consolidated some of the itemized mitigating
15 circumstances, probably to the displeasure of the defendant but
16 nevertheless I think that in its consolidated form it allows
17 the defendant to make the same argument the defendant might
18 have made had I left or simply accepted the mitigating
19 circumstances as submitted.
20 So, additionally, it is my intention to file
21 something in writing that explains the rationale for not giving
22 a residual doubt instruction and not permitting it to be
23 argued. That may not happen until next week some time but at
24 least there will be that written record of the Court's thought
25 process and its rationale.

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1 So I will turn to the United States and give you an
2 opportunity to create whatever record you think is appropriate.

3 MR. KETCHMARK: And, Your Honor, you know, obviously,
4 on the residual doubt issue I think our pleading set forth our
5 position so I'm not going to add anything to that. We have had
6 an opportunity to review the proposed packet of instructions
7 that were provided by the Court earlier today on Mr. Eye. And
8 I didn't notice anything the government would consider
9 objectionable in terms of the form or in the manner in which
10 the Court is proposing the submission of the mitigating
11 factors.

12 I would ask that we have an opportunity to review
13 Mr. Sandstrom's since we obviously just got a chance to look at
14 those and would ask that we have opportunity to comment on that
15 maybe after we have a chance to reflect on those because,
16 obviously, we focused on Mr. Eye's packet.

17 THE COURT: We will very likely have the opportunity
18 to do that between, probably while the jury is out on Mr. Eye.

19 MR. KETCHMARK: So if we could do that, I would
20 reserve comments on those proposed mitigators until that time.

21 THE COURT: Okay. Mr. Sandage.

22 MR. SANDAGE: Your Honor, it's your decision, I
23 respect that. For purposes of the record, Defendant Sandstrom
24 filed this afternoon Document 467 which was Defendant's Joint
25 Response and Opposition to the Government's Motion. You didn't

1 indicate that you reviewed that.

2 THE COURT: I have reviewed that. Obviously, I had
3 not reviewed it at the time we sent out the proposed mitigators
4 because I had asked that everything be in by 9:00 a.m. this
5 morning. And when I didn't have it, I assumed it wouldn't be
6 filed.

7 MR. SANDAGE: My brief indicated, it sets out, I'll
8 give you the short version of that. So I wanted to make sure
9 the Court was aware of that.

10 For the other issue regarding the record, Your Honor,
11 is it the Court's position any single mitigating factor
12 proposed in Defendant Eye's trial brief, Document 444, that is
13 not included in the mitigating circumstances in this trial in
14 your proposed jury instructions are rejected by the Court?

15 THE COURT: There are three which I have rejected.

16 Your No. 27, that Mr. Eye has a positive relationship with his
17 legal team. Your No. 28, that Mr. Eye has been well behaved in
18 court. Your No. 29, if not sentenced to death he will be
19 sentenced to life imprisonment without release.

20 The other three, 31, 30, 31 and 32 I interpret as
21 residual doubt mitigators but those three specific mitigating
22 circumstances have been rejected.

23 MR. SANDAGE: Your Honor, circumstance No. 2, 3, 4
24 and 6 were ones that we laid out individually for the jury's
25 consideration and I don't see it worded like that in the

1 proposed jury instructions that you propounded upon us so I
2 don't know if you assume you have absorbed those into other
3 ones.

4 THE COURT: Yes. Your 2, 3, 4, 5 and 6 I think are
5 subsumed in the Court's No. 3 and Instruction 13.

6 MR. SANDAGE: Then I also have a No. 10 that I did
7 not see.

8 THE COURT: No. 10 can be argued under Court's No. 9.

9 MR. SANDAGE: Thank you.

10 I think Mr. Rogers probably has more comments than I
11 do, Your Honor.

12 THE COURT: Okay.

13 MR. ROGERS: First of all, Your Honor, I apologize
14 for not having filed my joint response in opposition. It was
15 my understanding when we left yesterday that since the
16 government was going to have their pleading filed yesterday
17 afternoon and since we had postponed our conference from this
18 morning until this afternoon that the purpose of that was to
19 give us a chance to look at theirs and then respond to it which
20 is what I did. I certainly trust that the Court has given it
21 due consideration despite it's untimeliness.

22 THE COURT: I have.

23 MR. ROGERS: Okay. Thank you.

24 I think that the record with regard to residual doubt
25 is fairly complete. I will, of course, look forward to

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1 reviewing what ever type of rationale the Court sets forth in
2 its order and would appreciate an opportunity to respond to
3 that if I feel the need which I'm sure I can get.
4 I have one I think pretty basic issue and I'll deal
5 with the mitigating factors with regard to Mr. Sandstrom I just
6 received especially factor No. 1, which is another person
7 equally culpable in the crime will not be punished by death.
8 To that, the Court has added the tail and this tends to
9 indicate that, it says Mr. Eye, but Mr. Sandstrom should not be
10 sentenced to death. That tail is not appropriate. That is a
11 statutory mitigating factor which must be, if supported by the
12 evidence, considered as mitigating by the jury. They have no
13 choice to consider it as mitigating.
14 THE COURT: Charlie, you may be right. I tell you
15 the reason I did that was simply for the sake of consistency
16 and maybe I sacrificed accuracy for consistency. I was also
17 going to add it to No. 2 and I assume your remarks would
18 pertain to that as well.
19 I have, in the listing of the aggravating factors, I
20 think, I added the same language or the mirror image of the
21 same language to the statutory aggravating factors as well as
22 the non-aggravating factors. And if we're all agreed it
23 shouldn't be on the statutory aggravating factors, I'm happy to
24 take it out.
25 MR. ROGERS: It should not be on the statutory

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1 aggravating factor. The difference, I think, with the
2 statutory aggravating factor, is in a separate instruction
3 because it's a gateway factor. And so when you list all the
4 mitigating factors together, they do tend to look different but
5 they have to look different to make that. And quite frankly,
6 Your Honor, on behalf of Mr. Sandstrom, if you wanted to leave
7 the tag, I believe is what you call it here, off of the
8 non-statutory mitigating factors, that would be okay with me.
9 The evil that that is designed to prevent is the notion that a
10 jury would find a factor to be true and give it weight but give
11 it aggravating weight rather than mitigating weight. And I
12 don't think that's an issue with any of these factors
13 especially since they're listed as mitigating factors. But on
14 the other hand the notes on use from the pattern instructions
15 do indicate that that should be there and the government may
16 well have an interest in having the jury not only find the
17 factor to exist but also to find it to be mitigating with
18 regard to some of them. I don't think there's anything here
19 which if true would not be viewed as mitigating to some extent.
20 We would not object if you want to eliminate that from all of
21 them for the sake of consistency.
22 MR. SANDAGE: Your Honor, Mr. Eye would ask for the
23 same relief.
24 THE COURT: Okay.
25 MR. ROGERS: My next issue, we talked about it

1 yesterday and apparently I misread the Court's views on the
2 factor and that has to do with the non-statutory aggravating
3 factor of future dangerousness being limited to future
4 dangerousness in prison. And that is because, as the Court
5 well knows, under Count 5 there is no possibility of release.
6 And so at least with regard to Count 5 and I think for the sake
7 of avoiding cumbersome confusion, it's best to put it in
8 generally, there is no chance of release and the jury needs to
9 know that if they're concerned about future dangerousness.

10 THE COURT: Let me explain to you why I did what I
11 did, Charlie.

12 As to Counts 3, 4 and 6 there is a possibility of a
13 sentence less than life imprisonment. As to Count 5 there is
14 not. When we ruled the motion in limine, we, obviously, didn't
15 know what the evidence was going to be. The evidence has been,
16 the testimony has been that Mr. Sandstrom reached out to others
17 from the Jackson County Detention Center in order to do harm to
18 Ms. Rios and Mr. Deleon. The evidence further has been, who
19 knows whether the jury believes this or not but the evidence
20 has been that Mr. Eye attempted to arrange money through
21 Mr. Buchanan to pay Mr. Branch to do harm to Mr. Sandstrom. In
22 light of that testimony and the uniqueness of that testimony in
23 connection with this case, I don't think it's appropriate to
24 instruct the jury that the future dangerousness consideration
25 should only be applied to him in the context of the prison

1 setting. What I have done is change that non-statutory
2 aggravator from constitute a continuing threat, and I don't
3 recall the exact language to the public or to society in
4 general, to criminal acts of violence that would constitute a
5 continuing threat to others. I think that allows the
6 defendants to argue that they are going to be in a prison
7 setting segregated from society and the public in general and
8 therefore they are not a threat to the public in general. I
9 think it allows the government to argue that they are, in fact,
10 a threat to the public in light of the evidence in this case
11 that they have tried to do harm outside the prison setting, if
12 the jury believes that testimony. Trying to do harm outside
13 the prison setting. And, further, you know, there is life
14 which has value even in a prison setting.
15 MR. ROGERS: That's why I think that, I'm not, don't
16 want to make any admissions here. I'm not at the current time
17 arguing with the Court's earlier ruling denying our motion to
18 strike that aggravator in it's entirety. I think that danger
19 while incarcerated, either to fellow inmates, guards or others
20 on the outside through reaching out, is a proper notion of
21 future dangerousness. However, Your Honor, this government is
22 strictly limited to the non-statutory aggravators pled in the
23 notice. They cannot come now, after the trial has started and
24 the first part of the trial has finished and shift the ground.
25 That's a function not only of the 8th Amendment requirement of

1 Hotten reliability at sentencing but also a function of the
2 notice of the due process clause. And their notice says future
3 dangerousness as evidenced by his lack of remorse for the
4 offenses committed in this case. Threats to people.

5 THE COURT: There was something else after that. I
6 don't know whether I have that.

7 MR. ROGERS: There is another non-statutory
8 aggravator of obstruction of justice which we're not talking
9 about here.

10 THE COURT: Does anyone have that notice?

11 MR. KETCHMARK: I didn't bring a copy. I can run
12 downstairs and grab it. I know exactly where it is. It will
13 only take a second.

14 THE COURT: Do you recall, David, whether -

15 MR. KETCHMARK: I don't recall the exact language in
16 the pleading. I know I saw it in my file this morning. I'll
17 run down real quick. It will just take one moment.

18 THE COURT: Okay. I don't have it here.

19 Go ahead, Charlie.

20 MR. ROGERS: So if, in fact, the notice is as I
21 believe it to be and what is already reflected in the
22 instruction you provided which was based on the one they
23 provided, I don't think the letters are relevant to show lack
24 of remorse as evidence of future dangerousness. If you know
25 what I mean.

1 THE COURT: I know what you mean.

2 MR. ROGERS: Therefore, it seems to me that to tailor
3 the instruction in light of those letters is confusing and
4 perhaps even misleading.

5 The other point I would like to make is there is a
6 difference between being permitted to argue something and maybe
7 I will say something about reasonable doubt after awhile, the
8 difference between being permitted to argue something and
9 having the Court's instructions on law to show the jury that
10 the argument is correct or if believed is correct, let me put
11 it that way. And so I don't think saying that we could argue
12 that he's going to be locked up based on one little paragraph
13 at the end having to do with Count 5 is the same as saying to
14 the jury when you're looking at future dangerousness you have
15 to look at it in the context of somebody who is being locked
16 up.

17 Now, if that's what you say in the instruction, that
18 still does not preclude the government from saying, assuming
19 their notice is included that is, well, look, he was locked up
20 when he did this and he was still a danger. It's not a matter
21 of a danger to whom. It's a matter of a danger to whom, under
22 what circumstance. And so therefore I think that it is once,
23 now, that we know that neither of these defendants is going to
24 be released, assuming that the verdicts stand, the only
25 relevant future dangerousness is while they are incarcerated

1 for life and never getting out. That's my argument.
2 With regard to the mitigating factors, I believe that
3 we had submitted as mitigating factor No. 1, I think we named
4 Ms. Rios as another person equally culpable in the crime. I
5 think the evidence warrants that. So I would ask that she be
6 referred to specifically.
7 Now, I mean also in the event Mr. Eye does not
8 receive a death penalty, I may submit another one naming him
9 also.
10 While we're waiting for Mr. Ketchmark I can make some
11 remarks like Mr. Sandage, you say it's final, I believe you.
12 Okay. But I do think that there's a difference between
13 declining to give an instruction on residual doubt and
14 precluding argument on residual doubt. And for the last 32, 33
15 years that the death penalty has been back in business,
16 residual doubt has been a very common theme of closing argument
17 in state cases. After the enactment of the CCE murder statute
18 carrying the death penalty in federal court, the very first
19 federal capital case called Chandler down in Alabama. And
20 Chandler having been convicted and sentenced to death and on
21 appeal, certiorari denied, files his 2255 motion. He makes a
22 claim that his counsel was ineffective for failing to
23 investigate and present what I'll call traditional mitigation
24 Williams, Wiggins mitigation.
25 THE COURT: The government's notice, I don't mean to

1 side track you.

2 MR. ROGERS: That's fine.

3 THE COURT: Which was filed July 17, 2006. In
4 subparagraph D1 says Defendant Steven Sandstrom poses a threat
5 of future dangerousness based upon the probability that he
6 would commit criminal acts of violence that would constitute a
7 continuing threat to society as evidenced, for example, by one
8 or more of the following. The defendant has demonstrated a
9 lack of remorse for the capital offenses committed in this case
10 as indicated by defendant's statements during the course of and
11 following the offenses alleged in the superseding indictment
12 and the defendant's actions during the course of and following
13 the offenses alleged in the superseding indictment.

14 If you try to fit that within the frame work of the
15 evidence in this case, that would seem to point to the letters
16 to Mr. Buchanan and to Ms. Galyean.

17 MR. ROGERS: I don't see how. I guess the letters to
18 Ms. Galyean is during the course of the offense, the
19 indictment, but the indictment has been out for months before.

20 THE COURT: Statements as indicated by defendant's
21 statements during the course of and following the offenses
22 alleged in the superseding indictment.

23 MR. ROGERS: The notice is broad enough to encompass
24 statements that had not been made or at the time of the
25 indictment it's too broad to comport with the notice

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1 requirements of the due process clause. That's mean anything
2 he has ever said from the March 9, 2005 until the present
3 because everything follows an earlier date. And so that notice
4 certainly cannot be a valid statement. And that's why the lack
5 of, and lack of remorse as evidenced by. I don't know that
6 threatening a witness evidence is lack of remorse. You have a
7 lot of remorse when you go to jail.

8 THE COURT: I'm sorry?

9 MR. ROGERS: I don't know that writing to
10 Mr. Buchanan to dispose of whoever threatens shows a lack of
11 remorse as opposed to showing obstruction of justice or some
12 other type.

13 MR. KETCHMARK: Judge, if I might. I would note,
14 first, obviously, I think the Court correctly read the language
15 and it indicates that it's the defendant's actions during the
16 course and following the offense alleged in the superseding
17 indictment. It is also the non-statutory aggravator pled in
18 the notice 4 which is the defendant willfully obstructed and
19 impeded and attempted to obstruct and impede the administration
20 of justice during the course of the investigation of the
21 offense as contained in the superseding indictment, I think,
22 which would incorporate the conduct that was the subject of the
23 letters and conversations.

24 And I'm happy to, I spoke briefly with Mr. Whitworth
25 when I went downstairs, I'm happy to, if the Court wants more

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1 information on this, I'm happy to provide the Court with more
2 detailed briefing on that particular point. The notice
3 provision indicates that it is a threat of future dangerousness
4 as evidenced by one or more of the following, among others, and
5 that is underlined for emphasis. And the notation there,
6 subparagraph A, indicates it is a lack of remorse but it also
7 then talks about the defendant's actions during the course of
8 and following the offense alleged in the superseding indictment
9 which also incorporate in my opinion, obviously, conduct as it
10 related to.

11 I can tell the Court right now that we do have other
12 phone calls involving Defendant Sandstrom wherein he's talking
13 about getting into assaults with correctional officers. He
14 also writes letters to Mr. Buchanan where he talks about six
15 correctional officers it took to get him down and he was
16 basically beating the hell out of them. And only when he got
17 tired that they decided to stop. So I think there is some
18 information that the government is entertaining at this point
19 at least in including it in its evidence of aggravation. But,
20 again, I can tell the Court this is information that is all
21 pertinent when we were talking about the procedure and how best
22 to proceed. This is stuff specific to Mr. Sandstrom. So I
23 don't know that this is an issue we necessarily need to resolve
24 today. I'm more than happy to provide the Court with more
25 authority that I believe is supportive of the government's

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1 position and we can take it up as relates to Defendant
2 Sandstrom because this is not the situation with Defendant Eye
3 and, obviously, that's a more pressing issue because that's the
4 defendant that we're going to start with first thing on Monday
5 morning. We don't have that type of evidence as it relates to
6 Mr. Eye that we do as relates to Defendant Sandstrom.

7 MR. ROGERS: If I may respond just very briefly,
8 Judge. If there's any teeth whatsoever in the notice
9 requirement of the federal death penalty, it is to constrain
10 them from bringing in stuff later on that has nothing to do
11 with this but is some other aggravating factor. So if, in
12 fact, they are claiming that Mr. Sandstrom got in some kind of
13 fight with jail guards, that is not evidence of lack of
14 remorse. Even if they're claiming that Mr. Sandstrom lied to
15 his cousin about him getting in a fight with jail guards, that
16 doesn't show lack of remorse for the offenses charged in the
17 indictment. If their notice is so raw that it encompasses
18 anything they want to put in it, then it is no notice at all,
19 has to be stricken in its entirety. So if you're going to keep
20 the notice and instruct on the factor, you have to instruct on
21 the factor as narrowly construed.

22 Let me go back to Mr. Chandler.

23 THE COURT: Eric, do you want to -

24 MR. GIBSON: Thank you, Your Honor.

25 This is essentially the same argument that both sides

1 made, both sides being Mr. Eye and Mr. Sandstrom, when they
2 attempted to strike the death notice in the first place. They
3 attacked the death notice as being insufficient. And as the
4 Court recalls from litigation in that matter, the death notice
5 is that, merely that. Notice. It is not intended to be a Bill
6 of Particulars or to be an exhaustive or exclusive list of the
7 evidence intended to be presented against either defendant.
8 That argument was made in response to their, that I interpreted
9 to obtain essentially a Bill of Particulars as what we were
10 going to prove in the penalty phase. It's not required under
11 the law. Their motion was denied at that time. And the idea
12 that they have no idea of what is coming, they heard the same
13 trial that we did. They heard the same trial that the jury
14 did. They had the benefit of the discovery before that. They
15 have had everything that the government is intending to use at
16 the penalty phase. So to stand here and claim that they're at
17 a disadvantage, that they didn't know what was coming or what
18 their client said or did while in custody is not consistent
19 with the discovery process of this trial or the conduct of the
20 trial.

21 THE COURT: Well, maybe I will accept Mr. Ketchmark's
22 offer for further briefing on that issue between now and the
23 time when we have to have Mr. Sandstrom's instructions in final
24 form.

25 I know everyone is running on short energy at this

1 point in time. What do you suggest as a briefing date?

2 MR. KETCHMARK: I don't see any reason we couldn't
3 have something to the Court by Monday morning. And we could
4 work on it over the weekend in addition to getting ready for
5 Mr. Eye. I don't know that it's going to be all that time
6 consuming. Just a matter of getting something before the Court
7 if you like, if that's sufficient, we could have it to the
8 Court by then.

9 THE COURT: And Charlie?

10 MR. ROGERS: I would like a chance, Judge, quite
11 frankly to look at theirs, see what they say and respond to it
12 so maybe Tuesday morning.

13 THE COURT: That's fine.

14 Lance?

15 MR. SANDAGE: Your Honor, it seems to me in all due
16 fairness to Mr. Eye, Mr. Ketchmark's representation was a lot
17 of issues you just discussed, didn't even pertain to Mr. Eye,
18 these letters didn't exist. So if the Court is going to
19 entertain relief under this, then I think it's more urgent we
20 address it today since Mr. Eye is set to begin Monday morning.
21 I propose certain language in my briefing regarding how to
22 address future dangerousness as related. And I pulled it out
23 of a prior case that was forwarded to me on how to provide a
24 limiting instruction for future dangerousness for someone who
25 is not going to get out or be put the death--making changes to

1 its proposed jury instruction rejected it. So that's -

2 THE COURT: Well, I did. But let me look at it

3 again.

4 MR. SANDAGE: Page 2 of the trial brief, Your Honor,

5 Roman numeral No. 2.

6 THE COURT: Steve, did I return that to you?

7 MR. ROGERS: I have mine right here, Judge.

8 THE COURT: Thank you.

9 I recall writing a marginal note when I read it the

10 first time, Lance. And the problem that I saw with it is I

11 thought it was too restrictive in light of the evidence that

12 we've heard about both defendants reaching out to do injury to

13 persons outside the prison setting.

14 The first sentence says you must limit your

15 consideration of the risk of future dangerousness that Mr. Eye

16 poses to inmates and prison staff while serving a life sentence

17 in prison without the possibility of release. And in light of

18 the evidence in this case I didn't think that was a fair

19 instruction to give the jury.

20 MR. SANDAGE: I figured there was sound reason for

21 your rejection, Your Honor. The only reason I revisited it if

22 the Court is contemplating relief for Mr. Sandstrom who has far

23 more out there in a way of reaching out from prison walls and

24 Mr. Ketchmark's representation that Mr. Sandstrom has made

25 references in letters to actually injuring prison guards or

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1 getting into fights and he represents to you there is no such
2 evidence as to Mr. Eye, then I don't know how to approach it.
3 I don't want our ship to leave from the dock and you make a
4 decision different Monday afternoon and we can't bring the ship
5 back.

6 MR. KETCHMARK: Your Honor, I think from --saying
7 about my representation what I'm saying is we don't have
8 evidence on Mr. Eye like we do on Mr. Sandstrom with respect to
9 the threats to harm guards and things of that nature. So I
10 don't know that there needs to be a resolution because I don't
11 think however the Court proceeds on that particular issue, I
12 don't think it in any way impacts the penalty phase as it
13 relates to Mr. Eye. It's my belief that the notice is
14 sufficient. It's my belief there is no dispute, I'm not
15 hearing from either defense counsel that we didn't provide in
16 discovery all of the information and that they have had this
17 for years now, Judge, on some of it. You know, at least a year
18 on the majority of it, multiple years on some of the other
19 stuff in terms of the actual information that is the subject of
20 what we're talking about.

21 MR. SANDAGE: Your Honor, as relates to my proposed
22 tail, in addition would the Court entertain changing it from
23 starting at the end of the first sentence of future
24 dangerousness Mr. Eye poses to others? Similar language to
25 what you included in your proposed jury instruction and

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1 removing inmates and prison staff because that opens up anybody
2 to argue.

3 THE COURT: We may be parsing too finely here.

4 The proposed aggravating circumstance now reads, the
5 defendant poses a threat of future dangerousness based upon the
6 possibility he will commit criminal acts of violence that would
7 constitute a continuing threat to others as evidenced by his
8 lack of remorse for the offenses committed in this case.

9 MR. SANDAGE: Your Honor, I didn't want to
10 misrepresent the key language from the perspective of Defendant
11 Eye is that while serving a life sentence in prison without the
12 possibility of release. That's the language I want in there
13 now. That's the language I urge the Court to consider. And
14 you can remove inmates and other prison staff and put others in
15 there. But then at least it narrows it consistent with the
16 Court's motion in limine. I realize you reconsider that in
17 light of the testimony you heard the last week, a couple days.
18 But this just kind of brings into focus what we have spent the
19 last 25 minutes talking about.

20 THE COURT: What is there about the aggravating
21 circumstance as its written that you think prohibits you from
22 arguing that to the jury?

23 MR. SANDAGE: It's the difference between arguing it
24 and the reality of the situation that they can't get out. I
25 think in the form of an instruction they're going, honestly,

1 put more weight into it because it's reality. There is no
2 option. I can argue it but that's just argument. They're
3 going to take it as argument. It's not fact. Not reality.
4 It's me trying to persuade them to consider a life sentence
5 rather than a death sentence. If you put it in an instruction
6 that's the only option, it is life in prison or death. So to
7 hear it from me, I mean.

8 THE COURT: Well, what I tried to avoid is making
9 argument in these instructions which advances the interest of
10 either side over the other. And I think once the stamp of the
11 court goes on argument, then I have done that and I have
12 crossed the line.

13 MR. ROGERS: Let me touch on that, if I might, Your
14 Honor. I think if you add just a single clause after the comma
15 in paragraph 4 of the proposed instruction, doesn't have a
16 number on it.

17 THE COURT: E11. Actually it appears twice. One in
18 the opening instruction then E11.

19 MR. ROGERS: 11. If after the comma, after the word
20 others, you add while serving a sentence of life imprisonment
21 without release, comma, that solves that problem and takes away
22 my argument.

23 MR. KETCHMARK: But -

24 MR. ROGERS: That is consistent, Your Honor, with
25 your earlier ruling on the motion in limine. And I'm not

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1 saying I would have, with a different ruling on the motion in
2 limine but we certainly have not retained any sort of expert in
3 federal prison conditions and conditions of confinement and
4 options available to confine people in the Federal Bureau of
5 Prisons to make this an issue. In other words, we don't have
6 Mark Cunningham in here saying, yes, I've been to the ADX in
7 Colorado. Here's the cell. Here's what it looks like. You're
8 not going to be a danger. If they think you're a danger, they
9 put you here. And you can't be a danger because there's a
10 4-foot space, sallyport, between the grill in front of your
11 cell and the door that opens into the hall. And the guards
12 don't let you in there unless, etc. You know, we don't have
13 that kind of evidence to present. I don't think we need to
14 present that kind of evidence because I think if the jury is
15 focused on danger to others while in prison, that's within the
16 fair purview of the notice.

17 MR. KETCHMARK: Only thing I would note, Judge, is I
18 think it's important that I understand what they're arguing is
19 the reality of life imprisonment. Count 5 is going to be the
20 controlling sentence. I have a hard time where the Court is
21 referring multiple instructions to the other punishment ranges
22 and the verdict forms suggest that as to Counts 3, 4 and 6 that
23 they could recommend a lesser sentence. And so to me to put in
24 a tag like Mr. Rogers is suggesting on an instruction that is
25 not necessarily an accurate reflection, I think it gets

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1 convoluted and more confusing. And I think the way the Court
2 has done it, they can make the argument. The instructions will
3 say on Count 5 what the punishment options are. The
4 instructions will say on Counts 3, 4 and 6 what the punishment
5 options are. And to put this global life without possibility
6 of release where that is not necessarily on 3, 4 and 6 the
7 sentencing options that they're restricted to. I think it's
8 inappropriate and I think it's better to allow them to do it in
9 argument than to suggest this concern of argument versus stamp
10 of the court on the verdict form on Count 5 will set forth the
11 two punishment options. The verdict form on Counts 3, 4 and 6
12 will set forth the three punishment options. So I think we're
13 getting into an area of minutiae that we don't need to get
14 into. And that's why when I first stood up, my belief is the
15 way the Court has crafted the instruction, it is the fair way
16 to allow both sides to make their argument without suggesting
17 one way or the other. And the evidence is clear in the case
18 before them that these defendants, you know, Mr. Sandstrom more
19 so than Mr. Eye, took steps to reach out from behind the prison
20 walls to harm others.

21 MR. ROGERS: I don't see any way that an argument or
22 an instruction as modified the way that I have suggested based
23 upon what Mr. Sandage suggested would preclude the government
24 from making any argument they want to. Certainly would not
25 rule out dangerousness by reaching out beyond the prison walls.

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1 Because it's not where --it's not who's in danger. It's where
2 the person alleged to be a danger is. Now having said that, I
3 think you heard about all we have to say on the subject.

4 THE COURT: I am going to leave it as it is. And
5 each side can argue as I indicated but I'm not going to change
6 it.

7 MR. ROGERS: Let me then, I think I was talking about
8 Mr. Chandler before Mr. Ketchmark showed up with the notice.
9 With regard to Mr. Chandler, he was the first case tried under
10 the reinstated federal death penalty, not under Federal Death
11 Penalty Act. It was under the CCE. And his claim on his 2255
12 was that his attorneys were ineffective for failure to
13 investigate and present traditional mitigating evidence. And
14 the 11th Circuit in, they ruled on his 2255, I want to say half
15 a dozen times, reached a ruling then they would re-hear it en
16 banc, then set that one aside and have another. There were a
17 bunch of them. But the basic ruling with regard to his claim
18 of ineffective assistance was failure to research or
19 investigate and present classical background mitigation type
20 evidence, was that it was a reasonable trial strategy for his
21 counsel to rely on and argue the residual doubt.
22 Now there was no instruction as far as I can tell, no
23 instruction on residual doubt given but that certainly was the
24 argument. And there have been dozens if not hundreds of other
25 capital cases, federal, state, which have reached similar

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1 conclusions where there has been held to be a reasonable trial
2 strategy to rely on and argue residual doubt in lieu of other
3 types of mitigation. Surely it's not a reasonable trial
4 strategy to argue something that cannot legally be argued.
5 It's not a reasonable trial strategy to look for something else
6 in favor of something that you have no right to argue. So I
7 believe quite frankly that the Court has exercised discretion
8 and I think the Court has discretion on whether or not to give
9 an instruction as to residual doubt. Whether the Court has
10 abused its discretion, I guess is to be determined later on.
11 But having said that, Your Honor, I don't know that you have
12 the discretion to preclude argument of residual doubt as
13 opposed to the instruction. And that's -
14 THE COURT: I guess my thought is that if it is
15 improper to instruct on it, it is improper to argue it. If I
16 don't let you, if I don't instruct the jury that they can
17 consider the difference between reasonable doubt and absolute
18 certainty, if I don't instruct them that they can consider that
19 in trying to decide whether to impose a death penalty, it is
20 improper to argue it. And it's for that reason that I conclude
21 that it cannot be argued. Maybe you're right. Maybe this is
22 one of those things that will cause this case to come back. If
23 it comes back, I hope by then I am a senior judge and I can say
24 to a younger judge, it's your case now. But -
25 MR. ROGERS: That's called pulling a Sachs, Judge.

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1 Sachs is the original trial judge in the People's and Lightfoot
2 case. When it came back, he was able to foist it on Judge
3 Gaitan.

4 THE COURT: There are a lot of things about Judge
5 Sachs I admire and hope to emulate and that would be one of
6 them.

7 MR. ROGERS: I have nothing bad to say about Judge
8 Sachs but I've had that experience. Now it's going to take a
9 long, long appellate process for you to get up to Judge Sach's
10 seniority.

11 I think my record is clear, is it not?

12 THE COURT: I think it is. I think it is.

13 Anything else, gentlemen?

14 MR. KETCHMARK: Only two other things I had, Your
15 Honor. One was, obviously, we've been operating with and
16 correctly so, obviously, keeping compartmentalized the guilt
17 phase and penalty phase. I spoken with both defense counsel,
18 obviously, the fact that we're in the middle between the
19 phases, that the need for that really I don't believe,
20 obviously, exists any more. And I had talked with them both
21 about disclosures at this point because clearly the government
22 I believe is entitled to any discovery that they would have as
23 relates to the penalty phase and they have been rather forth
24 coming on that. So I'm just pointing that out as part of the
25 record I'm making a request and I think that I have been

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getting most of the information from them but I'm really putting that in as part of a request on the record so to speak.

Then the only other thing the government would have is I would also ask that along the lines of improper type arguments, I think that commenting on the capital certification process or procedure within the Department of Justice is inappropriate. I think it has no bearing. It's not anything that is part of the record or the evidence that's been presented. And we would ask that prophylactically, similarly to my request prior to closing argument in the guilt phase, that not be something that is commented on or argued by either defense counsel in this matter.

THE COURT: Any response?

MR. SANDAGE: Not on behalf of Mr. Eye. Mr. Rogers will probably have something.

MR. ROGERS: Why am I always the bad guy?

With regard to the disclosure, Your Honor, we have in accordance with the Court's earlier instruction small letter I, disclosed to the government the report of our neuropsychologist Dr. Fucetola and we have arranged to have him give his testing data to a qualified, I assume, psychologist on the government's behalf. He's had it for two weeks now. I don't know whether they intend to call him as a witness or what.

MR. KETCHMARK: I was going to file a notice

endorsing him as a potential rebuttal witness. That was how it

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1 was coordinated after we had prior discussions. That
2 information was transferred over. Thankfully for me, my wife
3 has been in contact with Dr. Martell, getting that part of
4 rebuttal, if necessary.

5 MR. ROGERS: And I think since we disclosed theirs,
6 they need to disclose what he's going to say --copy of the
7 report --I don't know if he's done any testing. I have no
8 idea. To me -

9 MR. KETCHMARK: What I can tell you is there's
10 obviously been no testing. We haven't filed any request to
11 allow him access to the defendant. So what he has done and to
12 my understanding I haven't had a full debriefing on his
13 prepping process but I believe he's taken the information and
14 has digested the information and is trying to determine whether
15 or not their doctor stayed within the parameters of what he
16 would deem to be acceptable practice within the field in which
17 they are endeavoring to present the information. There has
18 been no written generated report. I don't know that there will
19 be. I think it's going to be merely commenting on the
20 information and if their doctor steps out of line --if their
21 doctor stays in tow, there might not be a need for the doctor
22 on our part. But in answer to Mr. Roger's question, obviously,
23 we haven't filed a motion requesting access to either or both
24 defendants and I don't anticipate that we're going to do that.
25 It's going to be more merely in the form of rebuttal if their

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1 doctor steps out of what Dr. Martell believes is parameters for
2 expert testimony in that field.

3 MR. ROGERS: Another thing I would say, Your Honor,
4 is the government's decision rather adamant that we're not
5 entitled to a Bill of Particulars as they call it, concerning
6 what they intend to present in the penalty phase. So I don't
7 think we have any disclosure obligation beyond Rule 16 experts
8 to them in the penalty phase.

9 THE COURT: Well, what are you going to present in
10 penalty phase that you haven't told the defendants about?

11 MR. KETCHMARK: The only thing and I noticed it up,
12 is we're going to have some victim impact evidence and there's
13 been no written reports. In fact, we haven't had an
14 opportunity to sit down and have much detailed discussion with
15 the victim's family. We had some initial discussions yesterday
16 afternoon. I know one of the victim's brothers is in court.
17 We talked to him about meeting after this proceeding to get
18 some more information. Going to be background on the victim
19 and the impact of his loss on them. And other than that, it's
20 going to be pretty much restricted to all of the information
21 that was provided in the prior discovery process, Judge. It's
22 going to be an incorporation, obviously, of the factors as
23 submitted in the guilt phase. Then if there are additional
24 phone calls or letters that are provided in discovery, we're
25 entitled to use those. So there's not any new witnesses other

1 than victim impact and there's no reports on his testimony.

2 THE COURT: What else do you want, Charlie?

3 MR. ROGERS: I'm about to make more disclosures in

4 the true spirit of reciprocity.

5 THE COURT: Just so you all know, I don't want any

6 trial by ambush in this case. I want a fair clean trial for

7 everyone. And if there's something that comes up at the last

8 minute, you run the risk of having that testimony or that

9 evidence excluded, if it hasn't been disclosed. So those are

10 the broad marching rules, and if there is a specific problem

11 you want me to address, bring it to my attention and I will do

12 so.

13 MR. ROGERS: I will just bring something. I don't

14 think it's a problem. But we have long ago disclosed to the

15 government a CD, it's a video of maybe a DVD I'm not sure which

16 it is. Any way a video of several people talking about

17 Mr. Sandstrom's background. Quite frankly, most of them have

18 already testified so we won't need that. With regard to two of

19 those witnesses, they did not testify in the guilt or innocence

20 phase of the trial and we would be intending to play the video

21 of those witnesses for the jury. And those would be Monica

22 Webster. And the other issue is on the video both Teressa

23 Davis and Desiree Perkins, they're on the same video sitting

24 next to each other, kind of talking back and forth with me and

25 others. And I don't know how we could play Ms. Perkins without

1 playing Ms. Davis, who already testified.

2 MR. KETCHMARK: I guess my initial question is, is
3 there a reason they won't be bringing them in? I know
4 Ms. Perkins was subpoenaed and was here to testify. And,
5 obviously, I think everybody's preference would be it be
6 testimony from the witness stand that would allow us to have an
7 opportunity to inquire if we saw fit. In terms of the video
8 statements, I think there is portions of them that express
9 these opinions, witnesses belief on whether or not they thought
10 the defendants were guilty or not guilty. There is discussion
11 whether they view them as racist or not racist. So I don't
12 know, I know Mr. Rogers initially indicated that Ms. Webster
13 was out of town. But my first question to him would be is
14 there a reason he wants to do it in video format that doesn't
15 allow the government an opportunity to cross-examine the
16 witnesses when I know Ms. Perkins was here. They elected not
17 to put her on. She's the one who is also a relative of the
18 victim in this case.

19 MR. ROGERS: That answers the question. We had her
20 here. We wanted to put her on. And she saw a relative of hers
21 who happened to be the decedent's mother, who made her very
22 uncomfortable about testifying in person. We made the decision
23 not to call her and you disclosed to the court she was a
24 relative.

25 MR. KETCHMARK: We found out the morning of trial.

1 MR. ROGERS: That's when we found out, too. We
2 decided not to call her. She would be equally uncomfortable to
3 coming to testify again. That's why we propose to use her
4 video. With regard to Ms. Webster, she's no longer residing in
5 the area and we don't know where she is. And the government
6 has no right of confrontation.

7 THE COURT: Do I have a copy of the video? I don't
8 know.

9 MR. ROGERS: No. And I probably don't have one with
10 me.

11 MR. KETCHMARK: I have one downstairs. I could have
12 a copy burned if Mr. Rogers has no objection.

13 THE COURT: Why don't you let me look at it?

14 MR. ROGERS: Okay.

15 THE COURT: Then we can talk again.

16 MR. ROGERS: And the other issue that I was going to
17 bring to your attention, I'm not asking for any type of ruling
18 on, we have no discoverable witness statements of, I'll call
19 her civilian mitigation witnesses, other than things we got
20 from the government in discovery.

21 THE COURT: What does that mean, Charlie? You have
22 no discoverable statements?

23 MR. ROGERS: If I talk to a witness and take notes
24 myself as a lawyer preparing a case, that's not discoverable.
25 I don't have investigator A went to witness B and witness B

1 said C, D, E. That's what I don't have.

2 MR. KETCHMARK: How about names of witnesses at a
3 minimum? We could start with that. I don't know that we have
4 ever received any penalty phase disclosure from Mr. Rogers as
5 to who he's intending to call, let alone what they're intending
6 to say.

7 MR. ROGERS: Okay. I can do that. You want them
8 now? Or after we're done?

9 THE COURT: Why don't you-

10 MR. ROGERS: That was just kind of a lead in. We've
11 also enjoyed the services of a social worker, mitigation
12 specialist, person who has done a social history and a lot of
13 things. At this point it's not our intention to call her as a
14 witness but that might change. If it does change, then we
15 would before doing that disclose to the government her work
16 product.

17 THE COURT: Okay. What about commenting on the
18 capital certification process. You have no intention of doing
19 that I take it?

20 MR. ROGERS: Not per se. But I will tell you, don't
21 want any ambush. This is my only ambush. So I'm giving it up.
22 We do have a transcript of the detention hearing in this case
23 and there is a remark made by Mr. Ketchmark to the effect that
24 and this is in October of 2005, obviously, after the September
25 indictment, to the effect that based on his analysis, he sees

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1 no statutory aggravating factors. The ultimate decision is up
2 to the people in Washington or words to that effect. I'm
3 paraphrasing. We do intend to offer that portion of the
4 transcript as an admission of a party.

5 MR. KETCHMARK: Judge, obviously, I would strenuously
6 object to that. I provided that information as a courtesy to
7 Judge Larsen with the caveat that the capital review committee
8 has the final say-so. And their analysis, obviously, was in
9 support of an aggravator. They found it unanimously. I talked
10 with them about that and, obviously, the Court has had the
11 information. I think to try to end around and get this in is
12 absolutely inappropriate and there's no bearing on this issue
13 of whether or not it's for the jury to find, based on the facts
14 and the record. And for Mr. Rogers to try to take an end
15 around of a courtesy I was trying to extend to Judge Larsen is
16 wholly inappropriate. And I would ask that they be barred from
17 doing so. That's why I'm bringing it up because I don't want
18 any of these type of ambushes to come up.

19 THE COURT: I don't think it's germane. I don't
20 think it needs to come in. It will be excluded.

21 MR. ROGERS: Judge, I think it's clearly relevant
22 under the definition of 201. And I think that it is certainly
23 not hearsay, 801D2D so, you know, I don't know that.

24 THE COURT: Okay. I mean, you and I are going to
25 disagree. It's not going to be admitted.

1 MR. ROGERS: You win, if that's the deal.

2 THE COURT: Well, at least today I win.

3 Okay. Anything further, folks?

4 MR. KETCHMARK: No, Your Honor. I'll get a copy. I

5 spoke with Ms. Marko. I would just put the tag on the end of

6 that. We, obviously, let the Court review it, see what we're

7 dealing with. I would like to go back and review those two as

8 well. We might have further objections to presenting those in

9 the video format. But -

10 THE COURT: Well, we have some time to deal with

11 those.

12 MR. KETCHMARK: Yes.

13 THE COURT: Lance?

14 MR. SANDAGE: I'm just getting my briefcase.

15 THE COURT: Thanks, folks. See you Monday.

16 Before I eliminate the tags on all of aggravators

17 mitigators, is everyone on board with that?

18 Okay. Thank you.

19 (End of session)

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1 MAY 12, 2008 -DAY 14

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: There were a couple of filings over the
5 weekend. The government's consolidated response in opposition
6 to the defendant's oral motion to restrict the government's
7 presentation of evidence regarding future dangerousness and
8 lack of remorse. I have read that submission.

9 And then Defendant Steven Sandstrom's offer of proof
10 with suggestions in support regarding admissions of the United
11 States. I have read that submission as well.

12 Neither of those documents cause me to change what
13 I've decided to do on Friday.

14 MR. OSGOOD: For, Your Honor, we'd like to join in
15 the motion filed on the party admissions.

16 THE COURT: The record will reflect Gary Eye joins in
17 Defendant Sandstrom's offer of proof regarding admissions of
18 the United States.

19 MR. OSGOOD: We would adopt that filing in its
20 entirety. The way it's filed, our filing would be identical as
21 to the offer of proof.

22 THE COURT: All right. I'll accept that as Defendant
23 Eye's joinder verbatim in Defendant Sandstrom's offer of proof.
24 And, again, neither of the filings cause me to change
25 my mind.

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1 Anything that we need to talk about before we bring

2 the jury in?

3 MR. KETCHMARK: Your Honor, we have a stipulation

4 that's being signed this morning with respect to Defendant

5 Eye's age. We'll simply mark that as a Government's Exhibit.

6 THE COURT: That will be Exhibit 313?

7 MR. KETCHMARK: Ms. Marko is shaking her head so I

8 would assume that that's a yes.

9 THE COURT: Do we have everyone present?

10 MR. SANDAGE: If I might, were there any corrections

11 made to the jury instructions? I mean we discussed some

12 grammatical issues. I wanted to know if we'll get a clean copy

13 this morning.

14 THE COURT: The opening instructions, I don't recall

15 whether there were grammatical changes offered. If so, they

16 were accepted and should be included. There is, you don't have

17 a copy of what I'm about to read but it is the same as what we

18 discussed with the exception of any grammatical changes the

19 parties suggested. And we'll get you a clean copy of these

20 opening instructions and the closing instructions as soon as

21 they're ready.

22 MR. SANDAGE: Thank you, Judge.

23 MR. KETCHMARK: We had filed a witness list, Your

24 Honor, with respect to the government's evidence in aggravation

25 as relates to Defendant Eye. I can tell, the parties and I

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1 shared this over the weekend with Mr. Sandage and Mr. Rogers,
2 that we're looking at two of the brothers. We were going to
3 have the mother and the other brother. Unfortunately, the
4 other brother's health isn't enabling him and the mother isn't
5 comfortable. So we're looking at Rodney McCay and Cedric McCay
6 but just were endorsed witnessed. We'll start with Rodney when
7 he arrives and then Cedric.

8 THE COURT: Okay.

9 MR. ROGERS: Your Honor, do I correctly understand
10 that the testimony of Rodney McCay and Cedric McCay is being
11 offered against both defendants at this point?

12 MR. KETCHMARK: That was my understanding. Then what
13 we would do, not, obviously not need to duplicate that, if we
14 get into a penalty phase with respect to Defendant Sandstrom
15 then we would obviously reserve the right to make a modified
16 opening statement as relates to Defendant Sandstrom, then
17 present evidence that has not been presented because it's more
18 uniquely related to Defendant Sandstrom as opposed to Defendant
19 Eye.

20 MR. ROGERS: So I assume after the conclusion of the
21 victim impact evidence that we will recess so Mr. Sandstrom and
22 his team can flee the scene?

23 THE COURT: Yes.

24 MR. ROGERS: Thank you.

25 THE COURT: And we agreed that 30 minutes would be

1 sufficient for you to make any opening remarks?

2 MR. GIBSON: More than sufficient.

3 MR. SANDAGE: Yes, Your Honor.

4 (The following proceedings were had IN THE PRESENCE

5 AND HEARING OF THE JURY:)

6 THE COURT: Please be seated.

7 Good morning.

8 In a moment I will give you some opening instructions

9 for this phase of the trial. Before I do that, I want to tell

10 you a couple of things. First, we will ask you to focus

11 initially on the appropriate penalty for the Defendant Gary

12 Eye. Once you complete that work then we will ask you then to

13 focus on the appropriate penalty for the Defendant Steven

14 Sandstrom. You should not read anything into the order. We're

15 taking them up, we're simply holding to the same rotation that

16 we have used throughout the trial.

17 I have allowed each side up to 30 minutes to make

18 some opening remarks to you during which you will very likely

19 hear what the attorneys expect the evidence and the testimony

20 will be in this phase. They may not use the entire allotted

21 time but they have up to 30 minutes aside.

22 The government will present evidence in support of

23 its claims during this first session which may have equal

24 applicability to both defendants. That would come, could come

25 in the form of family testimony which you would take into

1 account in, in your deliberations both with respect to Mr. Eye
2 and Mr. Sandstrom.

3 Following the presentation of the government's
4 evidence, it is likely that Mr. Sandstrom and his lawyers will
5 not participate during that portion of the trial where Mr. Eye
6 presents evidence, supporting factors which are evidence that
7 would mitigate against the death penalty in this case.

8 I wanted you to be aware of that so you didn't have
9 questions when you saw something that was unusual in the
10 courtroom.

11 The instructions I am about to read to you are in
12 writing and will be available to you. We'll hand them to you
13 at some point and then simply insert these instructions into
14 your instruction booklet. There will be additional
15 instructions at the close of the evidence, together with
16 verdict forms and those will also be presented to you.

17 I begin now with instructions identified as E which,
18 obviously, stands for Eye, E1.

19 (INSTRUCTIONS NOS. E1 THRU E6 WERE READ BY THE
20 COURT.)

21 THE COURT: Mr. Gibson, will you be making the
22 opening for the United States?

23 MR. GIBSON: Yes, sir.

24 THE COURT: You may proceed.

25 MR. GIBSON: Thank you.

1 Morning. Ladies and gentlemen, on behalf of the
2 United States, on behalf of the McCay family and on behalf of
3 those who loved William McCay, I want to take this moment, this
4 opportunity to thank you. Thank you for the verdict you
5 rendered in this courtroom. Thank you for the courage and
6 wisdom you demonstrated in rendering that verdict.
7 Now, ladies and gentlemen, my remarks today are going
8 to be directed toward Gary Eye as the Court has already
9 indicated. And what was once hypothetical is hypothetical no
10 longer. Now, we have to consider the appropriate punishment.
11 Having heard the trial, having rendered your verdict, you'll be
12 able to consider the evidence introduced at the first phase as
13 we move through the second phase. You may, you should and we
14 will be asking you to recall the facts and circumstances as you
15 found them to be during the first phase of the proceedings and
16 we will be incorporating the record of the trial into these
17 proceedings as well.
18 I don't wish to belabor any points but the Court has
19 advised you there are a number of findings you're going to have
20 to make. You must find unanimously and beyond a reasonable
21 doubt that the defendant, Gary Eye, was at least 18 years of
22 age at the time the offense was committed. That is not in
23 dispute.
24 You must find unanimously and beyond a reasonable
25 doubt that the defendant intentionally killed William McCay, or

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1 intentionally inflicted serious bodily injury that resulted in
2 the death of William McCay. By your verdict you have already
3 done so. And the trial evidence supports such a finding now.
4 Next, the government will need to establish the
5 statutory aggravator. And the government submits that the
6 evidence introduced at trial will establish to your
7 satisfaction unanimously and beyond a reasonable doubt, that
8 the defendant committed the offense after substantial planning
9 and premeditation. Planning meaning mentally formulating a
10 method for doing something or achieving some end. It does not
11 mean sophisticated. It does not mean complex. It does not
12 mean smart or likely to succeed. Premeditation means thinking
13 or deliberating about something and deciding to do it
14 beforehand. Premeditation can form in an instant. Any period
15 of time is sufficient to form the intent to kill. And
16 substantial planning and premeditation means a considerable or
17 significant amount of planning and premeditation beyond the
18 minimum required for the commission of the offense.
19 We'll ask you to recall from the evidence that
20 Vincent Deleon had more than sufficient time to exit the car
21 before any shots were fired. We'll ask you to recall from the
22 evidence that you heard how Jonnie Renee Chrisp had more than
23 sufficient time to exit the car before any shots were fired.
24 We'll ask you to recall how Regennia Rios knew before they even
25 arrived at Inner City Oil to pick up Jonnie Renee how Gary Eye

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1 had announced his intention to shoot, quote, the next nigger on
2 site.

3 You'll recall the 12 minutes, possibly longer,
4 between the shots fired by Gary Eye at 9th and Spruce and the
5 shots fired by Gary Eye at 9th and Brighton. The government
6 submits that the evidence introduced at trial will establish
7 that the murder of William McCay took more than the minimum
8 premeditation and planning required for the commission of the
9 offense.

10 And then the government will offer the non-statutory
11 aggravating factors and evidence to support the same. First
12 that the offense caused injury, loss and harm because of
13 William McCay's personal characteristics as a human being, as a
14 member of our community. And the impact of his death on the
15 McCay family. You will hear from William's family who will
16 tell you about William, tell you about his life then they will
17 tell you about their loss.

18 Next, the government will demonstrate the defendant
19 intentionally selected William McCay as the object of the
20 offenses in Counts 1 and 3 because of the actual, perceived
21 race or color of William McCay. The government submits that by
22 your verdicts and the evidence introduced at trial the
23 government has established that William was selected for
24 violence and death because of his race.

25 Next, the government will demonstrate that the

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1 defendant voluntarily and intentionally obstructed and impeded
2 or attempted to obstruct and impede the administration of
3 justice during the investigation into this offense and these
4 offenses. And, again, the government submits the evidence
5 introduced at trial before you, the evidence found to your
6 satisfaction beyond a reasonable doubt has already demonstrated
7 that.

8 The government will then show that the defendant
9 poses a threat of future dangerousness based upon the
10 probability that he will commit future criminal acts of
11 violence that constitute a continuing threat to others as
12 evidenced by his lack of remorse for the offenses committed in
13 this case.

14 Again, ladies and gentlemen, we will ask you to
15 recall the evidence at trial. But more than that, ladies and
16 gentlemen, more than that, as you recall how he bragged
17 repeatedly about having shot and killed William McCay.
18 We will ask you, ladies and gentlemen, what have you
19 heard to indicate there is a shred, an iota of remorse? We
20 submit, ladies and gentlemen, that you have not heard during
21 the trial a single piece of evidence demonstrating remorse on
22 the part of Gary Eye. And I will suggest to you further,
23 ladies and gentlemen, that you will not hear it today. There
24 will not be evidence of genuine remorse on the part of Gary
25 Eye. And because of that, he represents a future threat to

1 others.

2 But before today, ladies and gentlemen, these
3 proceedings this trial what took place in this courtroom is
4 about Gary Eye and Steven Sandstrom. But now we're going to
5 ask you to remember William McCay. To remember the last
6 moments of his life. And, ladies and gentlemen, at the
7 conclusion of the evidence we will, again, appear before you,
8 and make no mistake, the United States will appear before you
9 and request a sentence of death for Gary Eye without
10 reservation. I thank you.

11 THE COURT: Mr. Sandage.

12 MR. SANDAGE: Thank you, Your Honor.

13 May it please the Court.

14 THE COURT: Go right ahead.

15 MR. SANDAGE: Good morning, ladies and gentlemen of
16 the jury.

17 My name is Lance Sandage and I, along with Mr. Osgood
18 have represented Gary Eye throughout this proceeding. It's
19 been awhile since we spoke to you about this phase of the
20 trial. Let me tell you before we go into the second phase we
21 respect your decision in the first phase. We do not quarrel
22 with it. We do not disrespect it. We accept it and we'll move
23 forward.

24 This part of the phase of the trial is to determine
25 what is merciful. What do you think is a fair and just

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1 punishment? You heard the judge's instructions at the outset
2 of today as to the sentencing options before you, death, life
3 imprisonment or a lesser punishment. But make no mistake about
4 it, ladies and gentlemen of the jury, you have two options.
5 You can either sentence Mr. Eye to death or life imprisonment
6 without the possibility of parole. Your decision to find him
7 guilty in Count 5 of the indictment allows for no other option.
8 So that's what this is about.
9 As I was thinking this morning or over the last
10 couple days my comments to you, I thought that during jury
11 selection we asked you and the judge talked about we don't want
12 you to check your life experiences at the door. When we were
13 inquiring of you during jury selection we wanted to delve into
14 your life experiences. That's important here today more than
15 ever in my opinion.
16 As I thought about myself, I thought about my life
17 experiences and how it prepares me for today to speak to you in
18 hopes that you will return a verdict of life without the
19 possibility of parole for Mr. Eye. But most importantly today
20 what you'll hear in that witness chair over the next several
21 hours, maybe even into tomorrow, are about Mr. Eye's life
22 experiences.
23 We stand here today at a juncture where we'll have to
24 examine all those life experiences and only you will be able to
25 make the decision of whether or not life or death is a just

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1 result. And I feel that you can do that. You will do that.

2 And like in the first phase we will respect your decision but
3 we want you to come into this with an open mind like you did in
4 the first phase.

5 The trial up to this point has been about the events
6 surrounding March 9th of 2005, roughly one month of Gary Eye's
7 life. I'm going to ask you to listen over the next day to what
8 led up to that. He lived 18 and a half years before March 9th
9 of 2005. That's what the bulk of today you will hear from the
10 defense once we begin to present our mitigation case.

11 You have an extraordinary task before you. I'm
12 confident that you'll do the right thing. Congress is
13 confident that you'll do the right thing. They allow for it in
14 the statute. They ask you to weigh everything appropriately.
15 And in the end you'll have only two options, as I have said
16 several times already, life imprisonment without the
17 possibility of parole or death.

18 In the first phase of the trial, ladies and
19 gentlemen, you heard a lot about Mr. Eye's drug activities.
20 From the very first part of the trial we have not disputed that
2 Mr. Eye was involved in drugs, a drug culture. You'll hear
2 more evidence over the next day regarding those drug
2 activities. You will have heard Mr. Eye was first introduced
2 to drugs at the age of 7 by an uncle. And it started out with
2 marijuana. But after you hear the evidence about his life in

1 his home, the amount of drugs, alcohol, violence, repeated
2 violence, that Mr. Eye moved into heavier uses of drugs. What
3 started out as frequent marijuana usage became rampant
4 marijuana usage, turned into rampant use of cocaine then in the
5 end methamphetamine.
6 Ladies and gentlemen, you probably heard more about
7 methamphetamine over the last week and two days than you ever
8 thought you would hear in your entire life. I would ask you, I
9 will say to you, you will hear more evidence about that today.
10 Drugs is not an excuse. I'm not asking you to excuse
11 Mr. Eye for his crimes. But what I think it does do and what I
12 am asking you to do is to consider how drug abuse and the drug
13 culture and his neighborhood culture and the violence in his
14 neighborhood and the violence in his home impacted him as a
15 person. And that the stresses of his life led him to this
16 point on March 9th of 2005.
17 It's not an excuse. I ask you not to consider it as
18 an excuse. Consider the evidence with an open mind.
19 You're going to hear evidence from a Dr. Marilyn
20 Hutchinson, a local psychologist here in Kansas City, Missouri.
21 She will tell you that the brain, the physical brain does not
22 fully mature until in the early 20s. And that at the time of
23 the crime Mr. Eye was barely over the age of 18, 18-and-a-half
24 years of age. You will hear that drug use and drug abuse can
25 some times impair the maturation of the brain. And all those

1 things should be considered by you when rendering, when
2 considering the mitigating factors the judge listed to you at
3 the outset this morning in the jury instruction process.
4 You will also hear that roughly a week before the
5 crime that Mr. Eye was extremely ill. You will hear evidence
6 he had been at North Kansas City Hospital diagnosed with
7 pneumonia, bronchitis and other ailments. That he was given a
8 prescription to fill. That he couldn't afford the
9 prescriptions. They were over \$200. So he turned to drugs,
10 methamphetamines to help him get through the days of the
11 illness. And that the illness and the drug abuse put extreme
12 stresses on his body and mind leading up to March 9th of 2005.
13 We're going to present evidence concerning Gary Eye's
14 entire life. You'll hear evidence from --you'll hear from
15 Deborah Tebo, his aunt. You'll hear from a cousin, Ashley Tebo
16 and Dr. Marilyn Hutchinson who will review with you her
17 examination of Mr. Eye's childhood. It's not a childhood that
18 many of us will be familiar with. It was a house riddled with
19 violence. It was a house riddled with drug abuse and alcohol
20 abuse. A mother who was not a mother. Who was gone for days
2 on end. You'll hear evidence that as Mr. Eye got older he
2 would have to take money out of his mom's purse to go get food
2 because no one would feed him. You will hear that there was no
2 structure in that house. When some kids are told to go to
2 school, he was not told to go to school. He dropped out. You

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1 heard the judge mention mitigating factor that he dropped out
2 at the age of 12. When most kids were dealing with the perils
3 of adolescence, Gary Eye was dealing with life on the streets.
4 Again, I don't offer these as excuses for the crime
5 that he committed or the verdict that you returned but whether
6 or not a verdict, a sentence of life imprisonment without the
7 possibility of parole is the just and right sentence in this
8 case as it relates to Mr. Eye.

9 You'll also hear evidence that his family is racially
10 diverse. You'll hear that Mr. Eye is part American Indian.
11 That for a long period of his life that was an important aspect
12 of his culture, of his life, of who he was going to become.
13 But as drugs riddled his body and his mind, he got away from
14 that.

15 You will hear that as a young child he would go to
16 family events and that some of the American Indian family
17 members were married to African-Americans and he had bi-racial
18 cousins and that he spent time with them.

19 You will also hear that Mr. Eye served a prison term.
20 And during that prison term he received education from a
2 teacher named Janice Nichols. I expect you'll hear from
2 Ms. Nichols today. Ms. Nichols will tell you that while
2 serving his prison term in the Missouri Department of
2 Corrections that in a structured environment, he did well. He
2 attempted to get his GED. He was on the path. He was doing

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1 the right things. You will hear evidence he was able to get
2 along with others. Some of those other people that were in his
3 classroom were minorities. I expect you'll hear that type of
4 evidence. I also expect that you'll hear from two other
5 employees from the McCune Home for Boys. You had heard from
6 Harold Dean in the first part of the trial. You will hear from
7 two other individuals from McCune that had a more daily role
8 with Mr. Eye. They will tell you, again, that when given
9 structure and responsibilities and controls, he is able to
10 perform well and he meets the expectations set forth.
11 Finally, you will hear regarding his relationship
12 with Stephanie Eye, his wife. You will hear evidence that this
13 relationship in all likelihood has caused him to grow, leaps
14 and bounds, maturity level. It doesn't come without problems.
15 A husband and a wife fight. The stresses of being incarcerated
16 while married presents additional stress. But I will present
17 to you and ask that you consider the evidence of how that and
18 her children and how Mr. Eye can assist them as he goes forward
19 in life would be a reason to consider a life punishment. And
20 that the loss of Mr. Eye by a death sentence would impact
2 Ms. Eye.
2 Again, finally, there is no evidence, there is no
2 excuses or justification for what has happened. And that's not
2 what we're asking you to do.
2 One of the last things I want to talk about before I

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1 sit down and we start to hear evidence is that you have heard
2 the judge set out in the jury instructions that you heard
3 evidence regarding Regennia Rios and that she received immunity
4 for these events. You heard a jury instruction from the judge
5 at the outset that you can consider the culpability of other
6 people when determining whether or not to be considered as a
7 mitigating factor. I would ask you to consider Gary Eye's role
8 in this offense versus Regennia Rios, who gets immunity and the
9 two options before you today.

10 When I come back before you at the close of all the
11 evidence, I will once again ask you what I discussed with you
12 at the outset today in opening statements that you return the
13 only verdict that is fair and merciful and that is a term of
14 life imprisonment without the possibility of parole. Thank
15 you.

16 THE COURT: Is the United States ready to proceed?

17 MR. GIBSON: We are, Your Honor.

18 THE COURT: Mr. Gibson.

19 MR. GIBSON: Your Honor, at this time as a formality
20 the government would move to incorporate the trial record of
2 the previous proceedings into these proceedings for purposes of
2 the penalty phase.

2 THE COURT: The government's motion is granted. The
2 trial record is incorporated.

2 MR. GIBSON: The government would next offer a

1 stipulation by and between the parties regarding the age of
2 Defendant Gary Eye. May I be permitted to read that
3 stipulation?

4 THE COURT: Without objection --this is Government's
5 Exhibit 313. It is admitted and may be read.

6 MR. GIBSON: It is hereby agreed and stipulated by
7 and between the United States and Defendant Gary Eye that
8 Defendant Gary L. Eye was born September 9, 1986 and therefore
9 would have been 18 years of age at the time of these offenses
10 on March 9th of 2005.

11 That would complete the stipulation.

12 THE COURT: All right.

13 MR. GREEN: At this time, Your Honor, the United
14 States would call Rodney McCay.

15 RODNEY MCCAY, GOVERNMENT'S WITNESS, SWORN
16 DIRECT EXAMINATION

17 BY MR. GREEN:

18 Q Would you, please, tell us your name?

19 A Good morning, Mr. Green. My name is Rodney McCay.

20 Q If you could, spell your first and last name.

21 A Rodney McCay, R-O-D-N-E-Y, M-C-C-A-Y.

22 Q How old are you, sir?

23 A I'm 51.

24 Q And are you the brother of William David McCay?

25 A Yes.

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Q And in your family how, well, let me ask you. How did you know William David McCay? What did you call him by?

A We called him Dave. That's what my father called him when he was little so the family started calling him Dave.

Q And so for purposes of the jury, not to get confused in this, is it more comfortable for you to refer to him as Dave or David?

A Well, Dave. We pretty much referred to him as Dave.

Q Now, Mr. McCay, were you the older brother of Dave?

A Yes.

Q And you were older by how many years?

A Five years difference between Dave and I.

Q And who were the --are the other surviving brothers of Dave?

A Robert McCay, which is right under me. Then William Dave McCay, James McCay, right under Dave, and Cedric McCay, my youngest brother.

Q And so there are three surviving brothers, is that right?

A Yes.

Q Now, what city did you and your brothers and Dave grow up in?

A Kansas City, Missouri.

Q And I want to display just for the witness Mr. McCay, Plaintiff's Exhibit 310. Can you see that, sir?

A Yes.

1 Q What is that?
2 A That was Easter Sunday when we were little.
3 Q A family photo?
4 A Family portrait, yes.
5 MR. GREEN: Your Honor, the United States offers
6 Plaintiff's Exhibit 310 into evidence.
7 THE COURT: 310 is admitted.
8 MR. GREEN: May it be displayed to the jury?
9 THE COURT: It may.
10 BY MR. GREEN:
11 Q I'm just going to walk over here. I'm going to point to
12 an individual here on the lower row. Who am I pointing
13 to?
14 A That's William Dave McCay.
15 Q And who is this I'm pointing to?
16 A That's me.
17 Q Now, who is this?
18 A That's my father Robert McCay.
19 Q Is he still with us?
20 A No. He died 8 months before William was killed.
2 Q Did he pass away in June of 2004?
2 A Yes.
2 Q And who is this right here I'm pointing to?
2 A That's my mom Yvonne McCay.
2 Q And is she in the courtroom here today?

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A Yes, she is.

Q And who is this here on the far left of the bottom row?

A Robert McCay.

Q Does he also go by another name?

A We call him Steve.

Q And who is that?

A That's Cedric McCay, my youngest brother.

Q And who is that?

A That's James McCay.

Q Do you recall what year this photograph would have been taken?

A Mom, don't be mad. '66, I believe it was 1966 or '67.

Q Would 1968, does that sound right?

A '68. All right. Could be '68.

Q And would Dave have been about 8 years old in this photo?

A Yes.

Q Now, growing up as Dave was growing up, how would you describe him as a child? Was he quiet or was he outgoing?

A He was very, very quiet. If you didn't look at him, you probably wouldn't have known he was in a room. He hardly ever spoke much.

Q But did he make friends as he grew up?

A Oh, yeah, he made friends. It seemed that guys that were not probably the sharpest guys, wasn't the sharpest knives in the drawer tend to like being around him because I

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guess they felt comfortable around him.

Q At Dave's funeral did many of these life long friends attend?

A Yes.

Q Now, when Dave was growing up and particularly focusing on his teen-age years, did he and your dad share a particular interest?

A Yes.

Q What was that?

A My dad owned horses and Dave liked horses. The rest of us weren't too fond of horses but Dave liked horses. And dad --and he and dad rode horses in a lot of contests.

Q Did they do a thing called barrel racing?

A Barrel racing, uh-huh.

Q Was there a particular horse that Dave had or rode?

A Buck. Yeah, the fastest horse in the field.

Q Did your dad and Dave in terms of working with horses, would they break horses for other people?

A They broke horses for other people, yes. Took care of other people's horses. Fed. Watered them. Lot of people came to them when they needed something done with their horses because they knew that they were good and very fond of horses.

Q Do you recall a particular instance when your dad and Dave were working on a particularly stubborn horse?

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A Yeah. A lady came to my father and Dave and asked them, she said, I just got a horse. He's never been ridden by anybody before. We need somebody to break him to get him prepared so she could ride him. And my dad said, sure, no problem. And they left Saturday morning and they came back Saturday evening cut up, no voices. I asked them how did it go? They said we got to go back tomorrow (whispering). They went back the next day. They came back Sunday evening and said we got him (whispering). But he was quite a horse.

Q Did your dad and Dave take their horse, particularly Buck, and let the neighborhood children take rides with him?

A All the time. Almost an annual thing on Sundays just about. They would bring the horse to the house or Swope Park or over off Van Brunt and let kids in the neighborhood, they would walk them, William would walk the horses and lead them and let the kids ride the horses. And so we became quite popular for that in the neighborhood.

Q Now, this was an activity that your dad and Dave enjoyed. Was it particularly during Dave's teen-age years, is that right?

A Yes.

Q How would you describe the relationship between your dad and Dave?

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A It was real special. I believe dad sincerely loved all of his sons. We all feel that way. But the relationship between dad and Dave was closer because Dave did more things with him and they went on a lot of out of town rodeos and things with the horses and so they got to be a lot closer than the rest of us and dad. Actually just before dad died I remember, I remember when Dave came out there to see him in the hospital and dad was very, very weak. He was having renal failure. And I remember he reached his hand up, reached his hand up when he saw Dave and that was the most response he had pretty much given in several days.

Q So as Dave moved into adulthood did this close relationship with your dad remain?

A Uh-huh. Yes.

Q Now, as a teenager did Dave play sports?

A Yes. Yes. Dave played basketball for the Air Force and he also played softball in the Parade Park League which he won MVP the year before he was killed.

Q What high school did Dave attend?

A He played basketball at Westport.

Q And did he letter?

A Yes.

Q Now, you mentioned that Dave played in the Air Force. Did Dave join the Air Force?

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A Yes, he joined the Air Force.

Q How long was he in the Air Force?

A Three years.

Q Was he --I'm sorry?

A Yes. Three years I believe it was.

Q Was he ever stationed overseas?

A Yes. He was in France.

Q Was Dave honorably discharged from the Air Force?

A Yes, I think that's what --I didn't go to the military but yes.

Q Well, where is Dave buried today, do you know?

A Leavenworth Memorial in Kansas City, Kansas.

Q In other words a military?

A Military, yes.

Q Now, as an adult what type of jobs did Dave hold?

A Dave, he worked at Sears, worked on the dock at Sears for a long time. Actually the only reason he wasn't still there was because Sears shut down. And he worked with my uncle some. My uncle has his own business and Dave worked with him a lot and then a couple other odd jobs. Then he ended up at Aeroform which he really, really liked. And I remember speaking to him about that and he really liked the people there and he liked doing that job.

Q From your being around Dave how would you describe his work ethic?

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1 A Super. Dad taught all of us don't run from work. We'll
2 make work run from us.

3 Q If Dave, in his employment, did you know whether or not
4 whatever time he was suppose to report for work he was
5 always early?

6 A Always early. Every job he ever had, he was always early.

7 Q During his life, as an adult now I want to focus on, did
8 Dave have an interest in reading?

9 A Yes.

10 Q Describe that.

11 A He really liked, I tell you what it was, Dave really liked
12 reading books and I'm not fond of reading books. I'm a
13 picture guy. I like going to movies. He read the book
14 and I saw the movie then we talked about what we got out
15 of it. But Dave really, really enjoyed reading. He went
16 to the library all the time. In fact, the people working
17 there know him.

18 Q Would it be common for Dave to be reading six or seven
19 books at once?

20 A Oh, yeah. Oh, yeah. He was like that.

21 MR. GREEN: I want to show just for the witness, if
22 you could show Mr. McCay Plaintiff's Exhibit 311.

23 BY MR. GREEN:

24 Q Who do you recognize to be in that photograph?

25 A That's Dave, William McCay, Miss Lorraine, my mom Yvonne

1 and a friend of hers from the church.

2 MR. GREEN: Your Honor, may the United States offers
3 Plaintiff's Exhibit 311 into evidence?

4 THE COURT: 311 is admitted and may be published.

5 BY MR. GREEN:

6 Q And, obviously, I'm pointing --to whom am I pointing?

7 A That's William McCay.

8 Q And this is who?

9 A My mom Yvonne.

10 Q And who is this?

11 A That's a friend of hers that goes to the church.

12 Q And who is this lady here?

13 A Our Godmother, Ms. Lorraine.

14 Q As an adult did Dave, besides reading, what other types of
15 interest did he have?

16 A Dave, he was athletic. He still played a lot of sports.

17 But along with reading he also, he likes swimming. He was

18 a pretty good swimmer. He was pretty good in the water.

19 And he liked walking. He took walks. I remember when dad

20 was still mobile, he and Dave would get up some mornings

21 like 4:30, 5:00 in the morning and take walks around the

22 Van Brunt area, mostly because dad needed to get exercise

23 because he was a diabetic and William wanted to help him

24 in that area. So they got up and walked. And he enjoyed

25 it.

Q Is that something they did a lot of mornings?

A Uh-huh. Just about every morning if it wasn't cold or rainy.

Q Did Dave have an interest in working on cars?

A Oh, yes. He and dad, that's another thing he and dad did a lot. I didn't do much of that and my other brothers, I can't recall doing much of that. But he and dad worked on cars a lot, trucks.

Q How would you describe, as an adult, yourself, Mr. McCay, how would you describe your relationship with Dave?

A We were all right. Me and Dave were all right. Dave helped me a lot when I was younger. And he opened up and spoke to me honestly. We could, all of my brothers we can all speak honestly about anything, relationships, work, people in general. But me and Dave was all right.

Q Did Dave have nieces and nephews?

A Yes. My children, my two sons, Robert's sons and daughter and my brother James, all of them were very fond.

Actually when my youngest brother, Cedric, came back from overseas, came back from out of town, he was just amazed how everybody was always asking about Uncle Dave.

Q How would you describe him then as an uncle to his nieces and nephews?

A He was a good role model for my children. He encouraged my sons to go to college. Both of my sons graduated from

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1 Tennessee State and a lot of that was because William had
2 spoken with them and told them we need some more college
3 graduates in this family. And both of my sons went to
4 college and they did well.

5 MR. GREEN: If we could show just for Mr. McCay
6 Plaintiff's Exhibit 312.

7 BY MR. GREEN:

8 Q What does 312 depict, Mr. McCay?

9 A Those are the --that would be his nephews.

10 Q And was this photograph, this photograph was taken after
11 Dave's death, is that correct?

12 A Uh-huh.

13 Q Is that -

14 A I'm really sorry, yes.

15 Q In fact, it would have been December 25 of 2006. Would
16 that sound right?

17 A That sounds right.

18 MR. GREEN: Your Honor, United States offers
19 Plaintiff's Exhibit 312 into evidence.

20 THE COURT: 312 is admitted and may be displayed.

21 BY MR. GREEN:

22 Q And, again, these are just the nieces and nephews, many of
23 the nieces and nephews that we were speaking about?

24 A Yes.

25 Q In the late 1990s did Dave have problems with

2218

tuberculosis?

A Yes.

Q That required him to be hospitalized for periods of time?

A Yes.

Q Was one of the hospitals he was hospitalized in, was it in Springfield, Missouri?

A Yes.

Q Do you recall while Dave was in the hospital in Springfield, Missouri, at some point in the late '90s, do you recall him writing you a letter?

A Yes.

Q And does that letter stand out even today to you?

A Yes.

Q Can you tell us what was in that letter?

A He was telling me about where he was at in Springfield in 1996, is when it was, and he sent a letter wanting me to tell everybody that he was okay and that he was getting better. And in the letter he also stated that he had something he had to do. He needed this time to kind of gather his self as well and to get well and to start thinking more positive about life in general he said. And at the end of the letter he told me, he said, Rodney, I just want to tell you, you're my big brother and I'm proud of it and I'm proud to say that you're my brother.

Q Did that letter mean a lot to you?

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A Yes. Yes.

Q I want to now jump ahead to March 9th of 2005, the morning of and this is going to sound like probably a stupid question but do you recall that day?

A Yes.

Q And that was the day you found out that Dave had been killed?

A Yes.

Q Can you describe for the jury how you found out?

A Yes. That morning I was going to go to work that morning but I had a chance to finish some dental work that I was having done and I decided not to go to work and stay home. And I ended up going to the dentist that morning. I went to the dentist and came back to my house and I sat there for a second to watch some television and gather what I was going to do that day. And two detectives came to the door and which I had no idea. I knew I had sons out of town in college and I had family and I had no idea and when they introduced themselves as detectives, it's just like shivers and chills just went through, all through my body. They asked me to sit down and they told me, we found your brother, William McCay, dead. He was shot and killed this morning. And I went to pieces. I screamed and cried. I fell to my knees.

Q Did you end up calling one of your brothers to let them

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know that this news would be coming?

A Yes. They wanted to know about my other brothers and I told them about Robert and Robert works at Western Missouri and I called up there to tell him. And I could hear on the phone where he fell apart.

Q Now, you have spoken of a brother named James, correct?

A Yes.

Q And how would you describe the growing up and then into adulthood, the relation between Dave and James?

A They were one. You could hit Dave and James could feel it.

Q And so, describe James' reaction to all this news?

A James, when they went and told James that Dave was killed, he fainted.

Q And what's been the effect on James from that point on to today?

A He's deeply wounded. All of us are deeply wounded. But James, because him and, he and Dave were right next to each other in the family and they did more than everybody else. And he still hasn't got a grip on it yet. He's hurting still. Some times he calls me and we talk about old times with Dave and I know what is going on when he does that and I listen. That's what I let him do. I let him get it out.

MR. GREEN: Just for Mr. McCay, would you display

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1 Exhibit 309, please?
2 BY MR. GREEN:
3 Q Do you see that, Mr. McCay?
4 A Yes.
5 Q And what is that a photograph of?
6 A My mom and my other three brothers and myself.
7 Q It was taken on a Christmas after Dave's death?
8 A Uh-huh.
9 MR. GREEN: Your Honor -
10 THE WITNESS: It looks empty.
11 MR. GREEN: Your Honor, the United States offers
12 Plaintiff's Exhibit 309 into evidence.
13 THE COURT: 309 is admitted and may be displayed.
14 BY MR. GREEN:
15 Q Is this yourself, Mr. McCay?
16 A Yes.
17 Q Am I pointing to James?
18 A That's James.
19 Q And this is Robert?
20 A That's Robert, yes.
21 Q And that's Cedric?
22 A That's Cedric.
23 Q Mr. McCay, one hears the word closure used often to
24 describe people's reactions or supposed reactions to
25 tragedy that may befall them. Describe your feelings as

1 you sit here today about Dave's murder. Has it been
2 closure for you?

3 A I don't think it ever will be. Every day I think about
4 Dave. There hasn't been a day since then that I don't
5 think about him some point through the day or see
6 something that reminds me of him. I think I'll get on and
7 get through this but closure on it, I don't think is ever
8 going to happen with me.

9 Q I think you stated earlier, did you consider yourself and
10 your brothers as one?

11 A Yes. I always looked at it from that moment on, more so
12 than ever before, that I'm the oldest and I felt that I
13 was the head. This was Robert, this was William, my legs
14 were James and Cedric. And what they did because I'm
15 left-handed and William was the strength of my brothers,
16 they cut my arm off and they left me like this.

17 Q They left you without an arm?

18 A Without an arm.

19 MR. GREEN: I don't have any further questions, Your
20 Honor.

2 MR. SANDAGE: No questions, Your Honor.

2 MR. ROGERS: No questions, Your Honor.

2 THE COURT: Thank you, Mr. McCay. You may step down.

2 (Witness excused.)

2 MR. KETCHMARK: Government calls Cedric McCay to the

1 stand, Your Honor.

2 CEDRIC MCCAY, GOVERNMENT'S WITNESS, SWORN

3 DIRECT EXAMINATION

4 BY MR. KETCHMARK:

5 Q Cedric, can you, please, introduce yourself?

6 A I'm Reverend Cedric McCay, C-E-D-R-I-C, M-C-C-A-Y.

7 Q And, Cedric, you're one of the brothers of William?

8 A Yeah. He was my middle brother. I've given myself

9 permission to cry this morning. When Jesus arrived at

10 Lazarus' body after the sisters called him and he wept,

11 the next verse is, see how much he loved him? So if I

12 cry, it's only because.

13 Q And that's understandable. Where do you live now, Cedric?

14 A I live in Chicago.

15 Q How long have you lived there?

16 A Since August of 1993.

17 Q And you heard your older brother, Rodney, talk about your

18 brother growing up?

19 A Uh-huh. I did.

20 Q And there was some discussion about how William was an

2 avid reader in his adult life?

2 A Very much so.

2 Q Do you remember growing up, was that something William

2 always enjoyed as well?

2 A I think he had a particular interest in reading and books

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in general, perhaps even just ideas associated with reading. Our family is a family of talkers. Lot of people talk. Even as a preacher, I think I would probably find it difficult to get a word in edgewise in our family. He was very quiet. And I think reading was an opportunity for him to sort of get into those ideas and maybe even have a discussion in a family that was so wordy.

Q

Did you have an occasion or did you talk with your brother before he passed about his passion for reading?

A

Absolutely we did. In fact, we even would read the scripture together. I remember one particular conversation, I can't remember the exact time but there was a comic book convention in the City of Chicago.

I

thought it was sort of an interesting thing. I mentioned it to him in some sort of passing conversation. He was very interested and asked questions about it. And he was, my brother Dave was very interested in comics. I kind of thought it was something --I wouldn't have considered comic books to be the sort of heavy reading, theology or

philosophy may be but we had conversations about the comics. He started recounting the history of the characters in the comic book, how the stories developed, the companies that had owned the comic books, how they changed or nurtured. I realized this was not just a child's game. It was an opportunity to talk about ideas

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and feelings and story lines, that sort of talk about global in a broad history of humanity. And I think my brother was very perceptive in that regard, even reading to glean from them human truths and human dignity. And while I would have just considered it to be a comic book, I think through his reading he found something deeper.

Q You mentioned philosophy. Was there a particular memory you have of your brother when you learned that he was reading philosophy?

A I do. Up until now I don't think this has changed. I've not yet met a person, besides my brother Dave, who had read philosophy or read the philosophers because they were required to do it as a matter of work or class work or part of their job. And I remember once having a conversation with him, just passing, and I asked what he was reading and I think he was reading, you know, I want to say it was Socrates. I can't remember the exact philosopher. I don't take a heavy interest in them now even though I do read philosophy. I said, why would you be reading philosophy? Why? He said he was interesting. He had heard so many people talk about them and he wanted to know what they had to say for themselves.

Q And at the time of his death were you aware that he was working at Aeroform?

A Yeah, I was.

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Q

Had you had discussions with him about his co-workers and the people he was interacting with there at work?

A We did. In fact, some of the discussions centered around reading. And I'm an avid reader. I love to read. He was much more of an avid reader than I am. I may have three or four books at a time. That would have been way too little for him. Reading multiple books and sharing them. And one of the things that we had discussed in our morning prayers during the devotion, particular devotion, we talked about this notion of being a gift to the world, of trying to bless the world and smile to the world. In fact, I think it was part of it, I don't remember the devotion. I do remember the conversation that followed. He talked about a co-worker of his, a woman, maybe a middle age or elderly woman who did not smile. She did not have a smile at work, morning, noon or night. Smiling was not part of what she was generally accustomed to. She didn't greet her co-workers with a smile. He told me in one of our morning prayer devotions that he was going to make that woman smile. One of the things he was doing, one of his Christian tasks and duties was to make that woman smile. And I remember, I think my mother was

reading a letter that we had gotten from a co-worker and she was sharing it or I was reading. I remember the content of the letter. I don't necessarily remember the

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situation in which I gained content. But it was one of the co-workers, all of whom had showed up at the funeral. I think they closed the little place down. They might come and bear honor to our brother's life and the importance and value of his life to be there at the funeral. One of the letters said that I always found,

I didn't have a smile on my face and I was sort of a grumpy person. But when ever William, Bill, I think she may have said, when ever Bill came around, I always smiled.

I reflected about that. I think this was probably the woman he said he was going to make smile.

Q

You mentioned the morning prayers, tell the ladies and gentlemen of the jury how often were you interacting with your brother before his death?

A

Because Dave would go to work early in the mornings and I

was trying to be an early person myself, he would always arrive at work much --I'm usually about 5 or 10 minutes after time. He's usually about an hour earlier. We would pray very early in the morning. And we generally would be able to connect about 3 to 5 times a week. Some times

I would wake up a little later just might be pushed for time. And we would use a prayer guide, Our Daily Bread. I would generally read the devotion from the devotion book because I had the book. We didn't always have the same books. He would read from scripture. He would read the

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word. I would read the devotion. Then have a discussion before he left for work. That was pretty much 3 to 5 times a week. Some times we would miss each other.

Q And do you remember prior to his killing on March 9 of 2005, when was the last time you would have spoken with him?

A I think it was the previous week, Friday, I think of the previous week.

Q Can you explain to the ladies and gentlemen how you remember finding out about your brother's murder?

A It was a very painful, well, to remember the day is a lonesome memory. It's not something I want to recall. But that day I remember my brother had lost his cell phone, had changed cell phone numbers. And because I can tell you the first phone number I ever had, 861-4088. I can't remember the numbers I have now because of the cell phone technology, you punch the numbers in. When he would lose his cell phone, he would often lose my number, and I would have to try to catch up to him and I had several numbers, not to where if he lost the phone or misplaced the phone. So we had missed each other that morning. I remember leaving a message. I think I took a walk and went back to sleep and when I woke up, there were several messages on the phone. One was a very unfortunate way to carry out this information. Someone had called, a member

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of my family called and left a message, a voice mail message and said, oh, I'm sorry to hear about Dave. I offer my condolences. That was the first time that I had ever had any idea that something had happened to my brother. And then I had a series of phone messages and went through them all. I was in Chicago. Family far from me and I stayed in that apartment by myself, I think for 8 hours. It was singularly the most unpleasant day of my life.

Q Rodney talked about how your brother was quiet growing up?

A Uh-huh.

Q Did you have kind of a different experience at some point after your father passed away?

A Even as we came to be adults, I worked as a sales rep for Proctor and Gamble in the mid '80s before I had left to live abroad for a few years. One of the things they trained was to use what they call the pregnant pause. When you were talking to someone, that you would hesitate. Maybe nod your head, smile to the store owners, then just not speak. Hold your words. Then let them share more information, share their thoughts and ideas rather than you continuing to try to sell. Let them share more with you. I thought it was an interesting sales technique. I practiced it on my brother Dave.

Q Was it successful?

A It was ordinarily successfully. I learned that if you would shut up long enough and be quiet long enough that you would, he would start talking. And it became very clear to me that he was extremely perceptive of where and what was going on, deeply thoughtful about the events around him and had quite a bit to say and share. But in our family of talkers we didn't have a lot of pauses. Usually words followed by words. And at this particular time when we would be having our conversations, he was extremely kind and careful and thoughtful and perceptive of the world and noticed what was happening around him.

I

think through his reading and deep perception, I think he had a great sense of love and care for people. And I think Rodney pointed out earlier, there were some people who may not have been the most well received group in the community but because I think he respected their humanity and dignity and he cared so much about them. And they could see that even in his quietness. They would be attracted to him. It's not simply because they would talk on. He would learn. They could see that he cared even in his quietness.

Q

Reverend McCay, can you describe as best you can what the loss of your brother, how it's impacted you and his family and friends?

A

There has been in the history of humanity no words yet

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1 uttered that fully express and capture what this has meant
2 to us. It has been a horrible and bitter loss. One
3 filled with extreme and serious disappointment. And for
4 me to see someone who can right it, themselves, and really
5 focused themselves on life and living, developing very
6 good relationships. One of the persons in the courtroom
7 today, MT, long term friend, had been romantically
8 involved. But to have really now had the opportunity to
9 make that relationship and friendship better, to have
10 really sort of pulled himself in a place where life was
11 flowering and blooming, to have it cut short by murder is
12 a loathsome reality. Very much a disappointment. Very
13 much a disappointment for us. It is bitter.
14 Not a day goes by that I don't think about it.
15 Some times I turn the radio off because I will remember a
16 song my brother was teaching me how to slow dance to that
17 song or court girls to that song. I remember a time or an
18 experience by music or by words. I will not look at a
19 comic book. I won't do it. I haven't seen one in years
20 and revisit those horrible painful memories of what I have
21 lost, huh-uh. No. This is something, this has really
22 rendered us in a space of pain. We have struggled to make
23 our way. We have no choice but to look forward. We are
24 Christians and we have hope and eternity but this flower
25 was cut too short.

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1 MR. KETCHMARK: That's all I have, Judge.
2 THE COURT: Cross-examination?
3 MR. SANDAGE: No questions.
4 MR. ROGERS: No questions, Your Honor.
5 THE COURT: Thank you very much, Reverend McCay. You
6 may step down.
7 (Witness excused.)
8 MR. GIBSON: With the incorporation of the trial
9 record, the stipulation and the testimony from Mr. McCay's
10 family, the government rests its presentation at this time.
11 THE COURT: Why don't we go ahead and take a break
12 before moving on. The admonition I gave you earlier is in
13 effect again. You should not discuss the case. You should not
14 make up your mind until you have heard all of the evidence and
15 the views of your fellow jurors.
16 We'll reconvene at about 10:15. We'll be in recess.
17 (The following proceedings were had OUT OF THE
18 PRESENCE AND HEARING OF THE JURY:)
19 THE COURT: We'll be in recess.
20 (Recess)
21 (The following proceedings were had OUT OF THE
22 PRESENCE AND HEARING OF THE JURY:)
23 THE COURT: My understanding was Mr. Rogers and
24 Mr. Gromowsky would not stay for this part. It's up to you.
25 You may wish -

1 MR. GROMOWSKY: We may be in the courtroom but we'll
 2 not be up at the counsel table.
 3 THE COURT: All right. Ty, you may take
 4 Mr. Sandstrom.
 5 Are we ready folks? Let's bring the jury in.
 6 (The following proceedings were had IN THE PRESENCE
 7 AND HEARING OF THE JURY:)
 8 THE COURT: Please be seated.
 9 Mr. Sandage, are you ready to proceed?
 10 MR. SANDAGE: We are, Your Honor. Our first witness
 11 will be Ashley Tebo.
 12 ASHLEY TEBO, DEFENDANT EYE'S WITNESS, SWORN
 13 DIRECT EXAMINATION
 14 MR. SANDAGE: May it please the Court?
 15 THE COURT: Go right ahead.
 16 BY MR. SANDAGE:
 17 Q Ms. Tebo, we'll start out, you'll have to get as close to
 18 that microphone as possible. Some times we have a hard
 19 time hearing. Could you please state your full name and
 20 spell it for the record?
 2 A Ashley Blair Winona Tebo. A-S-H-L-E-Y, B-L-A-I-R,
 2 W-I-N-O-N-A, T-E-B-O.
 2 Q And Ms. Tebo, where do you live?
 2 A I live up north by 152 and North Oak.
 2 Q You've lived in Kansas City your whole life?

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A Yes.

Q What is your relationship to Gary Eye?

A He is my first cousin.

Q What is your mother's name?

A Deborah Tebo.

Q And is she the sister of Gary's mother?

A Yeah.

Q And what is Gary's mother's name?

A Joyce Eye.

Q Ms. Tebo, how old are you?

A I'm 21.

Q How far apart in age are you from Gary?

A A couple months.

Q Where did you live growing up?

A I lived in Riverside and I stayed over at my grandma's house a lot.

Q Where does your grandma live?

A She lived off of North Brighton.

Q And where did Gary Eye live growing up?

A North Brighton, same place.

Q With his grandmother?

A Yes.

Q What is your grandmother's name?

A Betty Tebo.

Q And who all lived in, what is your memory of who lived in

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the Brighton house?

A My grandma, my two uncles, my Uncle Rick and Uncle Mike, my Aunt Joyce and Krystle and Gary.

Q And let's go through that. Uncle Rick, is that Rick Tebo?

A Yes, Rick Tebo.

Q He's your uncle?

A Yes.

Q So he's the brother of your mom?

A Yes.

Q And then there is Mike Tebo, is that correct?

A Yes.

Q And is he another uncle?

A Yes. He passed away.

Q When did he pass away?

A 1994.

Q 1994?

A Uh-huh.

Q And Joyce, we already discussed, is Gary's mom, is that correct?

A Yes.

Q And then did your grandfather ever live at that residence?

A Yes, he did.

Q Is he alive or deceased?

A He's deceased.

Q When did he die?

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A '92.

Q And is your grandmother still alive?

A Yes.

Q Do they still live at the Brighton address?

A No. They live on South White now.

Q So is the Brighton address in what would be considered the northeast part of Kansas City?

A Correct.

Q Do you have a lot of memories of the Brighton address?

A Yes, I do.

Q How many days a week, how often would you go over there as a young child?

A I would say a lot. Pretty much every weekend and some time during the week.

Q And describe your earliest memories of Gary?

A My earliest memories of Gary, we were very close as kids.

We didn't really have any rules at my grandma's house so we didn't, we didn't really have any rules over there so we got to do pretty much what ever we wanted.

Q I guess it's fair to say you liked going over there?

A Yeah. Correct.

Q What about when Gary, would Gary come to your house often?

A Yeah, he would.

Q Describe the things that you would do together when he was at your, strike that. How often would he come over to

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your house?

A He would come over weekends mostly.

Q Stay the entire weekend?

A Yeah. He would stay the entire weekend. And we went down to the creek. He liked fishing and the crawdads and stuff. So we went down to the creek and we did that or he would help us with my chores. It was like mowing the lawn or something, doing gardening or whatever.

Q Was Gary different when he was at your house than he was when he was at the Brighton address?

A Yes.

Q How so, please?

A He was involved with more activities so he didn't get in trouble.

Q When he was at your house?

A Yeah.

Q When you say in trouble, did he get in trouble a lot when he was living at Brighton?

A Yeah, I would say. Yes.

Q Did you ever see him receive any type of punishment?

A Yes, I have.

Q What type of punishment would you see him receive?

A By my uncle, if he were to do something wrong as far as, I'm really not sure what he did but I remember my uncle spanking him.

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Q When you say uncle, which uncle are you referring to?

A My Uncle Rick.

Q Do you remember them ever using a paddle?

A Yes.

Q Did this happen a lot?

A Yes.

Q Was Gary's mom around a lot when you were at the Brighton house?

A No.

Q When she was around, what are your memories of Joyce Eye?

A She would come home intoxicated.

Q Did she ever take you and Gary to activities?

A No.

Q Did you ever go to the zoo with her?

A No.

Q To dinner with her?

A No.

Q Go to a park with her?

A No.

Q Did you do some of those activities with Gary?

A Yes, I did.

Q Okay. Who would provide those activities and take you there?

A My mother, Deborah Tebo.

Q And you and she were living in Riverside at the time?

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A Yes.

Q Describe to the jury what your opinion is on how Gary was treated at Brighton?

A I believe that Gary, he was more of the outsider. Me and Krystle were, we got, we were paid attention to and I don't think Gary had enough attention per se.

Q And would that include from his mom?

A Yes.

Q And what about his grandmother?

A Our grandmother was, she was fairly nice to all of us. But she acted like nothing, she didn't know what was going on half the time.

Q So when, let's talk about that a little bit. When you say she would act like nothing was going on --I'm not going to put words in your mouth. What do you mean that she acted like she didn't know what was going on?

A I think she knew what was going on.

Q Like what?

A With Gary and his actions but she didn't want to know. She knew but she didn't want to know.

Q Did you see drug usage at the Brighton household?

A Yes.

Q Who were the first people you remember seeing use drugs?

A My uncle.

Q Which uncle?

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A My Uncle Rick.

Q Do you know if he still uses drugs?

A Yes.

Q So you've seen him use drugs over the course of your whole life?

A Yes.

Q What types of drugs have you seen your Uncle Rick use?

A Marijuana, crack, cocaine, pills.

Q Has he ever offered those drugs to you?

A Marijuana.

Q When is your earliest memory of him offering you marijuana?

A When I was 16, I believe.

Q Let's talk about drug usage for a little bit. Do you know if Gary Eye used drugs?

A Yes.

Q When is your first memory of Gary using drugs?

A I believe it was twelve.

Q And what type of drugs do you remember seeing Gary use?

A Marijuana.

Q And do you know how he got that?

A I do not.

Q Have you ever seen Gary use any other drugs other than marijuana?

A I haven't seen him use it but I know he was.

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Q Which ones was he using that you think --strike that.
What other drug do you think he was using?

A Later on, I know he was using methamphetamine and crack cocaine.

Q How do you know that he was using methamphetamine?

A I believe it was Krystle who told me. But the way his actions were, he was more paranoid and he wasn't acting himself.

Q When you say wasn't acting himself, tell the ladies and gentlemen of the jury what he was like when he wasn't on methamphetamine?

A When he wasn't?

Q Yes, ma'am.

A I believe he was a very sweet person. He always looked out for me in my best interest as far as he didn't want me to know a lot things about him because he didn't want me to do that kind of lifestyle.

Q You said methamphetamine changed that in him?

A Yes, I believe it did.

Q What type of change did you see, Ms. Tebo?

A I would say he was more frustrated. He was more angry when ever I witnessed him using that.

Q During that period of time, and I guess to focus the jury on, are we talking about 2004 into 2005? Is that when you really saw the methamphetamine being used by Gary?

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A Yes, that's correct.

Q So just a few months before the incident or the homicide?

A Correct.

Q Did you stop participating in activities and seeing him as much in 2004 and 2005?

A Yes.

Q Would you try to make contact with him and he wouldn't call you back?

A There were a few times when me and him had a talk about him coming to live with my mom or just talking to him about life and what is best for his interest. But I think he took it as, I don't think he listened to what I was actually saying so.

Q So is it fair to say that you tried to intervene and get him out of the drug culture?

A Correct.

Q And it was, obviously, unsuccessful, is that correct?

A Yes.

Q How many times did you try to do that?

A A couple times.

Q Have you had contact with Gary since his arrest in this case?

A Yes, I have.

Q What type of contact have you had with him?

A Via mail.

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Q U.S. mail?

A Yes.

Q You exchanged letters?

A Yes.

Q When is the last time you exchanged a letter with Gary?

A It was about five months ago.

Q Describe to the jury what some of those early letters that you received from him were like?

A At first they were a little thuggish. But as time passed on, he seemed to be more mature in his letters. Instead of using cuz, he would sign his name, Gary Eye.

Q And when you say thuggish, I guess we should go back a little bit in time. Was he involved in what we could call the hip-hop culture?

A Correct.

Q Wear baggie pants?

A Yes.

Q He would use the slang that's common with that type of culture?

A Correct.

Q Would he use that around you?

A Yes.

Q Would he use it in his home on Brighton?

A Yes.

Q So just nonstop that type of language and behavior?

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A Yes.

Q At some point you just stated that that type of behavior at least in the writings you received from him kind of changed?

A They definitely did change, yes.

Q And what type of things did you and he, as the letters became more mature, what type of things did you discuss in these letters with him?

A Basically, I would just tell him what was going on with me and how I was doing. And he would tell me what was going on with him and how he was getting stronger. And he was getting through this and he was getting closer to God. And I just felt like he was growing up in a sense.

Q And do you know if Gary is married?

A Yes.

Q And who is he married to?

A Stephanie Eye.

Q She's in the courtroom today, right?

A Yes.

Q What are some of the things, personally, actually having as much contact as you have had with Gary, what are some of the things you think helped him grow as a person over the last two or three years?

A Having structure.

Q When you say structure, you mean being in jail?

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A Yes.

Q Just a couple more things, Ms. Tebo. Are you currently pregnant?

A Yes, I am.

Q Have you told Gary about that or does Gary know?

A I believe he does, yes.

Q And when are you due?

A January 4.

Q Is it your hope that Gary will play a role in his cousin's life?

A Yes.

Q Should he receive a life sentence and go to prison, given everything that you know about Gary, would you feel comfortable taking your child to visit with him?

A Definitely.

Q Describe the loss if Gary wasn't here, describe how that would impact you in your life?

A It would definitely impact me because my child wouldn't know my cousin. He was like a brother to me. We were all very close, me and Krystle and Gary.

Q Is there any reason why, over the last four or five months, you haven't had any contact with Gary necessarily?

A It's because of me. I've been busy lately.

MR. SANDAGE: May I have a moment, Your Honor?

No further questions.

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1 THE COURT: Cross-examination?

2 MR. KETCHMARK: Thank you.

3 CROSS-EXAMINATION

4 BY MR. KETCHMARK:

5 Q Good morning, Ms. Tebo. You mentioned there at the end

6 that you and Gary and Krystle were very close?

7 A Yes.

8 Q And I think the jury heard but Krystle is Gary's sister,

9 is that correct?

10 A Correct.

11 Q And you talked about growing up. And I think you said

12 that you grew up in Riverside but you spent a lot of time

13 at your grandmother's house and that's where Gary was

14 living?

15 A Yes.

16 Q And isn't it true, ma'am, that at one point in time you

17 actually lived there at your grandma's house for a

18 particular period of time?

19 A Yes.

20 Q How long did you live at your grandma's house?

2 A I believe it was only a year or less.

2 Q Do you remember when that would have been from a timing

2 standpoint?

2 A It was 2004, I believe.

2 Q 2004?

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A Uh-huh.

Q Is that a yes?

A Yes.

Q What are you currently doing?

A I'm an administrative assistant.

Q Where do you work?

A Ideal Solutions.

Q What's your educational background?

A I have some college background. I graduated from Park Hill South.

Q What year did you graduate?

A '04.

Q Did you get good grades?

A Yes, I did.

Q Where did you go to college?

A Where?

Q Yes.

A Maple Woods Community College.

Q Did you get a degree or how many hours did you complete toward your studies?

A I completed two classes or 6 credits.

Q How long have you been working at your current job, ma'am?

A For about six months.

Q In terms of this activity that was going on at your grandma's house, you said that you liked going over there

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because it was pretty much wide open and there were no rules?

A Correct.

Q And what I'm trying to figure out is then there is this discussion about Gary getting disciplined with this paddle. I'm trying to reconcile in my own mind, but maybe you can help me. How it doesn't make sense to me, I guess, let me put it this way. If there's no rules then how could one get in trouble for violating something that doesn't exist? Does that make sense?

A Yes, it does. He would get in trouble for, I can't really remember but I know he would get in trouble some times.

Q For what? Just, can you give me any example? Can you remember any specific instance when Gary was paddled and what he had done wrong?

A For saying cuss words.

Q Swearing?

A Yes.

Q How often did that happen?

A A lot. He would swear but he would only get paddled some times.

Q How often did he get paddled? Was this an every day occurrence every time at your grandma's house?

A No. It wasn't all the time.

Q I think you said your grandma was really nice to all of

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you, Gary included, correct?

A Yeah.

Q And you described her as acting like there was nothing going on, in terms of her observations of what was happening. Do you remember making that statement?

A Uh-huh.

Q And it was your belief that you think that she knew but she never voiced to you any concern with what was going on with your cousin there at the house, did she?

A Correct.

Q You talked about your Uncle Rick and the fact that he was a drug user?

A Right.

Q And you mentioned that it was your belief that your Uncle Rick maybe had provided Gary or introduced him to some drugs, is that correct?

A Yes.

Q And I think you also told us, ma'am, that your Uncle Rick also offered you drugs?

A Yes.

Q And you declined. You chose not to take advantage of that offer?

A Correct.

Q And those drugs weren't forced on you?

A No.

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Q This is the same Uncle Rick who offered Mr. Eye drugs and apparently, I think your testimony is that he took him up on that offer, correct?

A Correct.

Q Your Uncle Rick didn't force drugs on your cousin Gary, did he?

A No.

Q Merely provided him with a choice and your cousin made a different choice than you did?

A Correct.

Q You also talked about what I might characterize as happier times when Gary would come see you and you gave us the example of going down to the creek and hunting for crawdads?

A Yes.

Q And so there were some periods of time where Gary and you --was Krystle included in those times?

A Yes.

Q You would have fond memories of both your childhood, as well as Gary's childhood and growing up?

A Yes.

Q And you also talked about the zoo and going to the dinner and the park and about how you didn't do that or that Gary didn't do that with his mom, correct?

A Correct.

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Q But your mom, it sounds like, kind of filled that void at times because you said she did, in fact, take Gary out and Gary did get to enjoy those types of activities?

A Correct.

Q With respect to your mom and your grandma, Ms. Tebo, would it be an accurate characterization to say that what Gary's mom Joyce didn't provide, your mom and his grandmother attempted to fill that void and provide that nurturing and that support? Would that be an accurate characterization?

A Yes.

Q And, in fact, your mom continued to do that until she got frustrated because Gary simply wouldn't listen to her any longer and she reached the point where she didn't think she could help him any more. Is that a fair statement?

A Yes.

Q And I think you testified in direct, did you not, Ms. Tebo, that you, yourself, even tried at times to intervene in Gary's drug use, to try to because you were concerned because you loved your cousin?

A Yes.

Q You tried to intervene to suggest he needed to stop this, correct?

A Yes.

Q And I think you said but if I'm wrong correct me, but it sounds like he didn't take you up on that and that he

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elected to make a choice to continue to use the drugs. Is that a fair statement?

A Correct. But I think it was too late by that time.

Q At that point it was too late?

A Yes.

Q Well, before it got to that point, you're aware, are you not, that your cousin had several opportunities through the court system to have people who tried to help him provide structure to his life, true?

A Correct.

Q And as part of that there would have been times when they would have addressed his substance abuse issues, correct?

A Yes.

Q And are you aware, Ms. Tebo, that, in fact, one of those times was when he was at Bowling Green in the prison system and he actually got his substance abuse under control when he was provided with that assistance? Did you know about that?

A I did not.

Q With respect to Gary and his wife, you're aware, are you not, Ms. Tebo, that Gary and Stephanie got married while he's been incarcerated?

A Yes.

Q And it was after these charges were filed and after this was a capital case?

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1 A Yes.

2 Q And I understand, Ms. Tebo, that you love your cousin very
3 much and you're here on his behalf and that's commendable,
4 but my question to you is, you have already agreed with me
5 and I think you do, that Gary had several people who loved
6 and cared deeply for him while he was growing up, correct?
7 You included?

8 A Yes.

9 Q And he had those people who tried to steer him in the
10 right direction and at times when you made the right
11 choice, Gary was presented with that same opportunity and
12 he chose differently, correct?

13 A Correct.

14 MR. KETCHMARK: That's all I have, Judge.

15 THE COURT: Mr. Sandage?

16 REDIRECT EXAMINATION

17 BY MR. SANDAGE:

18 Q You didn't live on Brighton on a daily basis, did you,

19 Ms. Tebo?

20 A I'm sorry. Repeat the question.

2 Q You didn't grow up on Brighton?

2 A No, I did not.

2 Q You grew up in Riverside?

2 A Correct.

2 Q If you had grown up on the Brighton address, can you tell

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this jury that you would be the same person today that you would have been if you had grown up on Brighton?

A No, I wouldn't be.

Q Tell the ladies and gentlemen of the jury why you feel that way?

A Because I believe that house was built with no structure and it brought people down. That's what I think.

Q The house brought people down?

A Uh-huh.

Q The people that lived in the house did that?

A It was all influence.

Q And why did you like going over there so much?

A Because there was no rules.

Q So your grandmother didn't have any rules for you?

A No.

Q She provided you with love like any grandmother would, is that right?

A Yes.

Q Joyce was never around, I think that was your testimony on direct examination?

A Correct.

Q And the only other adult figure on a daily basis after your Uncle Mike died was Rick?

A Correct.

Q And you testified that he used drugs on a daily basis?

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1 A Yes.

2 Q And you saw him discipline Gary?

3 A Yes.

4 Q And you know your mom tried to pull Gary out of that
5 house?

6 A Yes.

7 Q And why was she unable to do that?

8 A I don't have an answer to that question.

9 Q How old was Gary when these things were happening?

10 A He was about ten.

11 Q What were you doing when you were ten years old?

12 A I was in school and going to the park, being a kid.

13 Q If you had told your mom you didn't want to do something
14 and you didn't want to go, what would happen?

15 A I would get disciplined.

16 Q Or you would go? She would make you go?

17 A Definitely.

18 MR. SANDAGE: Nothing further, Your Honor.

19 MR. KETCHMARK: No recross, Your Honor.

20 THE COURT: Thank you, Ms. Tebo. You may step down.

2 (Witness excused.)

2 MR. SANDAGE: We call Deborah Tebo to the stand. If

2 I might have a minute.

2 DEBORAH TEBO, DEFENDANT EYE'S WITNESS, SWORN

2 DIRECT EXAMINATION

1 BY MR. SANDAGE:

2 Q Good morning.

3 A Good morning.

4 Q I'm going to have to say this with every witness. You

5 have to pull up and get close to the microphone. It's

6 hard to pick your voice up if you're not. Could you,

7 please, state your name for the record?

8 A Deborah Lynn Tebo.

9 Q How do you spell that?

10 A T-E-B-O.

11 Q And where do you currently reside?

12 A 2802 NE 56th Street.

13 Q Are you currently employed?

14 A Yes, I am.

15 Q Where are you employed?

16 A Halster Service.

17 Q What is your job at that business?

18 A Administrative assistance.

19 Q What type of business is it?

20 A They are a derailment company.

2 Q And how long have you worked there?

2 A Since a month and a half ago.

2 Q What is your educational background?

2 A College.

2 Q How many hours --do you have a college degree?

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A I have an associates.

Q From where?

A From Kansas City Business College.

Q And when did you get that degree, ma'am?

A 1977.

Q And what is your relationship to Mr. Eye, Gary Eye?

A I'm his aunt.

Q And we just heard testimony from Ashley Tebo. Is that your daughter?

A Yes, it is.

Q What are your parents' names?

A Oney is my father. My mother's name is Betty Tebo.

Q And your mother is still living, correct?

A Yes.

Q And where does she reside?

A She resides at 128 South White, Kansas City, Missouri.

Q And you have brothers and sisters?

A Yes, I do.

Q And can you, please, tell the jury the names of your brothers and sisters?

A I have a sister named Joyce Eye. My brother's name is Richard Tebo. My brother, who is deceased, is Michael Tebo.

Q How many nieces and nephews do you have?

A Two.

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Q And Gary Eye being one?

A Yes.

Q And who is the other one?

A Krystle, his sister.

Q Let's talk for a minute regarding you're American Indian, is that correct?

A True.

Q Are you a hundred percent American Indian?

A Yes.

Q And what tribe?

A Ogallala and Santee Sioux.

Q And is your, do you have extended family that are also American Indian?

A Yes, I do.

Q Where do those family members reside?

A California and Minnesota and Omaha, Nebraska.

Q Do you stay in contact with those family members?

A Yes, I do.

Q And growing up did Ashley, Gary and Krystle interact with those extended family members also?

A Yes, they did.

Q Did they for a period of time embrace the American Indian culture?

A Yes, they did.

Q Describe for the ladies and gentlemen of the jury what all

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1 you would do to develop your culture in your kids?

2 A I worked at the Heart of America Indian Center when my
3 children were very young. And I used to take them to work
4 with me. And we would, I kept them interacting with the
5 ICS, which is the Indian Children Services. And we would,
6 Gary Lynn was headman dancer for our center. And we
7 pretty well, just, you know, worked with them and showed
8 them their heritage and the background of their heritage
9 is what I wanted to instill in them.

10 Q And part of your extended relatives have married
11 African-Americans, is that correct?

12 A Yes.

13 Q And so Ashley and Gary and Krystle have bi-racial cousins?

14 A Yes.

15 Q Was, did Gary interact with those cousins?

16 A Yes, he did.

17 Q Until approximately what age?

18 A 11. Around 11, 12.

19 MR. SANDAGE: May I approach the witness, Your Honor?

20 THE COURT: Yes.

2 BY MR. SANDAGE:

2 Q I'm going to show you what has been previously marked
2 Defendant Eye Exhibit No. 61. Without commenting on the
2 contents of that picture, do you recognize the people in
2 that picture?

1 A Yes, I do.

2 Q Do you remember the time, a general time frame as to when
3 that picture would have been taken?

4 A Yes. That was, they had went up there for just a family
5 reunion.

6 Q And so you can recognize everybody in that picture?

7 A Yes, I do.

8 MR. SANDAGE: Your Honor, I would ask for admission
9 of Defendant Eye Exhibit No. 61 and ask to be displayed to the
10 jury?

11 MR. KETCHMARK: No objection.

12 THE COURT: Defendant Eye Exhibit 61 is admitted and
13 may be displayed.

14 BY MR. SANDAGE:

15 Q Ms. Tebo, we'll just kind of go through it from left to
16 right. Can you see it on the monitor there?

17 A Yes, I can.

18 Q You can either look at it there or if it's easier, look at
19 the big screen over there.

20 But I would ask you to kind of identify the
21 individuals in this picture. And from time to time we
22 might stop you and talk about one or more of those. Who
23 is the first person in the far left, closest in the
24 picture?

25 A That is my mother Betty Tebo.

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Q And for the ladies and gentlemen of the jury, where was this picture taken at?

A This was in St. Paul, Minnesota.

Q Who lives in St. Paul, Minnesota?

A My mother's mother.

Q And was this a family reunion of some sort?

A Yes.

Q And was that fairly common in your family for awhile?

A Yes, it was.

Q And who is next to her, please?

A That is Krystle.

Q When you say Krystle, you mean Gary's sister, Krystle Eye?

A Yes, I do.

Q And just to the left of her in the yellow? Young man in the yellow?

A That is TJ.

Q How do you spell that?

A T-J.

Q And what would TJ be to Gary?

A That's his first cousin.

Q And who would be next in the picture?

A That is Gary Lynn.

Q And you say Gary Lynn, is that Mr. Eye?

A Yes.

Q And to the left of him. If you can't identify -

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A I can't identify.

Q We'll go up to the far right, person closest in the picture in the far right?

A That is my cousin.

Q Your first cousin?

A Yes, that is my first cousin. I'm so nervous I can't remember her name.

Q What about to the right of her?

A That's her daughter.

Q All right. And then just going?

A That is my other cousin.

Q Okay. Is that her daughter in the pink?

A Yes.

Q Farthest lady in the white top?

A That's Diane.

Q Who is that?

A That is my cousin also.

Q So it's fair to say that you had a very diverse family?

A Yes, it is.

Q Where did you grow up, Ms. Tebo?

A I grew up in Winnebago until I was eleven.

Q Then at eleven where did you move to?

A We moved to Kansas City and with my parents on Brighton.

Q And the address of Brighton was what?

A 343 South Brighton.

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Q And how long did the family reside at the Brighton address?

A 33, 34 years.

Q Describe the neighborhood, as a child, for you. What was the neighborhood like when you were a child?

A We lived right across the street from the high school. It was a very normal neighborhood. It was a neighborhood that we knew neighbors. Everybody was just living.

Q Did you see it change over the course of time?

A Yes, I did, very much so.

Q Your family still lives in the northeast part of Kansas City, is that right?

A Yes, they do.

Q And now they live on White Street?

A Yes.

Q What changes have you seen in the neighborhood in 2005 to 2008, to this time period?

A To this time period? It's very lower income, very sad neighborhood. A lot of things happened in the neighborhood.

Q Do you see violence in that neighborhood these days?

A Yes, I do.

Q Let's talk about your relationship with the family. Joyce Eye is your sister, is that right?

A Yes, she is.

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Q Describe to the jury what your relationship was with Joyce as you were all growing up?

A My sister and I were very close as sisters are. She was my girl. We were all close at that time.

Q Was there, did Joyce become pregnant at about age 16?

A Yes, she did. She became pregnant at the age of 16 with my first cousin.

Q Was that an expected pregnancy in your house?

A No, it was not.

Q How was that pregnancy received by your parents?

A Very negative.

Q And what --did Joyce have the child?

A Yes, she did. And they made her put it up for adoption.

Q Did Joyce go anywhere after the delivery of that child?

A Two weeks, she came home. Two weeks after that two weeks she left and went to California to stay with my aunt.

Q And who made her do that?

A My parents.

Q And you had a good positive relationship with Joyce up until that time, is that right?

A Yes, I did, very positive. We were sisters and we stuck close together and that's how I knew what really went on with her. I was planning to take the child if it would be all right with my parents but my parents said no. And they took her to an unwed home for mothers and stuck her

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in there until she had the baby. And she named the baby after my grandmother and I.

Q And when Joyce returns home, describe to the ladies and gentlemen of the jury how she acted?

A She was very distant. She had checked out. She had checked out of life.

Q And how old would she have been when she returned from California?

A She was 17 and a half when she returned.

Q I need to go back for a couple minutes, Ms. Tebo. I forgot to discuss, growing up you and Joyce and Rick and Mike growing up, how would you describe your childhood?

A There actually was no childhood. Just a lot of violence, alcoholism, abuse.

Q Would you be abused by your parents?

A Yes.

Q Would Joyce receive the same type of punishment?

A Not always. I was the oldest so I was in charge of making sure that the two younger ones were taken care of. And to make them dinner, to take care of them and make sure that they would behave.

Q So it was a rough childhood for you?

A Yes. Because there were certain rules that you had to follow. My mother intended me to follow those rules and if you didn't, you suffered the consequences.

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Q Sorry about going back there. At some point did Joyce meet Gary's dad?

A Yes, she did.

Q What was his name?

A His name was Gary Lynn Eye.

Q And did they eventually marry?

A Yes, they did. They lived with my parents for a year before they got married. Then they got married and decided to have children.

Q Was that something that Joyce wanted to do?

A I think she loved her husband very much and it was an escape for her to get out from underneath what she was under but she couldn't get out from underneath it. It was there.

Q When you say escape, you mean escape your parents and family?

A Yes. Escape the parents.

Q Did she ever express to you a desire not to have children any more after the first child?

A No, she didn't express that. We saw it. I saw it. As her sister I saw that she had checked out of being a parent. A friend of ours had asked her to babysit their daughter and she was a little baby, not more than a year. And she came to the house and Joyce could not, couldn't do it. She did not have that mother, that mothering tool

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that we have as women.

Q At some point Gary, Senior, and Joyce do have children, is that right?

A Yes, they did.

Q And who was the first children born of the marriage?

A Krystle.

Q Gary's sister?

A Yes.

Q And then Gary was born, is that right?

A Yes.

Q How far apart in age are Krystle and Gary?

A Approximately 9 months.

Q After the children were born, describe to the ladies and gentlemen of the jury what, how Joyce handled being a mom?

A She tried. She tried to be a mother.

Q Was she successful in your opinion?

A No.

Q Why do you say that?

A She didn't know how to show love. She didn't know how to show the love as a mother to a child. She had lost it.

She had checked out of that and she thought for a moment that maybe if she married this man and got pregnant and had children that it would come back to her. But it didn't. It never came back. And she tried.

Q Was Gary's mom using alcohol during this time period?

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A No. Not at this time period.

Q At some point did she start using alcohol?

A Yes.

Q Would you describe to the ladies and gentlemen of the jury how much she would be using or -

A When Gary left her, too, that is when it all fell apart for her again. She wasn't allowed to take Krystle, his sister. His mom and dad took him. And they weren't allowed to take the oldest. That had to stay with grandma and grandpa. She had to stay with grandma and grandpa.

Q So at some point it's your testimony that Joyce and Gary, Senior, and Gary Eye, my client, even moved away from Kansas City?

A Yes.

Q Where did they go?

A They went to Potosi, Missouri.

Q Why did they go to Potosi?

A Because Gary had a job offer down there. He was going to make it down there. He had tried up here but they just felt like if they could just get away from here, everything would be fine. They both started drinking also at that time.

Q So that is your recollection as to when Joyce Eye started using alcohol?

A Yes.

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Q Was it casual use?

A Yes, at first.

Q At some point does it change from casual use?

A Yes, it changed.

Q Describe how bad of alcohol abuse it became?

A Daily.

Q At some point Joyce and Gary, Junior, return home, is that right?

A Yes.

Q Does Gary, Senior, come back with them?

A No.

Q Does Gary, Senior, ever come back at all after that?

A No. I never saw him after the age of two.

Q At the age of two, the father was no longer around?

A No.

Q When Gary and Joyce came back to live, where did they go to live at?

A They go to grandma's house on Brighton.

Q On Brighton. And who was living in the house when they returned from Potosi?

A Grandma, Grandpa, Uncle Rick and her, and Joyce, Joyce.

Q At some point early on when Gary was 2, 3 years old, did you attempt to take Gary out of that house?

A Yes.

Q Were those attempts successful?

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A No.

Q Describe to the ladies and gentlemen of the jury first why you wanted to do that?

A I wanted to do that because I knew what kind of house that was.

Q What do you mean by what type of house that was, Ms. Tebo?

A It was a very unproductive, no self discipline. No discipline. No self worth. No productivity. In short-

Q Did you feel like Gary could be successful in that household?

A No. I knew he couldn't. I knew both those kids couldn't be successful in that house.

Q Your daughter Ashley testified a little while ago that she would go over there on weekends. Were you okay with her doing that?

A It was her grandmother. And we would go see them. And no but it was her grandparents.

Q Would Gary have witnessed physical abuse in that house?

A Yes.

Q Would he see physical abuse between his uncles?

A Yes.

Q What about, would Joyce exercise physical abuse on people?

A I didn't see that with her.

Q What about with her kids?

A No, I didn't see that with her children.

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Q Who would discipline the kids?

A Nobody.

Q Did you see drug abuse in the house?

A Yes, I did.

Q And who was abusing drugs at the time?

A Their uncles.

Q What type of drugs do you recall being in the house?

A Marijuana for one. And crack cocaine.

Q I think you already described the alcohol was a common place?

A Very common.

Q Let's talk about Gary and his school. Do you recall Gary going to school?

A Yes.

Q How did he do in school?

A At first he was doing fine. You have to remember you have to praise a child for them to move forward.

Q And around this time are you living in Riverside?

A Yes, I am.

Q Are you working?

A No, not at that time.

Q So you were able to try to help Gary in school?

A Yes. Teachers would call me, the principal would call me, want me to come to the school because they couldn't get hold of anybody. That's at that time my mother worked,

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their grandmother worked.

Q What about Joyce?

A Joyce did not work. Joyce has never worked.

Q Where would she have been during these years when Gary was in school?

A Either home sleeping or not home at all.

Q How long did Joyce leave for periods of time from the house?

A Days. Longest I think she's been gone was a week. It's more now that they're grown.

Q Growing up, it was not uncommon for her to be gone several days at a time when Gary and Krystle were small children?

A Right.

Q When that would happen, who would be responsible for the kids?

A Well, grandma. Grandmother was suppose to be responsible.

Q But it's your testimony she was working full-time?

A Yes, she was working full-time on top of that. Then the uncles, they lived in the house.

Q Did you ever see Rick discipline Gary?

A No, I did not.

Q Did you, again, make another attempt to remove Gary from the home?

A Yes, I did.

Q Around what time was that?

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1 A That was the age of six. My father had passed. And I
2 knew that there was not going to be any kind of stability
3 in that house because my mother had just lost her husband
4 of 38 years. So I asked their mother and my mother if I
5 could take him. I didn't want, wasn't going to adopt him.
6 I just wanted to take him out of the home. And come live
7 with me for awhile. So then he could get the love that he
8 needed.

9 Q Ms. Tebo, I'm sorry, how old was he at that time?

10 A He was six.

11 Q If he had wanted to go with you could he have gone with
12 you or?

13 A No.

14 Q Why is that?

15 A Because mother and Joyce said no. It was my mother said
16 it was her kid and she had to be responsible for it. But
17 for her to step up to the plate was --wasn't going to
18 happen.

19 MR. SANDAGE: May I approach the witness, again, Your
20 Honor?

2 BY MR. SANDAGE:

2 Q I'm going to hand you for your examination what's been
2 previously marked Defendant's Exhibit No. 60. Do you
2 recognize the people in that picture?

2 A Yes, I do.

1 Q I would ask, do you remember when that was taken?

2 A Yes. That was Christmas.

3 Q How old would Mr. Eye have been, Gary been about that
4 time?

5 A Gary at that time was probably, would have been, oh, about
6 seven.

7 Q Right around the time frame that we're talking about?

8 A Yes.

9 MR. SANDAGE: Ask for admission and publication of
10 Defendant's Exhibit No. 60, please.

11 MR. KETCHMARK: No objection.

12 THE COURT: Defendant Eye's Exhibit 60 is admitted
13 and may be published.

14 MR. SANDAGE: Thank you.

15 BY MR. SANDAGE:

16 Q So that's a picture from Christmas?

17 A Yes.

18 Q What house is that picture taken in?

19 A That's the house on Brighton.

20 Q And everybody here probably knows but who is in the middle
2 of that picture?

2 A That is me.

2 Q And to your left is?

2 A Gary Lynn.

2 Q And to your right is?

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A Krystle Nicole.

Q His sister?

A Yes. As you've seen in that picture, the alcohol in front of me. That's what it was.

Q I was going to ask you about that but since you brought it up, there is alcohol displayed on the table, is that right?

A Yes.

Q And it's your testimony that was common place?

A Yes.

Q What is your first memory of --strike that.

Would Gary come to your house on occasion?

A Yes, he would.

Q How often would he have the chance to do that?

A Rarely because they knew I wanted him. And if I could get him away long enough maybe something would --he would beg to come.

Q He would beg to come over to your house and they wouldn't let him come?

A No.

Q But there were times that he did?

A Yes.

Q And he and your daughter would play on those weekends?

A Oh, yeah. He was very innovative. He knew, I would put him to work. He loved to work. He enjoyed, you know,

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doing little things like raking the yard. He enjoyed things like that. As long as he could do something productive, he was happy.

Q So in a structured environment, he seems to do pretty well?

A Yes, he did.

Q Is it fair to say your house was a structure environment?

A Yes.

Q Far different than the environment on Brighton?

A Very much so.

Q When do you first recall Gary getting involved in drugs?

A Ten.

Q What is your memory or how do you recall ten being the time you first remember him being involved?

A I just remember the cigarette smoking and I had a talk with all three of them about that.

Q You say all three, who do you recall?

A Gary, Krystle and Ashley. About smoking cigarettes.

Q At some point do you become aware that Gary's use expanded beyond cigarettes?

A I wasn't aware of that.

Q He never used drugs in your presence?

A No.

Q At some point did Gary go to prison?

A Yes, he did.

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Q What were you suppose to do when he got out?

A I had talked to him and wrote to him many times and told him that I wanted him to come and stay with me after he got out of prison. And that I would help him get a job and be a productive citizen.

Q When you went there to pick him up, was he there?

A No. He left that morning.

Q I'm going to take you to the time around March 9 of 2005. Did you have a conversation with Gary some time before March 9 of 2005?

A Yes, I did.

Q Describe to the ladies and gentlemen of the jury about that conversation?

A I had took him to Dixon's Chili out in Independence. He had gotten out of jail and I wanted to talk to him and help him try to get straight. So we went to Dixon's Chili and we sat in there and talked. I asked him if, I had money saved, and that if we could go to his PO officer and talk about moving somewhere else besides here, to get him out of this environment or out of the environment that I knew that he was going back to.

Q When you say environment, you mean back to the Brighton address or at this point the White house?

A The White house.

Q Because at some point between our conversation here the

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family moves from Brighton to White, right?

A Yes. My mother did four years ago move to the house on White.

Q And by this time in 2005 you know that Gary had a substance abuse problem?

A Yes. I had heard he had substance abuse problems.

Q And he had court intervention for that?

A Yes.

Q And after each court intervening he would go back to his home?

A Yes.

Q And without going through it at great length I assume that the dynamics of the house had not changed over the years since Gary was 2 to when Gary was now 17, 18 years of age?

A That's still very true.

Q All those things we talked about earlier still going on?

A Yes, to this day.

Q Did Joyce express concerns to you regarding Gary's contact with the court system?

A My sister never discussed anything with me.

Q Did you try to have discussions with her about that?

A Yes.

Q And how would she receive those questions and those inquiries?

A She did not want to hear me.

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Q When is the last time you have had communication with Gary?

A Two years ago.

Q You haven't stopped loving him in the last two years, have you?

A Never.

Q Describe to the ladies and gentlemen of the jury today as you sit here testifying, your feelings for Gary?

A That is my nephew. I watched him come into this world. He was a very good boy and I love him. And I'm going to be a grandma.

Q Despite, you love Gary because he's your nephew, right?

A I love him because he is my nephew and -

Q And he's made mistakes?

A Yes.

Q And he's committed this crime?

A Yes.

Q And even though those have happened, you're willing to forgive him?

A I forgive him. I forgave him.

Q What type of impact would the loss of Gary have on you?

A An empty hole in my heart.

MR. SANDAGE: I have nothing further, Your Honor.

THE COURT: Mr. Ketchmark.

MR. KETCHMARK: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. KETCHMARK:

3 Q Good morning, Ms. Tebo.

4 A Good morning.

5 Q Talking about some of the information that you covered

6 with Mr. Sandage on your sister and your parents,

7 obviously, that I think would be provided to give a back

8 drop on who your sister was and some of the experiences

9 she had growing up?

10 A Yes.

11 Q And, obviously, it sounds like and from your reaction, it

12 was very emotional, and you don't, unfortunately, look

13 fondly on your own childhood. Is that a fair statement?

14 A That is a true statement.

15 Q The product of the home that produced your sister was also

16 the product that you, yourself, came out of, correct?

17 A Yes.

18 Q And you consider yourself to be a productive member of

19 society?

20 A Yes.

2 Q You've got a job?

2 A Yes.

2 Q You don't have any prior convictions?

2 A No.

2 Q You're not in trouble with the law?

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A No.

Q And you, yourself, don't have a drug or alcohol problem, do you?

A No.

Q So would it be a correct statement that you and your sister were brought up in the same environment and you and her made different choices?

A Yes.

Q You made choices to be law abiding and to stay away from the substances that caused her problems and she, of course, did not make those choices?

A Yes. She had no choice to make. She couldn't make those choices.

Q She couldn't make those choices?

A No.

Q Why is that?

A She's an illiterate. She, they --how can I say this?

Q Did anybody force her to take drugs, ma'am?

A No.

Q Did anybody hold her down against her will and pour alcohol down her throat?

A No.

Q So maybe she wasn't as smart or as bright as you but she nonetheless made a voluntary choice to engage in the conduct that she engaged in, correct?

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A Yes, I guess.

Q And with the photographs that we talked about with you in Defendant Eye Exhibit 60, this picture that is displayed there?

A Yes.

Q You would agree with me that that looks like you all appear to be fairly happy?

A Yes.

Q Loving?

A Yes.

Q Including Mr. Eye?

A Yes.

Q This discussion about the home on Brighton and your concern about the type of house that it was, do you remember having that discussion with Mr. Sandage?

A Yes.

Q Your daughter, obviously, was allowed to go over there?

A Yes.

Q And I think her testimony was and I don't know if you were in the courtroom or not but would it be accurate to characterize your daughter and Gary and Krystle as almost being as close as siblings?

A Yes.

Q They ran around together. They were around each other all the time?

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A Yeah. Yeah.

Q Both including the time that Gary spent at your home in Riverside as well as the time that your daughter would have spent down at her grandparents' house?

A Yes.

Q And is isn't it true as well, ma'am, that your daughter herself moved in with your grandparents there in the northeast for a period of time as well?

A Yes. The house on White.

Q So she lived with her grandparents in this very environment that you were so concerned about?

A Yes, she did. Because I instructed rules and regulations that she had to live by if she was to live in my home.

She knew that if she moved to her grandmother's house, there's no rules. There's no grounds for punishment. It was you are out here yourself, you do it. In my home, it wasn't like that. You did something wrong, you got grounded. If you did something you weren't suppose to or you did not go to school, you had chores to do.

Q And your daughter made the choice, did she not, at some point to live with your mother at that house in the northeast?

A Yes, she lived there for a couple of months.

Q And your daughter you consider to be a good kid?

A Yes.

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Q She's never been in trouble with the law for anything serious?

A No.

Q You talked about Gary growing up and you indicated that you, it sounded like you tried to fill the void that was left by your sister's lack of involvement as a mother in his life. Is that a fair statement?

A Yes.

Q And you talked about Gary being a happy child and you remember that he was very thoughtful and very helpful. Is that accurate?

A Yes.

Q In fact, he's often been described as a child as being loving and fun and that he was helpful and kind when he was in school, in kindergarten particularly, and liked to play football. All accurate descriptions of him?

A Yes, he did.

Q And isn't it accurate, ma'am, that Gary's problems started when he, himself, made the choice to start hanging around with a bad crowd and you deemed him to be a follower and it was these other individuals that he chose to hang out with that were a bad influence on him. That's when Gary started exhibiting these problems. Is that accurate?

A Yeah.

Q Yes?

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A Yes.

Q And so growing up, Gary did okay, even though maybe he was in a home that you wouldn't consider to be ideal because you, yourself, grew up in that home but he was doing all right there with his grandma, wasn't he?

A No, not by any means.

Q Well, he wasn't exhibiting all of these concerns and these problems because he was a happy child when, in the activities?

A You can show happiness if you don't, this rule of thumb here is that even if it was fake happiness, you still had to be happy. It was --your family was all you had.

Q So you're trying to tell the jury that when Gary was as you described him as fun loving and enjoyed the outdoors, enjoyed finding worms and building things, that was fake happiness?

A No, I didn't say that.

Q So it was genuine?

A Yes.

Q So there is a situation where it wasn't like Gary was locked in an attic or in a situation where there were no aspects of his childhood that were enjoyable, fair?

A Well -

Q Let me ask you this, Ms. Tebo. With respect to Gary hanging out with his friends, it's at that point that he

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starts to make bad choices, correct?

A I don't know when Gary decided to make choices on bad choices. All I know is about his childhood and how his mother would put him in the basement and lock the door and scare him. Okay? I know there's nothing I could have done. I tried to do that. And it just -

Q Was there a particular reason why you left that out when you talked with both their mitigation specialist and Mr. Sandage on direct about this experience of Gary being locked in the basement?

A Yes, I did.

Q Why did you leave that out?

A Why did I leave it out?

Q Why didn't you tell the jury about that? I don't recall you saying on your direct testimony about Gary being locked in the basement?

A It's all overwhelming up here.

Q I understand, ma'am. And let me ask you this about Gary getting in trouble with the law. Do you remember an incident about finding bikes in the garage and talking to Gary about them?

A Yes, I do.

Q And do you remember that you, yourself, called the police?

A Yes.

Q And you told Gary to learn from that incident and he chose

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not to. Those were your words, not mine, correct?

A Yes.

Q I understand, ma'am, that you love your nephew very much?

A I do.

Q And you have tried to fill a role in his life that you felt like your sister didn't fill, correct?

A Yes.

Q And that's admirable and you should be commended for that. With respect to his choices though, they're choices that he made himself, correct?

A Under the influence of drugs.

Q But you told us that you didn't know much about his drug use. Isn't that a fair statement?

A Yeah, that is.

Q You, personally, don't, right?

A Hearsay.

Q And my question though is like talk about the prison, you're aware or are you aware that he had counseling on substance abuse in prison?

A No.

Q You didn't know that?

A No, I don't.

Q And your discussion about Gary getting out of prison and

you writing him and telling him that you want him to come and live with you, do you remember talking about that?

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1 A Yes.

2 Q And Gary, he got those letters. He knew that you were
3 trying to help him, didn't he?

4 A Yes.

5 Q But he made the choice to not go with you. He wasn't
6 there when you went to pick him up. It's not the choice
7 he wanted to make, correct?

8 A Yes.

9 MR. KETCHMARK: That's all I have, Judge.

10 THE COURT: Mr. Sandage?

11 REDIRECT EXAMINATION

12 BY MR. SANDAGE:

13 Q Mr. Ketchmark asked you some questions that you're all
14 smiling and jovial there, right? Do you remember those
15 questions?

16 A Yes.

17 Q Are those smiles the norm or are those the rarity in that
18 house?

19 A It was a holiday.

20 Q You --he asked you questions about conversations you had
2 with Gary after you were told about him stealing some
2 bikes?

2 A Yes.

2 Q Do you remember how old Gary was when that would have
2 happened?

1 A 13, 14.

2 Q 13 or 14 years of age. Not 17, 18?

3 A No.

4 Q Not 19 or 20?

5 A No.

6 Q After Gary was released from prison and you went up there

7 to get him and he wasn't there, did you end up seeing him

8 in the days after that?

9 A Yes.

10 Q Do you remember going to his house on Brighton to see him?

11 A Yes.

12 Q Did you ask him and his mother and his grandmother at that

13 time if Gary could come live with you?

14 A Yes.

15 Q And what did his mom and grandmother say?

16 A No.

17 MR. SANDAGE: Thank you nothing further, Your Honor.

18 MR. KETCHMARK: No follow-up, Your Honor.

19 THE COURT: Thank you, Ms. Tebo. You may step down.

20 (Witness excused.)

21 THE COURT: Mr. Sandage?

22 MR. SANDAGE: The defense would call Janice Nichols

23 to the witness stand, Your Honor.

24 JANICE NICHOLS, DEFENDANT EYE'S WITNESS, SWORN

25 DIRECT EXAMINATION

1 BY MR. SANDAGE:

2 Q Good morning.

3 A Good morning.

4 Q Could you, please, state your name for the record?

5 A Janice Nichols.

6 Q And, Ms. Nichols, are you currently employed?

7 A Yes.

8 Q Where do you work?

9 A Northeast Correctional Center.

10 Q And is that part of the Missouri Department of

11 Corrections?

12 A Yes.

13 Q And how long have you worked at --it's in Bowling Green,

14 Missouri, is that right?

15 A Correct.

16 Q How long have you worked at Bowling Green?

17 A Ten years.

18 Q And what is your occupation?

19 A I teach. I'm a special education teacher 3.

20 Q And describe to the ladies and gentlemen of the jury what

2 that means.

2 A Well, I teach for the juvenile unit that's enclosed within

2 the prison and as the students come in, I evaluate what

2 their educational needs are and then begin teaching them

2 from there. Work on behavior and academics.

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Q So your classroom is confined within the walls of Bowling Green Correctional Facility?

A Yes, sir.

Q And where did you work before you were at Bowling Green?

A I worked for Head Start in Louisiana, Missouri.

Q So Bowling Green is the only correctional institution that you have ever worked within?

A Yes, sir.

Q What are the age range of the students that you deal with at Bowling Green?

A I believe the youngest was 14 and then when they turn 17 they are transferred to an adult facility.

Q Describe to the ladies and gentlemen of the jury what the structure of Bowling Green is like for these students?

A For the juvenile students?

Q Yes.

A I have a classroom with desks and a small classroom, library, chalk board, like a normal classroom. Then we have a library setting where we go into and do activities. The students would come in, sit down at the desks. They're expected to follow rules of a public school classroom. I do test them to figure out where they, what their abilities are. Then I find materials at that level and progress forward from that spot. Also I work with employability skills, trying to prepare them for when they

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leave the facility or when ever their time is up that they'll be ready to work on a job.

Q Are all of the --is everybody in Bowling Green a juvenile?

A No.

Q Are there inmates that are older than 17 years of age?

A Yes. Our --where I work, it's for juveniles that have been certified as adults and then the rest of the facility are for adult population, 17 and over.

Q When they're not in their classroom are the juveniles and the inmates in a structured environment in the prison system?

A They have some programs that are structured but they also have free time.

Q How much free time?

A Well, classes go from approximately 8 in the morning until 11 and then there is a two-hour period for count. That's a procedure that the institution goes through and counts to make sure everybody is there. Recreation department would come down during that time and from 1 until quarter of 4 they were back in school. There were breaks in their classroom period. They would take like a five-minute break then have another class, might have a 20-minute break.

In the evenings during the time Mr. Eye was

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there, they may have had programs, I don't remember that. But after school then they would have chores. And they could go to the gym and play, go outside if it was nice, until it was bedtime.

Q There's walls around the facility, is that correct?

A There are fences with the barbed wire or the barbed wire on top and then another set of fences beyond that.

Q Did the juveniles wear regular clothes or were they issued certain clothes?

A They wear like a canary yellow two-piece suit and the adult offenders wear gray two-piece suits.

Q How big were your classrooms or how big is your classroom size?

A During the time that Mr. Eye was in there or any time?

Q Generally speaking.

A Generally speaking, say the average, probably 4 to 5 students.

Q When you mentioned Mr. Eye several times, you know that's the reason --we have mentioned Mr. Eye, you have mentioned Mr. Eye a couple times already during your testimony. Was there a period of time when Mr. Eye was in your classroom?

A Yes, sir.

Q And do you remember if it was around late 2002, early 2003?

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A Yes.

Q And what was he doing in your, do you remember how old he was at the time?

A He would have been 16 because, well, I'm not positive. He was on 120 days so I don't know if he turned 17 in there or just his time was up.

Q And what were, what were the educational goals when he was in your program?

A To earn his GED.

Q Describe to the ladies and gentlemen of the jury what he would have to do in an attempt to work toward his GED?

A He would need to come in to the classroom. He was at like 7th grade level, so he had to progress in his reading, math and spelling. His math was a little bit higher. So he had to come in, set the goals with the teacher. We set goals. And he worked in his GED books. He would participate in group activities. And most of it was independent work. He worked at --every student has their own assignment plan. They're independently working toward their goal.

Q You say he was working at a 7th grade level. What grade level at 15, 16 years of age should he have been working at?

A 9th or 10th.

Q Did he work hard for you?

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A At first he just was kind of complacent and he wasn't disruptive but he didn't go out of his way to race toward his GED.

Q At some point did that change?

A Yeah. Over the course of his four months, he was there four months, he was in a 120 shock program.

Q For the ladies and gentlemen of the jury describe, a lot of them don't know what the 120 shock time means, so describe to them what that means?

A What I know, it's a four-month time that they're given, kind of to see what prison is like and if he satisfies that then they're allowed to, they go back out into society and they have the rest of their sentence as probation, I believe.

Q And you described it in the beginning Mr. Eye didn't perform well but as time went on he started to achieve?

A Uh-huh.

Q And what do you attribute that progression to?

A The goal setting that we did and we would have conferences and confront him with this behavior won't get you to where you want to be. You need to do this, this and this. So he started to achieve some of the behaviors that were on his goals.

Q So once in a structured environment like what I suspect that you had in your classroom it took awhile for him to

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adjust but once he started to adjust he started to meet some of those goals?

A Yes.

Q So it's fair to say he was receptive to the structure you were giving him?

A Yes.

Q Did he follow your directions?

A Yes.

Q Is it common for you to remember every inmate or every juvenile that was in your classroom?

A Not everyone, no.

Q How many have you had over the course of ten years?

A 120, 130.

Q How many students were in the classroom at the time Gary was there?

A I think there were six or seven.

Q I'm sorry?

A Yeah, I think there were six or seven, somewhere in that number.

Q Did he get along well with his classmates?

A Yes.

Q Do you recall any outbursts or fights with classmates?

A No, he didn't have any outbursts or fights.

Q If he was called on to participate in the classroom, would he participate?

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A Yes.

Q But not, if not called upon he wouldn't give answers on his own?

A He seemed shy. And but if he was called upon, he would participate and he usually knew the information but he would not volunteer.

Q What was the racial makeup of the five to seven students?

A There were three males that were white and three or four African-Americans. I'm not sure.

Q Did you see him have any problem, I might have already asked you this but did you see him have any problems with his peer group?

A No.

Q What about outside the classroom did you have any contact with Mr. Eye outside the classroom?

A If it was like at break times, I mean I could hear them or during the lunch period because my classroom was right next to their dorm so. But he didn't get in trouble in class and I didn't hear him getting in any fight.

Q Some of the juveniles that come in your program, do they make the same strides that Gary did when he was within your program?

A Some did.

Q And some don't?

A Some don't, correct.

1 Q Do some have problems in your classroom?

2 A Yes.

3 Q Do they have outbursts?

4 A Yes.

5 Q Can they get along with other juveniles in the classroom?

6 A Some can't but-

7 Q And did you see any of that in Gary?

8 A No.

9 Q Thank you.

10 I have nothing further, Your Honor.

11 THE COURT: Mr. Ketchmark?

12 MR. KETCHMARK: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. KETCHMARK:

15 Q Good morning, Ms. Nichols. How are you?

16 A Fine.

17 Q Along those lines with Mr. Eye, you were often successful

18 in getting him to apply himself and he obtained his GED as

19 a result of your assistance, did he not?

20 A Yes, sir.

2 Q And so Mr. Eye, obviously, had intellect if he chose to

2 apply himself. It was just a question of getting him

2 motivated to apply himself. Would that be an accurate

2 characterization?

2 A He had the potential to achieve, yes.

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Q He did have the potential to achieve?

A Yes.

Q And as a prime example, when he used and chose to use that potential he was successful in getting his GED?

A Yes, sir.

Q And, in fact, as he was progressing with you during this time frame, you would keep comments on a weekly basis about his progression toward that goal, correct?

A Yes.

Q And do you recall, ma'am, making statements about the fact that on January 24 of '03, stating something to the effect of Mr. Eye needs to ask questions rather than waste his time floundering. He needs to learn the material instead of going through the motions?

A I didn't make that statement myself. That was another teacher that worked there.

Q Are you aware that that statement was being made about Mr. Eye?

A Yes. Yes.

Q And with respect to the 120-day program, is it your understanding, ma'am, that if there is an offender whose attention is wanting to be got, that's kind of what the program is designed for? It's shock incarceration to shock the offender and give them a taste of what lies

ahead if they elect to continue to make bad choices?

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A Yes. That's what that shock program is geared to do, I believe.

Q It, basically, gives them a taste of what prison life can be like?

A Yes.

Q With the hopes that they will make better choices when they get back into society?

A Yes.

Q And, obviously, part of the program that is designed is if they don't successfully perform during that four month period, it's possible that the judge who sentenced them might not recall them out of prison and they could be left to do what ever their entire sentence is?

A Yes, that's true.

Q And so with respect to Mr. Eye cooperating and working toward his GED is, obviously, a factor that who ever his sentencing judge would have been at the time could consider in deciding whether to pull him out and place him on probation for the remainder of his time?

A Could you --I'm not sure what -

Q Bad question. The point is this, Ms. Nichols, is that in working toward his GED, that is clearly something a judge might look favorably on in terms of deciding to release him after the 120 days?

A Yes.

1 Q So he had incentive to try to succeed in your program?

2 A Yeah.

3 MR. KETCHMARK: That's all I have, Judge.

4 THE COURT: Mr. Sandage?

5 MR. SANDAGE: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. SANDAGE:

8 Q Is your recollection that there were other juvenile

9 students that also had the same incentive and some of them

10 didn't achieve?

11 A True.

12 MR. SANDAGE: Thank you. Nothing further.

13 THE COURT: Mr. Ketchmark.

14 MR. KETCHMARK: No follow-up, Your Honor. I have no

15 objection to her being finally excused. She came from Bowling

16 Green.

17 THE COURT: Without objection, Ms. Nichols is

18 excused.

19 (Witness excused.)

20 THE COURT: How you folks doing over there? Everyone

21 comfortable? Good until 12:30? Okay.

22 MR. OSGOOD: Alton Clay, Your Honor.

23 ALTON CLAY, DEFENDANT EYE'S WITNESS, SWORN

24 DIRECT EXAMINATION

25 BY MR. OSGOOD:

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Q Good morning. Would you tell the ladies and gentlemen of the jury your name and where you're employed, please, sir?

A Yes. My name is Alton Clay. Employed with Jackson County Family Court, 16th Circuit.

Q And do you work at McCune Home for Boys?

A Yes.

Q How long have you been there, sir?

A Going on twelve years.

Q And what is your background that caused you to choose that occupation?

A Well, I had a friend that was tragically lost in a shooting and I decided to try to help change others.

Q So that had an effect on you and caused you to actually reconsider what you wanted to do and you went to work there as an employee, could help you accomplish those goals?

A That's correct. At the time that it happened, I was in the Navy and I heard about this, my best friend I decided I --not to do that career. I wanted to do something else.

Q Tell us a little bit about McCune, would you? What kind of facility is it?

A McCune is a security facility for adolescents. It's like restored to justice system where you try to not appease but to work with the victim, the offender and the

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community because they all tie in together. And so what we do is try to set individual treatment plans for each of the youth to have positive outcomes in their lives.

Q I assume you have pretty close contact with the court system itself?

A Yes.

Q Who all would be typically involved in a boy's situation when he's about to go to McCune. I mean, let's kind of tick off who has had some impact on his case?

A Well, when they first come in the system, they have to have done something first. They're put in detention in the Detention Center. Then they would have a hearing with the judge. At that time they get sent to a facility such as Hilltop or McCune, depending on what the crime that might have been done, they have been adjudicated of a crime.

Q Would they do, like we do in the adult system, would there be like some kind of presentence report or report of investigation?

A There would be a background investigation, history, if there was indication that occurred, yes.

Q And would that report follow the person to McCune?

A It would.

Q And do you have access to those?

A Not per se myself. But the case management officer or

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deputy juvenile officer.

Q You work closely with those people?

A That's correct.

Q Now, you were in the Orientation Cottage at one point?

A Yes, sir.

Q Tell us about that, please?

A Orientation is the first cottage they originally will come into where they'll be evaluated for the first 30 days to get a feel for the residents and see what setting, at that time we had four cottages, to see which cottage would be appropriate for the individual based on their treatment plan. One cottage may be certain for drugs. One cottage may be for anger management, things of that nature. One cottage may be there was a youth that wasn't going to school or minor things, that cottage might be appropriate. So they did a 30-day evaluation.

Q Where is the facility actually located?

A It's in Independence, Missouri.

Q Is it out on 291?

A Yes. 24 Highway.

Q 24 Highway. And how long has it been there?

A I believe 1908.

Q A long time?

A Long time.

Q Has it had a pretty good success rate?

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A More success than failure, I would say.

Q Now, I want to take you back to 1998, around that time frame. Well, first of all, I'll asked you what is the age range of the boys at McCune?

A Generally, 14 to 17 or 18.

Q What is the bottom line goal of the system?

A The bottom line goal of the system is to reunite the offender back in the community with positive results.

Q Does that require, hopefully, that when he gets out and goes back, he'll have a structured environment in the family home?

A That's the idea. But lot of times it's hard to. We have a youth from 6 to 9 months and try to change what they learned 14, 15, 16 years of their life in that short time span.

Q But even with the success stories, when you send them back, do you personally get concerned that maybe even when you have done a good job with them, they get back out and go back to the same environment?

A You're always concerned with that, yes, sir.

Q And what is your experience if that home environment doesn't change?

A If the home environment doesn't change, what we try to do is we try to equip the youth with skills so when they go back to the same environment to try to better deal with

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those situations. So because they're going to be, truth of the matter is, they're going to go back to the same environment pretty much and deal with the same situations and circumstances that they might have gotten to the place like McCune. So we try to equip them with those skills so they make the proper decision at that time.

Q What is your experience though with say putting a 15, 16-year-old boy back into a family of older adults that created a problem to begin with? That's a tough hurdle to overcome, isn't it?

A It would be tough, yes, sir.

Q Do you remember Mr. Eye, specifically?

A I remember him from at the time he was at McCune, yes, sir.

Q What can you tell us about that, just starting from the day you first laid eyes on him?

A Well, Gary at the time was a youth. He stood out because he was like rapping. He was always talking street terms and so he just stood out. Just stood out.

Q Happy-go-lucky kid?

A Carefree, kind of.

Q Okay. And this was a mixed environment racially, wasn't it?

A Yes, that's correct.

Q One of the goals, was it to get kids to recognize the

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rights of others and to respect other people?

A That's right.

Q And how did he do along that line?

A He made the program. He furloughed from McCune, I believe.

Q You heard about this incident that he's been convicted of, haven't you?

A Yes, I have.

Q At the time you heard, it was just a charge?

A At the time I didn't know the details of the case. I still don't know all the details of the case.

Q I'll tell you he's been convicted. You know, we're not fighting that now and that's over.

A Correct.

Q And we respect the jury's decision. But did it surprise you at the time when you heard about it?

A Well, any time you have someone that you had in your care and you see them on the news and something where it's a negative versus a positive, it's always a surprise. Yes, sir.

Q Have you seen in the past in your experience people do serious negatives that you later think maybe were, even in retrospect, out of character?

A Yes, sir.

Q And that's human nature?

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A Yes, sir, it is.

Q Human behavior?

A Yes, sir.

Q Okay. You ever know Mr. Eye to get involved in any fights while he was at McCune?

A I can't recall if he got into a fight. It was such a long time ago, I can't recall if he got into any fights. But not to my recollection.

Q Okay. Was, we talked very briefly out in the hallway before you came in and I think one of the things you mentioned was this concept of some of these kids like to act like a street hood?

A Yes.

Q Would you explain that to the jury?

A Well, when the question was asked about Gary at the time and that that was a thing, just like if you see an old schoolmate for some years there would be some things you remember and some things you don't. That's the thing that stood out for me. I said street hood because of the demeanor he carried himself in. And like he would have his hat cocked to the side, or like I said, the music, generally, just the attitude.

Q Okay. Now, do they, the young men there on their free time are they allowed to listen to the music of their choice? Certain music you try to discourage?

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A Well, pretty much it's a structured environment where music is not really there so they pretty much sing on their own. He might be in his room just rapping to himself.

Q What about dress? Were there uniforms?

A Uniforms, yes.

Q Were there uniform wear requirements? Restrictions?

A Yes.

Q I assume you had to have your shirt tucked in?

A Yes.

Q Pants pulled up?

A Structured from the time you got up to the time you went to bed.

Q Did Mr. Eye conform to those or not conform to your recollection?

A He conformed.

Q Did he adjust well under your care?

A Like I said, I don't remember any major problems he had at the time. When a youth goes through this, there will be some ups and downs but nothing outstanding to my recollection.

Q Now, how many boys have you had under your care in the course of the time since '98?

A Too many. Well, we hold 80 in our facility. I've been

there since '96. And usually they're there for six months

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so it's quite a big number.

Q It's like, I guess not much different than a high school teacher over the course of many years having many, many students. Some stand out, some don't. Fair statement?

A Correct.

Q That is a fair statement?

A That's a fair statement, sir.

Q Would Mr. Eye have been one who stood out or didn't stand out in your mind looking back?

A I would say not standing out, anything exceptional either way, negative or positive. But I do recall.

Q Do you remember him?

A I do remember him.

Q There are probably a lot of boys you probably honestly don't remember?

A Correct.

Q That didn't in some way register in your mind?

A Yes, sir.

Q Was that one of the reasons you were a little surprised when you first heard about it in the newspaper and on T.V.?

A Yes, sir.

Q Okay. Now, I assume you have had students that when you read about them in the paper later, you're not surprised?

A I wouldn't say not. It's always surprising. It's just

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1 that in a case of this magnitude, it's even more surprise.

2 Q But my point is there are some that don't conform, aren't
3 there?

4 A Yes, sir, there are.

5 Q And you're, obviously, been there a long time and pretty
6 good at your job. There's some you can just look at and
7 say, I'm going to see him back again or he's going to be
8 in the system from now on?

9 A You have those thoughts because it's change is something
10 that an individual has to make. It's nothing we can give
11 them. And some choose to take the things we have to offer
12 and some choose to do the same things. They're free to
13 choose to do.

14 Q Do you get involved in family visitation at all?

15 A The hours of family visitation are not such that I was
16 able to. It was usually during the evening hours. I was
17 during the day shift.

18 Q Okay.

19 May I have just a minute, Your Honor?

20 THE COURT: Yes.

21 MR. OSGOOD: I believe that's all I have, Your Honor.

22 Thank you, sir.

23 THE COURT: Mr. Green?

24 CROSS-EXAMINATION

25 BY MR. GREEN:

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Q Hello, Mr. Clay. In response to a question from Mr. Osgood just a few moments ago, he was asking about whether or not Mr. Eye had been involved in fights at McCune Home and your response was, well, that's such a long time ago, I can't recall. Do you recall that response?

A Yes, sir.

Q What was the last year that you would have had contact with Gary Eye?

A I don't know the exact last year. Was it '98, '99? I'm not sure.

Q So either 1998 or 1999?

A I can't say for certain because it was such a long time.

Q It's been such a long time ago, is that right?

A Yes, sir.

Q You would have no idea about Mr. Gary Eye and his life from, basically, let's say 1999 on up to the present, correct?

A No.

Q Is that correct?

A That's correct.

Q And you would have no knowledge certainly of what his life was like in say the year 2005, correct?

A Correct.

Q I think you said also that if I understood you correctly

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that the McCune Home, I think you said more success than failures, is that correct?

A Yes.

Q So by success do you mean that you have boys or young men that go through your program that don't have, that basically can stay law abiding? Is that what you're saying?

A Yes, sir. Based on, they did studies for recidivism where we have more that do not return or continue in the system versus those that continue in the system.

Q So the good things at McCune does for these young men, many of them are able to latch on to that and become law abiding citizens, right?

A True.

Q Then, obviously, there are some who make the choice to continue having problems with the law, correct?

A That's true.

Q You talked about Mr. Eye seemed to fit in well, is that correct?

A He did, sir.

Q And was the racial makeup of the facility that Mr. Eye was in was it more African-American than whites, is that correct?

A That's correct.

Q And Mr. Eye fit in with the other African-American, other

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African kids there, is that correct?

A Pretty much, yes, sir.

Q But was it a case where, in fact, you, yourself, wondered if what Mr. Eye was doing was basically doing what he needed to do to get by, correct?

A I'd say that with all the residents, sir.

Q Do you remember talking to Mr. Reeder, a private investigator on behalf of Mr. Eye?

A Yes, I do.

Q And do you remember and that was just actually about a week ago you talked to him, correct?

A Correct.

Q And do you remember telling him that you, yourself, didn't know if Gary acting more black than white was something he was doing at the time just to get by? Do you remember telling Mr. Reeder that?

A I told Mr. Reeder because looking at the case now I didn't know if it was something because it seemed like it was just him. I know at the time, based on looking back, judgment in my own case whether was it real or unreal. I wasn't sure.

Q You would agree it was in Mr. Eye's best interest if he wanted to get out of McCune as soon as possible to get by, right?

A That would be correct.

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1 Q And that would involve not getting into fights, correct?

2 A Correct.

3 Q And if most of the residents at McCune were

4 African-American then it would be in his best interest to

5 get along with them, right?

6 A I suppose so.

7 Q And if a boy, a young man does not adjust at McCune

8 basically, has trouble, continues to have trouble getting

9 in trouble with the law is the next step that he's

10 certified as a juvenile then can do time in a prison?

11 A Yes, sir.

12 MR. GREEN: Nothing further, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. OSGOOD:

15 Q Is it your experience, sir, that these kids think at that

16 level of sophistication and they plan ahead that if I work

17 within the system, I'll get out, and if I don't, I'll be

18 retained in the system? Or do they just react to normal

19 behavior, part of their environment?

20 A I think it's based on individuals. Because some would say

21 a term we use, some fake it to make it and some have a

22 genuine sincerity that they want to succeed in life.

23 Q So there are devious ones that fake it to make it was your

24 term?

25 A I want to --won't say more or less but there are some

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that do, they already have in their mind what they're going to do when they leave there and just do what the requirements are to leave there.

Q Okay. And are you able to identify those kinds of people as long as you've worked there?

A I can, the more sincere than others but can't identify all of them.

Q Was Mr. Eye, in your opinion, sincere when he was there?

A At that time I believe so.

Q Now, let me ask you this. Is it a structured environment sir?

A Yes, sir.

Q Obviously, it's not --Now, have you ever been to any of the more secure confinement facilities?

A As far as the juvenile system, McCune is the most secure.

Q No. I mean have you toured though adult prisons?

A Yes, sir.

Q And you're familiar with the, have you ever toured Crossroads, for example?

A No, sir.

Q Okay. What about any of the facilities in Missouri?

A Boon -

Q Booneville?

A Booneville, yes.

Q And would you agree with me that the structure depends

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1 upon the nature of the offense and the sentence to some
2 extent?

3 A I'm not really understanding your question.

4 Q Well, you wouldn't treat a young man, a young boy the same
5 way you would treat a convicted bank robber, for example?

6 A No.

7 Q As you progress in the system the structure becomes even
8 tighter and more severe, doesn't it?

9 A That's right.

10 Q Your structure was pretty tight there, wasn't it?

11 A For juveniles.

12 Q For a juvenile. And Mr. Eye worked within that structured
13 facility?

14 A Yes, he did.

15 Q Did he respond to structure?

16 A Yes, he did.

17 Q Do you have any reason to believe he would not continue to
18 respond to an increased level of structure?

19 A No.

20 Q Okay. Thank you.

21 RECROSS-EXAMINATION

22 BY MR. GREEN:

23 Q Mr. Clay, there are young offenders who do, basically,
24 learn to work the system to their advantage, correct?

25 A That's correct.

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1 MR. GREEN: Nothing further, Your Honor.

2 THE COURT: Thank you, Mr. Clay. You may step down.

3 (Witness excused.)

4 MR. SANDAGE: Don Caldwell to the stand, Your Honor.

5 DONALD CALDWELL, DEFENDANT EYE'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. OSGOOD:

8 Q Sir, would you tell the ladies and gentlemen of the jury

9 your name and where you work?

10 A My name is Donald Caldwell. I work at the Jackson County

11 Family Court where I'm a community resource person.

12 Q And where is your actual duty assignment?

13 A It's at 42 --Boys and Girls Club, 42nd and Cleveland.

14 Q Did you at one time work at McCune Home for Boys?

15 A Yes, I did, for five years.

16 Q Five years?

17 A Yeah.

18 Q Was that also as part of actually the Family Court system?

19 A That's still the Family Court.

20 Q You have worked for the Family Court system for a number

21 of years?

22 A Yes.

23 Q How many total years of service do you have?

24 A Nine.

25 Q Nine. Okay. And did you at some point in time read in

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the paper or see on television that Mr. Eye had been charged with this offense?

A Yes, I did.

Q Did that surprise you or?

A I think the word is shock.

Q Shocked?

A Yes.

Q Why was that, sir?

A As I said, I was telling somebody that asked me about it I'm not very good at names. I'm not very good, I forget the names of people. But if you tell me something about yourself, I remember things, everything people tell me about themselves. And during my time at McCune I had Asset group meetings and Gary was part of them.

Q You did Asset group meetings?

A Yes.

Q Would you tell us little bit about what the Asset group meeting is, sir?

A The Asset Program is in the Quick Program. And that program is about cognitive distortion, getting children to understand distortion and how they relate to behavior.

Q What do you mean by that?

A Distortion is like, for example, something that happens to you when you were a child. A child cannot really process a lot of things that happen to them as children and it can

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become a distortion in some way and it can play out in another way. Like a child who has maybe too many spankings he thought, he could become aggressive. A child could feel like his mother didn't pay him enough attention, you know what I mean? Always want to do anything to seek attention. Those types of things, those are distortions about the way they see things and the way they process things.

Q How do you handle that? We all, hopefully, we're raising our children right but how do you identify first of all one of these distortions, then what do you do about it?

A There is like 12 distortions. And we allow the children through talking about themselves and their lives to kind of identify what their own distortions are, what they relate to.

Q Sort of a group therapy?

A Once they find out the ones they relate to. We try to find out in the children where it comes from in their life.

Q Are you telling me some of them may be an actual true problem as opposed to just a perceived problem?

A Right.

Q Okay. And so you work through that?

A Right. Through that process. And then especially they deal with where it comes from and how once they face that,

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where it comes from, then you try to work through it.

It's like if I'm aware of something then say you raised your voice to me, I have to be aware that you're raising your voice to me because you can't get my attention. Now if I have my mother hollered at me so much when I was a child and you raise your voice to me, I have to recognize it's not you that I should be bothered by. It goes back to my own distortion that if somebody raises their voice to me, I think they're angry at me. When so somebody raises their voice to me, I think something else is going to happen. They have to recognize things like that.

Q You worked with Mr. Clay, did you?

A I worked with Mr. Clay. A lot of times we worked together.

Q You were not in the Orientation Cottage?

A I was in Orientation Cottage but I did the group sort of for --Gary, he was in Orientation. Then Gary moved to another cottage. I did the groups for the cottages, for basically most of the cottages on the hill.

Q So I want to direct your attention to one of these sessions. How often were these sessions held?

A Three times a week.

Q Was it voluntary or mandatory?

A It was mandatory.

Q Was it, how did it fit in with the school requirement?

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A Well, they would do them. We do some in the morning before school. And then in the evening right after school they would do them, so process the day.

Q I assume you have had a number of boys that have been under your guidance over the years?

A Yeah. Yes.

Q Is there any reason why Mr. Eye stood out?

A The things he told me, again the things he told me about his life and also the way that, McCune is in Independence and in Independence a lot of the white kids that came there, they weren't --this is Jackson County. So a lot of the white kids that came there weren't necessarily from an urban core, growing up in Kansas City, Missouri. Some would be in Independence and outside the area.

Q Sure. And they had some attitude?

A It was an adjustment period, of course. If you weren't exposed to different cultures, it was a race thing and all that. At first with Gary I didn't know, I thought --and I thought he was a white kid. I just thought Gary is a white kid. But Gary always, like he fit in. You know, what I mean? You know, tell like on times even some of the other kids, white kids, who would try to fit in, try to play the comedian role.

Q What was the mix in terms of number?

A About 85.

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Q 85?

A About 85 percent African-American, say maybe 12, 13 percent white and other 2, maybe, Asian or Latino at the time.

Q Were there distinct groups like we see, unfortunately, now in high school where all the white kids are sitting at one lunch table and the black kids sitting at another?

A There was a lot of that.

Q Had a lot of that. Did Mr. Eye break those boundaries?

A Yeah. He was friendly with a lot of African-American children. You know, he sort of fit in. Moved around all the different groups. So I remember one time in groups someone -

Q One of these meetings?

A Yeah. One of the groups they talked about race and stuff like that. And someone said, well, you know, this - called him, white boy. I'm not a white boy. My --I'm not white. That's when he talked about, that's when I found out he's an Indian heritage and he spoke of that. And it wasn't like he had anything about being white, just that he brought up his heritage is the way I took it.

Q Did, in fact, somebody to your recollection at one point in time talk about their own self esteem and the fact that they had bi-racial issues?

A Yes. Yes. Yes.

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Q Remember that?

A Yeah. That was a moment of clarity for me.

Q Moment of clarity you say?

A Moment of clarity for me. First in the group, Gary seemed sort of laid back, didn't really speak a lot. And this is right before he did his life story. When they do their life story, that's when you get to know them really well.

The kid is talking, he's bi-racial.

Q Not Gary?

A Not Gary. The kid speaking in the group. He's bi-racial. He said he had a problem with being, the problem he had with being bi-racial he had to stand for his black side because that brought up a lot as you can imagine in a group of African-American kids, a lot of them spoke up about that. But he said he had a problem with it because the negativity that was attached to being an African-American. Talked about the low self-esteem, talked about the violent behaviors and all the different things, drug abuse, all that was attributed to African-Americans, to our culture. And Gary spoke up and he was really, first time I heard him speak up, and he said those same afflictions are part of a white culture as well. And the problem that he had was probably the individuals in his family that did those things, not with the culture.

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Q That showed you some insight in him that surprised you?

A Yeah, that surprised me.

Q And that's not something you hear every day from?

A He was 14, 15 years old. It was kind of surprising.

Q That was a positive?

A Yeah, it was positive.

Q Was that sincere?

A Yeah, it was sincere. I mean, especially talk about somebody who didn't generally speak up. He was really trying to get more acclimated to the group. For him to say that, I mean, he really meant it. He wanted to speak up especially in the midst of all the other kids with conflict with African-American kids but what the other guy said.

Q You don't think he did that because he figured that would feather his nest and get him through the program quicker?

A No. It was insight.

Q It was a fairly structured program?

A Very, very.

Q From what you told us. And part of getting to these kids, I guess, is to some extent teaching them to function within a structured environment?

A Absolutely.

Q Did he function?

A Yeah. Gary never had a problem. Whatever you asked Gary

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1 to do, Gary, he would do it to the best of his ability.

2 Granted he was still 15 years old. He was a kid so he

3 made mistakes and all that. But he was never, there was

4 never behavior problems where he was aggressive or

5 anything like that.

6 Q As I said, he's been convicted of this offense and the

7 jury has made their decision and now they have to decide

8 whether or not to sentence him to death or to life without

9 parole in a very structured maximum security federal

10 penitentiary. Do you believe, if they choose the latter

11 as opposed to the former, that he will adapt to that

12 structure and get along?

13 A Definitely.

14 Q Definitely?

15 A Definitely.

16 Q Thank you, sir. That's all.

17 THE COURT: Mr. Green.

18 MR. GREEN: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. GREEN:

2 Q Just a few questions, Mr. Caldwell. To be clear, the

2 years you knew Gary Eye, what years would that have been?

2 A Had to be between '99 and 2000, '98, 2001, 2002, something

2 like that.

2 Q So you're not even sure of the years. Is that fair?

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A Yeah, I'm not exactly sure. Like I said, I just remember people what they tell me about themselves.

Q It's been, frankly, so many years ago that you're having trouble recalling exactly what years, is that correct?

A I do that, right.

Q Let's even give the outside year, let's say 2000. Okay?

A Okay.

Q So did you have any contact with Gary Eye after he left McCune?

A No, I didn't.

Q In fact, would today in the courtroom be the first time you have seen Mr. Eye since he left?

A Unfortunately.

Q Is that right?

A Yes.

Q So whatever factors, forces, influences in Mr. Eye's life that factored in after he left McCune, let's say 2000, leading up to March 9, 2005, you would have no idea?

A Right.

Q You have no idea of the details of this case other than what maybe you read in the paper, right?

A Right.

Q The Gary Eye you're talking about, you're testifying about is a Gary Eye who is about 14 or 15, correct?

A That's right.

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1 MR. GREEN: I have nothing further, Your Honor.

2 MR. OSGOOD: No redirect examination, Your Honor.

3 THE COURT: Thank you, Mr. Caldwell. You may step
4 down.

5 (Witness excused.)

6 THE COURT: Let's go to lunch. Please don't talk
7 about the case yet. Don't make up your mind. We'll see you
8 back here at 1:30. We'll be in recess.

9 (The following proceedings were had OUT OF THE
10 PRESENCE AND HEARING OF THE JURY:)

11 THE COURT: All right. See you at 1:30.

12 MR. SANDAGE: May I say something? We have one
13 witness left. Going to be a substantial period of time. I
14 can't estimate how long direct will be, maybe 2 hours or so. I
15 don't know how long Mr. Gibson is going to cross-examine. The
16 question is, if we finish around 3 or 3:30, are you going to
17 expect us to be prepared to close or can we adjourn and do
18 closing tomorrow morning?

19 THE COURT: What's your preference?

20 MR. KETCHMARK: I told Mr. Sandage when we spoke
21 yesterday that I, government can go either way. I have no
22 problem with recessing until the morning so that we could argue
23 then allow them to begin deliberations, assuming the Court was
24 going to send them home at 5 today.

25 MR. SANDAGE: I would prefer that, too, Your Honor.

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1 THE COURT: All right. Depending on what time we
2 finish with the testimony, I may go ahead and instruct this
3 afternoon.

4 MR. SANDAGE: That's fine.

5 THE COURT: But I would allow you to begin your
6 arguments in the morning.

7 (Recess)

8 (The following proceedings were had OUT OF THE
9 PRESENCE AND HEARING OF THE JURY:)

10 THE COURT: Are we ready to resume?

11 MR. SANDAGE: Your Honor, before we get started, we
12 might want to go ahead, maybe make a record. Mr. Eye will not
13 be testifying in this phase of the trial.

14 THE COURT: All right. Mr. Eye, you've now heard
15 this conversation three times I think. You have the right to
16 testify in this case. You also have the right not to testify.
17 No one can force you to testify. If you elect to testify, you
18 can expect a vigorous cross-examination by the United States.
19 If you have prior felony convictions, those can be admitted for
20 the limited purpose of assisting the jury in deciding how much
2 weight to give your testimony. I assume that you have
2 discussed the matter with your attorneys. And I'll ask you now
2 whether it is your wish to testify in this proceeding or not?

2 DEFENDANT EYE: No.

2 THE COURT: All right. Thank you.

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1 (The following proceedings were had IN THE PRESENCE

2 AND HEARING OF THE JURY:)

3 THE COURT: Please be seated.

4 Mr. Sandage.

5 MR. SANDAGE: Yes, Your Honor, defense would call

6 Dr. Marilyn Hutchinson to the stand, please.

7 DR. MARILYN HUTCHINSON, DEFENDANT EYE'S WITNESS, SWORN

8 DIRECT EXAMINATION

9 MR. SANDAGE: May it please the Court.

10 BY MR. SANDAGE:

11 Q Doctor, could you please state your full name for the

12 record?

13 A Yes. My name is Marilyn, M-A-R-I-L-Y-N, Hutchinson

14 H-U-T-C-H-I-N-S-O-N.

15 Q Where are you currently employed at, Dr. Hutchinson.

16 A I own an office called Hutchinson and Associates. It's in

17 the Waldo area of Kansas City. And it's a psychotherapy

18 practice.

19 Q What is your educational background?

20 A I have an undergraduate degree in music education from

2 Nebraska Wesleyan University. My masters and my PhD are

2 both from Purdue University. And I got those in '71 and

2 '75.

2 Q Could you give the ladies and gentlemen of the jury a

2 background on your, of your work and your body of work and

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what you do?

A Yes. As I said, I own an office called Hutchinson and Associates. Over the last 22 or 23 years that I have been there, I have done postdoctoral and post masters training, sort of like internships for them. Some of those people have been invited to stay in my practice. The size of my practice has varied across the years between, I think,

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of us now and at one time there were 12 of us. So there is an ongoing advanced education kind of component to those. Some of the people have been there for 20 years. Some of them have stayed.

I spend about half of my time seeing regular clinical clients. I see between 16 and 18 therapy clients every week. I also do forensic practice. That is court work for the court. My original work was predominantly in the area of Battered Woman Syndrome and I evaluated over 300 women or children who have fought back against a

perpetrator and committed some kind of crime in that process.

I evaluated another couple hundred criminal defendants who had for reasons of mental illness or some kind of mental disease or defect have been brought to the attention of a psychologist as they face some kind of criminal matter. I also have done several hundred civil cases. Those are predominantly people who are also

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victims of some kind of violence from their sexual harassment, age discrimination, race discrimination, rape, car accidents. Things that have happened to people that are traumatic.

Q Do you hold any professional licenses?

A Yes. I am licensed, I used to be licensed in the State of Wisconsin, where I was a university instructor. When I moved to Kansas City I let that go into some kind of a non-active status. And I'm currently licensed as a psychologist in Missouri.

Q And also you have some sort of license in Kansas as well, is that correct?

A I have, to practice in the State of Kansas, as of last year they had a new temporary license that allows you to practice for a certain number of days and I have that license. I was a number 001 in the new application process so I can always remember my number.

Q And you told the ladies and gentlemen of the jury that you testified in, you've been involved in hundreds of court cases, is that right?

A That's correct.

Q How many of those have been regarding cases involving the death penalty?

A Well, I was counting up just the other day that in the sort of more recent past I have been asked to testify in

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death penalty cases, seven cases. And this is the fourth one of those in which I have. And there were three of them in which I decided that I didn't find any mitigating circumstances. Prior to last five years, I think there were maybe about four cases in the 10 to 15 years before that. One I testified in mitigation and the other three were not guilty by reason of insanity cases.

Q And you were contacted by Mr. Eye's defense team on this case, is that correct?

A That is correct.

Q And we have hired you to do an evaluation in this case?

A Yes. I was hired to look at the mitigating circumstances that might be present.

Q Let's talk about the background leading up to today's testimony. Have you met with Mr. Eye, personally?

A I have.

Q On how many occasions?

A That would be on three occasions. I started out, the first time I saw him was August of '07. And then I saw him again in February of '08 and March of '08.

Q And how many total hours of interviews have you had with Mr. Eye?

A Eleven and a half.

Q Did you have any other consultations, meetings or discussions with any other people to get a full family

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history of Mr. Eye?

A Yes, I have.

Q And who are those people?

A I met with his grandmother. I met with his mother twice.

I met with his sister twice. I met with his Aunt Deborah.

I met with his Uncle Rick. I met with Uncle Rick's girlfriend, Dina Bean, who lived in the household from the time Gary was about eleven through pretty much the present.

Q Did you also have an opportunity to meet with his wife Stephanie Eye?

A Yes. Thank you. I also met twice with his wife Stephanie.

Q And how many hours of total interviews did you have with family members that you just testified about?

A 17.

Q So your total contact with Mr. Eye or family members is roughly 28 and a half hours?

A That sounds about right.

Q Were there other records that you were asked to review in preparation to, in reviewing Mr. Eye's life history?

A Yes, I have.

Q And can you give the jury a description of what some of those records were?

A Yes. I read some of his school records. I read a great

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number of childhood medical records. I read his mother's school records, some of his mother's medical records. I read his juvenile history. And some records from his work, from some of his juvenile incarcerations.

Q Did you also have a chance to look at the medical records pertaining to medical treatment that he received on or about March 3 of 2005?

A Yes, I did. I also read the treatment that he had for pneumonia, influenza and bronchitis on March 3rd.

Q Were you given any information regarding the current crime for which he's been convicted?

A Well, I have not read official records. I certainly have read about it in the newspaper and this weekend I was given a summary of the evidence that had been presented during the trial that you all acted on to reach your decision.

Q And is that, when asked to do evaluations of this nature, is it common that you not ask for and receive information regarding the actual crime itself?

A Yes. My purpose, some times I would evaluate the crime itself and I'm asked to make an opinion about the state of mind at the time, in which case I do lots of review of all the witness statements and interview witnesses and so forth. But in this case I was asked to do mitigation so the details of the crime itself were not relevant to my

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time or to bill the state for the time to read those.

Q So you were not asked to make conclusions on whether or not he was mentally competent at the time of the crime or whether or not he was able to assist his defense team currently?

A No.

Q Before we get into specifics regarding your review of the documents included, it might help the jury if we do a little bit of an overview of Gary's life. I would ask you to first maybe get into the stability or instability of his childhood?

A Yes. The key players, although they go back further generations than I had access to, what I understand to be of significance was Grandpa Oney and Grandma Betty and you've heard reports of them that Betty's oldest son was Mike, who had a different father. Then there was Deborah and then Richard and then Joyce. And that Mike and Deborah, both, were raised by grandparents. Mike was raised by his mother's grandmother and Deborah was raised by her father, Oney's grandmother until they were about eleven, when these grandmothers passed away. So they were, Deborah was actually raised on a reservation away from her parents during her youngest years.

That was not true for Richard and Joyce who lived in the home with Oney and Betty since the time they

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were born. It's --my understanding is that Grandpa Oney was an alcoholic. He was physically abusive to his wife. He was physically abusive to all of his children. That there was a great deal of tension and difficulty in the home. And that that was very much the upbringing that Richard and Joyce had.

Mike enlisted in the service, he didn't finish

high school, but he enlisted in the service. Got away.

And when he got out of the service, went back to Minnesota

to live with relatives there.

Joyce indicated that she was in the home from

age 11 to 18 and that she left as soon as she could. She

was the only one of the four that graduated from high

school.

Q

Let me stop there. You say Joyce, you actually mean Deborah Tebo?

A Yes. I'm sorry. My mistake. Deborah Tebo was the only one who graduated from high school. And that when she moved out of the home, her mother and father didn't speak to her for over a year because that was a violation of the family rules that you weren't suppose to leave home. She managed to sustain against that. She credits her grandmother with that kind of courage and that kind of stability that she got from them, from her. She moved out, got a job, worked, and has had a very different

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kind of life than all of the others.

Mike, the oldest one, who was living in

Minnesota, had a break up with a girlfriend, moved back to

Kansas City. Moved back into the home. Took up the,
I

don't know what kind of alcohol habit he had in Minnesota,

but he began substantially abusing alcohol once he moved

back to Kansas City.

That said, he was the most stable of the adults

in the home as caretaker for Gary and for Krystle. What
I

heard from all of them was that Joyce was asleep, if she was home. Grandma got up about 6:30 and went to work.

Rick wasn't ever up. But that Mike would get up and get the kids off to school at their very earliest ages.

But the idea that there just wasn't, there

weren't any rules in this household. And I think you

heard earlier some references to that. Joyce had a child

when she was 16. She was forced to give that child up for

adoption. Deborah said that that was a substantially

difficult time for her sister. Her sister had always been

in special education. Her school records indicate that

she vacillated between borderline retarded and retarded.

But that the loss of that child and then being sent to

California for a year to live with family, that she came

back a changed person.

Q Doctor, could you talk about the people within the

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household that were abusing alcohol by the review of the record and their interviews that you conducted?

A Yes. Grandfather Oney was using alcohol. Mike was using alcohol. Joyce was using alcohol. When Joyce married Gary Eye, Senior, for awhile they lived in the household, and he was using. I understand that at one point Joyce and Gary Eye, Senior, moved down the street a block or so away and they weren't allowed to take Krystle. That grandmother required that Krystle stay in the home with them.

Gary, on the other hand, who was 9 months younger, did go with his family, did go with his parents. They moved to Potosi. Again Krystle stayed with grandmother. And Gary was down in Potosi with his parents.

That relationship fell apart. Joyce says it's because Gary Eye, Senior, was doing drugs. Gary, Junior says that he remembers some very sort of spotty recollection of drugs and violence between his biological parents.

Q

What was the employment of various people in the household who held regular jobs?

A

Grandpa Oney worked in a shop where he worked on small engines like lawnmower repair. Rick was not employed at all. Joyce was not employed at all. And at some point

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grandmother went back to work and after her husband died she was the only regular wage earner in the home.

Q

Can you describe in general terms the structure and the discipline that was in the home on Brighton?

A From what I understand is that it was black and white. Extreme. That they, there weren't any regular rules or regular things that they had to follow. But occasionally there was extreme punishment. Hitting with paddles, hitting with fly swatters, locked in closets. That when Joyce would come home drunk, that she would scream and yell at Krystle and Gary. And I heard some of the words that she called her children when she was intoxicated. They are the worst ones you can imagine, one of the things that she regularly called her children when she came home drunk. But that Gary got the worst of that. Everyone in the family that I talked to acknowledged that Krystle was grandma's favorite in terms of attention, in terms of gifts, in terms of privileges, in terms of contact. And that Gary was much more left to kind of what his mom could give him, what his aunt could pick up for him and what his uncles picked up for him. Unfortunately, after Uncle Mike died, when he

was about, when Gary was about ten, Rick took over a much more active and much more physical role of discipline. And Gary said at that point the physical discipline, which

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discipline is sort of a misnomer, is that sort of on a daily basis. Rick would become violent to him, for unknown or minor offenses. That it seemed to be much more dictated by the state that Rick was in rather than by Gary's behavior.

Q Did you make certain you reviewed, you, I think you testified just a few minutes ago you did review some educational records, is that right, doctor?

A I did.

Q And also I suspected you interviewed some of the family members regarding education as well, is that right?

A Yes, I did.

Q Briefly describe what was the sum or overview of that, his educational history?

A Gary, in the fifth grade, started skipping school on a regular basis. He missed about 50 percent I think was the number of days in fifth grade. He flunked sixth grade twice. Again, predominantly due to a substantial number of absences. And in the last 25 days he was enrolled, he missed 20 of them.

When I talked to Deborah, she said that she would get calls from the school. She often went down there, would try to get him to attend school. But that she lived in Riverside. The family lived two blocks away from school. That she felt powerless and pretty impotent

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to try and get him to school on a daily basis.

Q

With all of that in mind and specifically some of the violence that you had heard about through various witnesses, including Mr. Eye, in the household, is there a commonality from generation to generation on violence?

A

Yes, there is. Sort of one of the worst tragedies of violence is that it lives on. And there's been --what it's been called in the literature is called the transmutation of violence. And the particular writings are about survivors of Holocaust, what their children ended up with. There's been writings about in the Indian culture what kind of beliefs and values get translated down from parents, you know, probably the grandparents in this family were where the kids got sent off to boarding school or the grandparents, grandparents taken away from their homes. A lot of the kind of actions that white Americans have done to the Indian culture has built up a whole set of attitudes and beliefs about white culture within the Indian tradition. And things don't have to happen to this person if they happened to the generation

ahead of you and all of those beliefs and values are translated down to the next set of kids. And that's part of what I think happened here.

Q

Before we get into more detail about some of the things that you just overviewed, based upon your review of the

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1 record, based upon interviews, research including what you
2 just indicated regarding American Indian culture, have you
3 been able to draw certain conclusions for mitigating
4 circumstances in Mr. Eye's case?

5 A Yes, I have.

6 Q Could you lay those out for the jury, please?

7 A Yes, I have a list of eight that at the time of the crime
8 he was -

9 MR. GIBSON: Objection. May we approach?

10 THE COURT: Yes.

11 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
12 PROCEEDINGS WERE HAD:)

13 MR. GIBSON: Her conclusions are not relevant at this
14 point. They're mitigating factors. That's for the jury to
15 determine.

16 THE COURT: Well, the jury can consider the statutory
17 mitigating factors and any other factors that one or more of
18 them may find. I see nothing wrong with having this witness
19 suggest some to them.

20 MR. GIBSON: Well, what I think he's asking her to do
2 is substitute her judgment for that of the jurors.

2 MR. SANDAGE: She's made, well -

2 MR. GIBSON: None of the statutory aggravators or
2 mitigators she's about to explore, not based on the report I
2 was handed.

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1 THE COURT: Your objection is overruled.

2 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

3 BY MR. SANDAGE:

4 Q Dr. Hutchinson, you can go ahead with your list of the
5 eight mitigating circumstances you were going to talk
6 about?

7 A Okay. The first one that I think is important to explore
8 and explain is that at the time of this crime he was just
9 barely 18 years old.

10 Q How old exactly was he? Do you know?

11 A I think it was like 18 years old and just a little under
12 six months. I think it was 18, 5 months and something
13 days I'm not sure. But under 18 and a half.

14 The second one is that at the time of this
15 crime, he was practicing what he had been taught by his
16 family in his neighborhood. He was doing what they had
17 demonstrated to him.

18 The third one is that his emotional development
19 was severely hampered by the use of drugs beginning around
20 age seven.

21 Q What was the fourth factor?

22 A The fourth factor is his emotional development was
23 severely hampered by a childhood of neglect, violence and
24 drugs around him in his home and neighborhood.

25 The fifth one, his emotional development was

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severely hampered by non-attendance at school.
The sixth one was that at the time of the

incident he was severely ill and very high on drugs.

The seventh one is that in the last couple years

since he has had some time to be straight and sober, the

first time since age 11 for him to have a substantial

amount of time, that he has matured and that his

adaptation to incarceration has improved.

And the last one is he has made a commitment to

his wife and her children and that they would suffer
a

loss if he was put to death.

Q

All right. Let's go through each of those conclusions in a little bit more detail, Dr. Hutchinson. I would take them in order as just presented to the jury. And let's talk about the first factor of age. I think you just testified that he was about 18-and-a-half-years-old and we'll settle on that. Can you describe to the ladies and

gentlemen of the jury about the physical brain, itself, and where it is in the maturation process at that time?

A

Yes. The human brain, obviously, starts to grow when we're in the womb and it continues to grow up until our early 20s. The 18-year-olds, our culture says, aren't completely of age. We don't allow them to drink. We don't allow them to gamble. If they go off to college, they're under some kind of supervision. That we think of

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18-year-olds as not being quite grown up yet. And that is quite accurate in terms of their emotional development in their brain maturity.

While he certainly is accountable for anything

he did at age 18, there are reasons that I can explain why

his maturity, his moral development, his emotional

development was far from being at the age that he has

become now and what he will continue to become. And

because of all the drugs that he had used from such an

early age, he is most likely even younger than other

18-year-olds would have been.

Q

Can you explain for us what you mean by the process of brain maturity and then develop slowly in the human brain?

A

Yes. There is a process called myelination. And myelination is you start off with what is known as the gray matter of your brain. And myelination is the development of the white fatty tissue that surrounds the neurons. And that starts to grow and the gray matter starts to drop off. It's the white matter that allows for the neurons to go from one part of the brain to the other. And the areas of the brain that are sort of the most primitive and most basic to us are the ones that develop first. So like our lymphatic system is pretty well developed by the age of 10. Whereas our pre-frontal cortex, the part that is, you know, in some ways what we

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think of what makes us human beings versus the more animal part of our brain doesn't begin to develop, it doesn't develop until nearly much later. Some people say that that development sort of is probably true about 22. Others say that it takes until 25. And that males develop more slowly than females in terms of that maturation process.

Q

Would that be a reason why young children, female children would act more mature than their equivalent group that's a male?

A It certainly is part of it, yes.

The pre-frontal cortex, perhaps some of you have known someone who had a frontal brain injury, is that it effects what we think of as, we call it the seat of second sober thought. Which is it's judgment, control of impulses, being able to foresee consequences, make plans, make goals. Which is why teen-agers have such poor judgment and why they act so impulsively is that this part of their brain hasn't grown up yet.

That's the very last part of the brain to actually grow up. And that that happens somewhere between 21 and 25. So at 18-and-a-half, he's just beginning to

start that second phase of what we call the pruning away.
So, initially, the brain sort of metaphorically has the
option of being anything, you know. If you are trained in

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languages, then that part of your brain will develop. If you're trained in athletics then that part of your brain is going to develop more. If you're trained in mathematics then that part of your brain is going to develop more. By the time we're 17, the ones that we haven't done much with, begins to prune away, as it were. They begin to dissolve so that there's more room, more space, more ability for the ones that we do use to work with. So that pruning starts around the age of 17. So you have all those years to try to figure out what you're going to get good at and what parts of the brain are going to grow and mature.

Q At what age do --talk to us about brain weight and how that relates to everything we've just been discussing?

A Brain weight like other parts of the body continues to grow. We actually have the maximum brain weight at age 20. When we're 20, our brain is the biggest it will ever be. After that it begins to go downhill in terms of volume. It doesn't necessarily go down in terms of effectiveness or efficiency but that's sort of the maximum. We're continuing to grow physically, the weight of our brain, up until the age of 20.

Q Is there new research in this field that we've been discussing?

A Yes. It used to be sort of understandably is the only

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1 time we could study brains is after people were dead. So
2 you couldn't get longitudinal data on them. You couldn't
3 tell how they changed over time because you just had them
4 once. But with the new MRI techniques, there are now
5 hosts of new just-ground-breaking research about brain
6 development. There's centers at Harvard, Stanford,
7 Hopkins, University of California at San Diego, Utah,
8 Pennsylvania, Duke, McGill, NYU, UCLA and a Japanese
9 University are all prime centers in this new studying what
10 is the growth and development of the brain. And that
11 they've been able to document by doing these MRIs on
12 people across time that pruning is most aggressive in the
13 pre-frontal and temporal, parietal lobes well into
14 adulthood. So making our, the area of our brain makes
15 decisions that does distractions, that does planning, that
16 does moral judgments, all of that gets finalized once
17 we're about 20 years old. It starts pruning so the ones
18 that we need are there the most.
19 And there was a landmark study in 1996, a
20 National Institute of Health that said the greatest delay
21 in myelination is in the frontal temporal lobes and it
22 continues at least until the age of 22. Harvard did the
23 study that says females grow faster. Stanford found a
24 study that the white matter that's myelination stuff
25 increases until at least the age of 22. Penn Valley or

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Pennsylvania, said that the gray matter peaks at age 2 but the white matter is the slowest to develop and goes well into adulthood. And Dartmouth did a study and found out there were significant changes in the freshman year students. So from September to May of freshmen 18-year-old kids, that there was significant differences in myelination of their brains, just in that nine month period. So it's a period of really significant growth.

Q So it seems to me from your testimony, Doctor, that age 20 is kind of a major point in brain development. Is that kind of fair to say?

A Well, there's variability. 20 is when we hit the weight. Myelination, certainly the myelination and the pruning is starting like from 17 to 22. And for males up to maybe 25.

Q You mentioned something about brain development and the impact that drug use can have on that. Can you go into a little bit more detail for the jury, please?

A The research on brains tells us why kids are more prone to drug use than adults. One, is that they are much more likely to act impulsively and avoid and ignore the consequences. That's that lack of pre-frontal stuff. They're impulsive. They don't do cause and effect. So they're going to do drugs because they don't think through it.

1 There is also a part of the brain called the
2 nucleus accumbens which is part of this frontal area, that
3 you may know this if you know teen-agers, is that they are
4 looking for the most excitement with the least effort. So
5 video games and drugs are the perfect fit. That part of
6 the brain is looking for stimulation and looking for the
7 least expenditure of effort and energy to get that. And
8 teen-agers find that in drugs and video games.
9 Adolescents are also, there's some new research
10 that says adolescents have more of a pleasurable effect
11 from the use of alcohol and drugs than adults do. Some
12 hypotheses that they're social anxiety is higher so it
13 helps them inhibit that anxiety more or it may just be the
14 weight of their brain processes, their body metabolizes
15 it. But the amount, the pleasurable effect that they get
16 from substances is greater than the pleasurable effect
17 that adults get from the same substances. So it makes it
18 even more attractive.
19 Another factor that adolescents need to be
20 dealing with is hormone surges encourages people to do
21 novelty seeking and it also promotes social
22 competitiveness particularly among males. Testosterone,
23 adolescent boys are extraordinarily competitive with each
24 other and novelty seeking are both effects of
25 testosterone. That increases the peer kind of pressure

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that leads to more alcohol and drug use in teen-agers.

Q

When we were talking in preparation for this you were discussing with me a new research out of England about this topic. Can you get into some detail with the jury about that?

A

I think this is an extraordinarily interesting. Because of the brain technology, they can look at what parts of the brain light up when they're asking people to think about things. And when they ask teen-agers to think about something really benign, like going to the movies. And they ask adults to think about something benign, like going to the movies. The teen-age brain activates up the part that is as if they're going there. Whereas in the adult brain goes through a reasoning process and a part of the brain that does reasoning. When you take it out of the personal, when you ask them like, what are the consequences of it if it rains or some more still abstract, what if, that they use the same part of the brain. So something about an adolescent brain when they think about doing something, it's as if they are doing it. And it leads, again, I think to that greater impulsivity

toward action.

Q

I think we're getting near the end of the first mitigating factor you outlined in your conclusion. So bring it full around. What was the first mitigating factor in light of

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the testimony you just gave?

A

That the brain of an 18-year-old is far from developed. There are many, many factors in terms of the growth of the brain, in terms of how it hasn't yet developed. All this frontal part that are the things that make us more human than animal, the things about impulsiveness, abstraction, moral reasoning, processing emotions, thinking, cause and effect, weighing alternatives, all those things that we know teen-agers don't do very well. And that that's in part because their brain isn't ready to do that. That there are additional factors that effect them biologically like hormones and the effect of alcohol or drugs on their system that's different than the way that adults process it.

Q

And, Dr. Hutchinson, the testimony on this point is not and you're telling the jury is not that that's an, what you just talked about is an excuse for the crime that Mr. Eye committed, is it?

A

No. I think of the things that I'm trying to explain as reasons. I think that behavior makes sense. And when I

work with clinical clients I'm always trying to say, let's try and figure out how this happened, why this happened, because behavior does make sense. And if we can figure out the reasons then we can figure out what to do next. It doesn't excuse people but understanding the reasons for

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things makes it possible for things to change.

Q Now, let's go on. Your second one you outlined when you outlined our conclusions for us was at the time of the crime he was practicing what he had been taught by his family and his neighborhood. Let's start off with within the home. And the first topic that I think is that I would like to delve into with you is employment and the importance of role models within the house that are working?

A As I mentioned, I can do this sort of quickly, is that grandpa worked, grandma subsequently worked. Rick sold drugs. Joyce didn't work. Mike didn't work after he came back to town. What Gary told me was that in the neighborhood, adult children lived with their parents and it was only the old people that worked. There was not a norm that the generation of his parents and younger were involved in employment.

Q And, again, you have outlined it a couple times but just to bring it into focus on this point, what type of conclusions did you make or see when you were reviewing the record and talking to family members regarding the use of drugs and alcohol within the family?

A Grandpa abused drugs. All the siblings but Deborah abused drugs. Mom drank on a daily basis. Uncle Rick told me he had 6 DWIs and hadn't had a license in years. Uncle Mike

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died in an alcohol related event. Ashley, Krystle and Gary all told me that they saw their uncles, particularly Rick and his girlfriend Dina, regularly shoot up drugs. When I asked the adults they said, yeah, we were doing them but we never let the kids see them. Obviously, the kids were much smarter than that. As is often true in families, adults think they can keep things from the kids but they don't really.

Q When you have done other interviews in cases like this, is it common that the adults that are interviewed will perform or will respond differently regarding their drug use and how bad it was?

A One of the main characteristics of alcohol and drug abuse is denial. Any time somebody says how much they use, you sort of have a rule of thumb of double or triple it.

Q What about the violence specifically within the family? Was it wide spread?

A As near as I can tell everybody was violent. Grandfather abused grandmother. Grandfather and grandmother abused the kids. Krystle, Gary and Ashley all witnessed their uncles having physical fights in the front yard. One time an uncle and Deborah and grandmother got into some kind of fight and somebody spent the night in jail. The adults all abused the kids. It was common for people to hold grudges and not speak to one another for a year or more at

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a time. What I heard from them was that they all seemed to hold somebody else to a standard of conduct that they didn't meet themselves. I'm mad at them because they did that. But and when you say but you did it too. Didn't seem to make sense to them. That they were all minimally emotionally adult enough that blame was the way they operated. Krystle, Gary, Rick and Grandma all told me that when Joyce would come home so intoxicated some times they would kick her out of the house and she would stand outside and throw rocks and stones and so forth back at the house, screaming obscenities.

Deborah told me that one time she saw Joyce throw a punch and knock out an adult male. This was a family that did not practice any kind of problem solving.

It didn't practice any kind of let's pay attention to what somebody else might feel about something. The reports that I alluded to earlier about Joyce being so incredibly verbally abusive to her children when she was drunk. Gary being locked in the basement. Gary being locked in closets.

Q

Let's talk about that a little bit, specifically, what was your review and interviews tell you about the type of punishment that Gary personally received?

A

He was hit with paddles, was hit with a fly swatter. That he was whipped with sort of anything that was around up

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until the age of twelve. That it seemed to be just erratic which is in some ways the worst kind of punishment because it makes a kid, there's no sense of control. If you know that you're going to get in trouble if you spill your milk, then you can be really, really careful with your milk. But if you can get in trouble for one time and not the next time and then the next time you get in trouble for something completely different, it makes life feel so insecure, so unstable and so threatening.

Q So the violence was, I guess, random on Gary then?

A Yes.

Q What about neighborhood violence?

A Gary told me that as early as age 10 when he would go down to Independence Avenue to try to get his mom out of a bar, he would get propositioned by the prostitutes on the street. That drive-by shootings were common. And that under the age of 18 he knew six people who had been killed, two of whom were good friends of his, one in 2001, one in 2005. Both of these were young men that he knew. He said one of them was driving a car in a neighborhood he shouldn't have been in and got shot. And another one went to a liquor store where he shouldn't have been and got beat up and was killed.

Q Let's get into a little bit of detail regarding education. As education for a child the age that we've been

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describing regarding Gary, I suspect you would say is

pretty important?

A

Education is one way out for some kids.

Q

And on that note in a house as unstable as what you just testified to, can school itself be the only place where

a

child can get the structure he or she might need?

A I have lots of clinical clients who had the sort of the good luck to be bright enough that they could do well in school. That they often said, I never missed school.

I

went to school even if I was sick as could be because it was the only place that was sane in the world. But that isn't true for all kids. Gary started skipping school at such an early age. His mom had dropped out of school in the 9th grade but she started flunking actually in the 3rd grade. Her school records are after 3rd grade she was

sort of a minimal attender and minimally attentive. It doesn't seem that anybody made the effort to get Gary to school. To encourage him in school. To try and make that an alternative place for him. So by 6th grade he flunked 6th grade twice. He wasn't anywhere near 16 but he dropped out of school full-time at that point. He said when he was 8 and 9 that he often would skip school and go hang out in abandon houses with older kids who were runaways from foster homes. And by the time he was 12 and dropped out full-time, he was always on the

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street with 16 and 17-year-olds.

Q

Let's talk about the third topic which is, maybe you already touched on it is emotional development was severely hampered by the use of drugs beginning at age 7?

A The ego is what psychology calls it for the self is going to grow through just slightly stressful experiences. If the ego is not challenged, then we grow up with people who seem very childish and like everything should just go their way and they shouldn't ever have to do anything hard. And kids who grow up in families where they are asked to do things beyond their capability, the word parentified child. You know older kids who have to take care of younger kids. What they try to do is to cope. And they come up with what we call false personalities. There isn't anything, a core underneath it that supports it but they're pretending to try and get along. They pretend to be happy. They pretend to be competent. They pretend to be macho. They pretend to try and slide through. But underneath, it's all hollow. People in therapy, they talk about, you know, there's a black hole inside of me. There is absolutely nothing in there.

When you use drugs, you stop the emotional growing. When you're abused, the emotional growing stops. So the ages of Gary's abuse seem to get much worse around 10 or 12. It's not exactly clear how significant it was

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much earlier because of the erraticness of it. But we know at age 10 or 11 he began using drugs on a regular basis. His Uncle Rick gave him marijuana some time around age 7 or 8. He began using marijuana on a regular basis at age 10 or 11. What that means is that he started using marijuana as his coping mechanism. He stopped growing up from the inside. He started using drugs to get by.

When he was 10, he was smoking marijuana and

cigarettes on a regular basis. By the time he was 13 he

was a regular user of crack and cocaine. He said that

cocaine made him feel numb and made him feel like a tough

guy and it made him forget all the things that he didn't

want to remember.

Q

What age was he telling you that he remembered experiences of those?

A Age 13. And this is 13 is like a junior high student. So if you think about kids that you know that are like 13, they're still kids. And he was saying it made me feel like a tough guy and it made me, helped me forget the things I didn't want to remember.

By age 14 he was selling and sharing the profits

with his mother.

By age 14 we know that he would have almost completely lost his ability to process emotions. His drug use was so substantial.

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By age 15 he was using cocaine and selling PCP.

By 16 he was using PCP and selling meth.

And by 17 he was using meth. He was buying needles from his mother who was a diabetic. He said he would give her 15 or \$20, she would give him a hundred needles. He said that he used to think of himself as a kind person who was willing to help somebody. But on meth he was paranoid, aggressive. His family said that he would come home skin and bones, sleep for a couple days then go out again. Because meth makes you aggressive, it makes you mean. It makes you wide awake. You get into sleep deprivation. He was a very, very ill teenager.

Q Let's talk about that for a second. I think at the outset of this particular topic you were talking about ego development and things of that nature. And you're just discussing fairly rampant drug usage around, I think you just testified 12, 13 years of age, he's into some, I guess professionally you consider it some fairly hard narcotics?

A Yes.

Q In the 7 to 12 age range and then on a little bit older, explain how that kind of couples in with the development that you were just talking about with the ego development?

A Well, every age has sort of the things that you're suppose to learn. When you're 7 to 12, the things that you should

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be learning are industry or initiative. And this has to come on the foundation of the things that you were suppose to learn under the age of 7. By the age of 1, you're suppose to learn trust. The ages of 2 to 3, you're suppose to learn autonomy. And ages 3 to 6, you're suppose to learn initiative. If you don't learn trust, you learn distrust. If you don't learn autonomy, you learn shame and guilt.

Q

Let me interrupt you there. As applies to Gary's life in his house, the drug usage he was experiencing, where does he fall in those on trust versus distrust and autonomy versus non-autonomy?

A

I interviewed a lot of criminal defendants and Gary is one of the least trusting ones, initially, that I have ever met. He didn't trust his lawyers. He didn't trust me. He didn't trust the mitigation specialist. He didn't trust his family. He didn't trust anybody. At one point he asked me, he said I've always had the idea it was me against the world. He said, I've never thought it was anything other than that. There wasn't anybody until his wife Stephanie that he felt like he could really trust that would consistently be there.

Q

All right. Are answers like that something you might expect, given the history that you knew going into the meetings with Mr. Eye?

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A I knew them but they're always still just chilling. When, I mean, lots and lots of my therapy clients have sexual abuse and childhood abuse. And, I mean, I work with them a long time to get to the point of trust. But the kind of distrust that he had was still marked to me. In terms of the situation that he was in, his need to trust, but his just absolute incapability to get himself to that place.

Q Is this kind of childhood development trauma that you've just been testifying about, found in diagnostic literature that you review on a regular basis in your field?

A It is.

Q Maybe you can explain to the jury what that literature is talking about these days?

A Well, back like 20 years ago, what we started doing was labeling children who were abused in childhood with post traumatic stress disorder. The same kind of diagnosis that we gave to survivors of the Hyatt crash or war or car crashes.

As we have continued to explore and study the effects of sustained abuse, the effect of sustained trauma at a very early age we see that it really is different than post traumatic stress disorder. That a new diagnosis is being proposed called the developmental trauma disorder. It's recent publications in the American Psychiatric Association and the American Psychological

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Association. It will most likely be in the newest edition of diagnoses. And it's for children who grow up in families where there's neglect, violence and where they were afraid. The research indicates that their biology and their brains are just plain different than kids who didn't grow up there. Their adrenal system reacts differently to the fight or flight response than anybody else. The kind of ways that they think and feel are different than the way other people feel. That when their caregivers have been absent, inconsistent, frustrating, violent, intrusive, neglectful, that those little kids are stressed past an ability to cope. They can't find ways to grow up fast enough to take care of what life is dishing out to them.

Q

Doctor, do you see some of those things in Gary Eye as you review the record and the literature?

A

I certainly did. That these are kids who are anxious, they're angry. They engage in self defeating aggression. They have extremely poor impulse control. They have, the list is an inability to control emotions, disturbed attachments that is their interpersonal relationships.

They have rapid regression to childhood states. They have aggression against others. They seem to lack the ability to control their eating, their sleeping, their basic self care habits. They have a lack of understanding of what

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things are dangerous in the world. And they have chronic feelings of ineffectiveness in the world.

Q Those are things that you saw in Gary?

A I certainly did.

Q Let's move to mitigation topic four for some discussion, please. I think we talked about it as development was hampered by neglect and violence in the home?

A Yes. I'm going to need some more water.

The harm that comes is not only what it does to the person in terms of how their biology and how their brain develops differently. It's also how do they learn to problem solve, how do they learn to respond emotionally. And that we learn those things by watching our parents, our mom and our aunt, by watching our grandparents. That if they get into trouble that they some how work it out. We watch our mom and dad have an argument and still love each other. We watch people get angry and express anger and still love each other. And that those kind of repetitive experiences in a home teach a child that emotions count, relationships count, things can be solved without hitting and without shooting guns. And if you don't have a home, you don't have a neighborhood that teaches problem solving, that you're a valuable person I will listen to you, then you never know that about yourself. And you never know that about

1 anybody else either. By learning, by seeing older
2 siblings, by seeing our parents fail and try again, we get
3 the idea that we could fail and try again. We get the
4 idea about persistence and about having commitment,
5 initiative to fight in the world.

6 Q And when you talk about this, the spectrum of age of a
7 child and is there a time that that child, if Gary has
8 seen it his whole life, is there a turning point where he
9 should know different, right from wrong, or be able to
10 acknowledge that? Or has it already become a pattern in
11 his mind?

12 MR. GIBSON: Objection. May we approach?

13 THE COURT: Step up.

14 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
15 PROCEEDINGS WERE HAD:)

16 MR. GIBSON: I assume Mr. Sandage is not about to
17 introduce an insanity defense that Mr. Eye can't appreciate
18 right from wrong under the McNaughton rule.

19 THE COURT: It's a little late for insanity.

20 MR. SANDAGE: No. I wasn't going to follow--motion,
2 Judge. I was just going to ask her on most of their
2 cross-examination they keep talking about he should know the
2 difference between, he could make choices. I'm just going to
2 ask her if a pattern of choices had already been made for him
2 at age 2 when he started seeing these things.

1 MR. GIBSON: He specifically referenced whether
2 Mr. Eye knows right from wrong which is the test for insanity
3 that has not been pled.

4 MR. SANDAGE: I understand what you're saying. I'll
5 rephrase the question. That's the problem here. I apologize
6 to the government. I don't think the testimony -

7 THE COURT: That's okay. We needed an objection to
8 keep everyone alert. Rephrase it, please.

9 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

10 BY MR. SANDAGE:

11 Q Thank you, Doctor. Explain to the jury if Gary had seen
12 this from an early age, can he break out of it or how hard
13 is it to break out of it?

14 A Well, you know, obviously, human beings are very complex
15 organisms. There are, we have a lot of things we start
16 off with biologically. There are things that happen to us
17 under the age of 3 that are very significant in forming
18 our ideas about trust and world and relationships. The
19 things that happen to us in adolescence set a strong
20 course for our peer groups and whether we're going to find
2 an outlet outside of the home. There are things that can
2 occur in the life of a child where, you know, sort of like
2 a left turn can get made. It seems that some kids seem to
2 have the ability to take some of those left turns. There
2 are some things like being a female is one of the things

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that helps. Being really smart is one of the things that helps. Being, having some really good skill, whether it's sports or car racing or Boy Scouts or something that you just really get into can help turn a kid, a big brother, something that can sort of direct you if you get off the course. If those kinds of things don't happen, then it's a stone rolling downhill.

Q You didn't see those types of things happening in Gary's life?

A I didn't.

Q Let's briefly talk about his mom and the mothering that he received and the importance of mothering and the maturity of an individual of a child?

A Well, the parenting that a child receives is the primary factor in whether juvenile delinquency will develop. The number one factor. Gary's mom was intellectually compromised. She abused alcohol. She appeared to me to be very emotionally compromised. That's the report of her sister. Her mom said I used to get mad at her and tell her not to take off but she did it any way. That she was gone 10 out of 30 days on average. That Deborah made the statement I love her but she should never have been a mom. Joyce expressed to me that at a very early age, like 3, she found Gary unmanageable. What that says to me is that she didn't have the parenting skills to manage a

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3-year-old. And I don't know whether any of you ever have had an unmanageable 3-year-old but if you have, what they do is they teach you how to be a parent. You don't do therapy with a 3-year-old. You do therapy with the parents to teach them how to be parents. Because that's how you change a 3-year-old. You provide consistently loving reliable parenting and 3-year-olds will change.

Q On the parenting front, you reviewed, you had a chance to review his medical records, right?

A Yes.

Q What conclusions did you make regarding how --his mother's parenting relationship to medical issues?

A Gary was taken to the emergency room on the average of about once a month for the first six years of his life.

Some of them were asthma related. But some of them were what I would claim must have been lack of supervision.

That he was at age one-and-a-half he was trying to climb a dog and ride it and got bit in the face. And then

subsequently it abscessed because of lack of appropriate medical treatment. When he was about 3, he had eaten a

black ant that they had to get out of the back of his

throat. He had ingested toilet bowl cleaner at about age

2. He fell out of a swing that he was swinging out over

the top of a car and landed on the car. So it seemed as

if it was medical, a lot of medical issues, these were all

emergency room visits, based on lack of supervision. What his grandmother told me was that Gary had a number of respiratory problems but his mother wouldn't take him to doctor, wouldn't take him to the doctor, wouldn't take him to doctor, then finally when he would become so terribly sick, she would take him to the emergency room. So he, at an early age, unlikely was receiving competent medical care for some respiratory difficulties.

Q Let's go ahead and move to mitigation topic No. 5, Doctor. I think you labeled that emotional development and how it interacts with school. I think we touched on that. But what was your review of the school records and how he did in school and things of that nature?

A As I indicated he had decent grades like grades 1 through 4. But his achievement tests for those same periods were very low percentiles. So whether he had attention and concentration problems that he couldn't take the tests, or whether he was getting by first through fourth grade because he was a nice little boy, I'm not sure. But he had decent grades first through fourth grade. But he wasn't learning, at least he couldn't show he was learning.

Q What were his attendance records like?

A I don't know that I, I can't recall attendance records

under fifth grade. But I know by fifth grade he was skipping 50 percent of the time. I remember that there were a substantial number but I don't have that in my head. I apologize.

Q When you discussed the issue of skipping school at the fifth grade and above, and you talked to his family about that, what was their reaction why he was skipping school, things of that nature?

A They said we couldn't make him.

Q How old is someone when they're in the 5th grade.

A Ten, eleven.

Q And at some point he dropped out?

A Yes. He dropped out after he flunked 6th grade twice but he had only been attending 50 percent of the time during those years.

Q You also reviewed some medical records from around March of 2005, is that right?

A Yes.

Q That leads us to your 6th topic you listed which is he was very ill at the time of the crime. Can you tell the ladies and gentlemen of the jury what medical condition he was suffering from?

A Yes. March 3, he was diagnosed with acute pneumonia, bronchitis and influenza. He left the medical facility. He was given a shot of morphine which evidently was for

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1 pain. And he was given a shot of an antibiotic and given

2 three different prescriptions that he was suppose to take

3 for an antibiotic, an inhaler and I forget the third.

4 MR. SANDAGE: May I approach the witness, Your Honor?

5 THE COURT: You may.

6 BY MR. SANDAGE:

7 Q I'm going to show you what has been previously marked

8 Defendant Eye Exhibit 62?

9 A I just remembered.

10 Q Are those, I'll just have you, I'm here while you review

11 those records. Are those the records you're talking

12 about?

13 A Yeah.

14 Q From North Kansas City Hospital?

15 A Yes.

16 Q What are the dates of those records?

17 A March 3 but I'm having trouble finding it on here.

18 MR. SANDAGE: Your Honor, I would ask for admission

19 of Defendant's Exhibit 62.

20 THE COURT: Without objection.

2 MR. GIBSON: No objection.

2 THE COURT: 62 is admitted.

2 THE WITNESS: Those medical records said that he had

2 been sick for about ten days but he had been home sick for a

2 couple days. That he had complete air flow wheezing, sore

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1 throat, ear ache, sweats, chills. And he was given a bronchial
2 dilator, antibiotic and prednisone which is to fight the
3 inflammation in his lungs. He said that he went back home but
4 that he, well, first, he couldn't get the medicine for two days
5 because nobody in his family had the \$200 that it took to buy
6 the medicine. So he didn't start on it for two more days which
7 would have been the 5th. And that he felt as sick as he had
8 ever felt in his whole life. But that he sort of in
9 18-year-old wisdom said, I felt so bad I had to take more
10 drugs.

11 Q I think it's important to reiterate that this illness is,
12 again, not an excuse or justification for the crime that
13 Mr. Eye committed, is that right?

14 A Of course not.

15 Q But as it relates to since it's so close in time to
16 March 9th of 2005, what type of impact can that type of
17 illness have on the body and the mind?

18 A Well, the body and mind are pretty well hard wired
19 together. And when the body is under stress, the mind is
20 under stress. When we're likely, at least most people I
2 know when they're really sick, they're more irritable.

2 They have trouble making good choices. They are more
2 likely to yell at somebody they love. They do even more
2 stupid things than they might do at some other time.

2 Q You have interviewed Mr. Eye while he's been incarcerated

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awaiting trial in this case, is that right?

A Yes, I have.

Q And that leads us to I think your seventh topic of mitigating circumstances which is how he's grown up now?

A Yes.

Q And the changes that you have personally seen in him as you evaluated him over the last year, year and a half?

A Yes.

Q And what changes have you seen?

A Well, the first time that I met with him I found him a pretty tough kid to like. He was angry. He kind of blew off the seriousness of this. He was just a real tough kid. He didn't give much. He, there --you couldn't make a connection with him. And I had read his records so I knew that that was a defensive position against a hurt and pain and fear. But I was unable to make any sort of inroads into that.

By the second interview which was like six months later and the next one which was another month later than that, I began to find a guy that was really different. This past March he was expressing regret for the difficulty that he had caused his family and the difficulty that he had caused to his wife. He expressed regret for the car thieving kind of things that he did as a teenager. He very sincerely was saying he said, I just

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don't get why I'm so angry. Can you help me at all with trying to not be so angry? I don't know why I'm so angry. But I always have been.

It wasn't my role to provide that kind of

assistance to him but it was a very different young man

than I had known before.

He went on to explain that he had never trusted

anybody in his life, particularly women. He said, women

will take your heart and your money and your kids and

there's just absolutely no way to defend yourself against

them. And that Stephanie, his wife, has been the

beginning of a change for him. That she has stuck with him. They were platonic friends, had been since childhood. Her dad and Gary's uncle used to do drugs together. They played together on Saturday afternoon while the adults were shooting up. And she had always been a friend to him. And over the time since this incarceration she said and he said, we both realized that we had very strong love feelings for each other. And he is beginning to trust and believe that someone can stay there and be there and always be there and that love can last. And that he doesn't have to worry as much as he's always worried that she will leave him.

Q

And that process, as you talked to him, also matured right in the beginning even though they were together, they had

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problems?

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What I understood was that during his initial incarcerations that he lashed out at her, that he lashed out at his attorneys on some regular basis. He didn't lash out at me but he certainly wasn't very friendly. But that he was very, very frustrated. Very, very unaccustomed to not being able to have some kind of control over his life. And he had a really hard time kind of getting up next to, I have just got to learn how to do this. And he said that in 2006 he made a commitment to move in that direction. He said he still fails some times. That he will get angry at his wife on the phone when he gets scared that she's going to leave him. But that largely, and she confirmed this too, but the tone of their conversations has changed differently, substantially. And that he is beginning to mature. He's beginning to get some of that change in aggression, change in impulse control, some of that frontal lobe stuff that I talked about at the very beginning.

Q

And you think that's just a part of a passage of time as he's getting more mature that's happening?

A

Well, that's certainly the passage of time. He's also been sober for the first time since he was eleven. His incarcerations were usually a matter of months, not --so he's been sober for three years. And he had never been

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sober since eleven years old. So he's got some catching up to do. And, fortunately, you grow up faster than just the chronological years. It doesn't take the same number of years to do it once you're older. But he's catching up to a more appropriate 21-year-old.

Q Has the environment he's in now provided any benefit or draw back to how he's developed?

A Certainly he initially had difficulty with the structure.

He was angry when he was changed from Jackson County to the CCA and I think that took him awhile to work through that. But he seems to be doing very well there now.

Q We covered, I'll wrap it up here in just a few more minutes, Doctor. We covered a lot of topics and you discussed with us a lot of research that you have done in preparing for today's testimony. Did you kind of find doing research something that drew all this together for us?

A Yes.

Q And where did you find that outline at?

A The Office of Juvenile Justice and Delinquency Prevention out of the federal government has a list of what they call risk and protective factors of child delinquency. And the purpose of this is to try and give communities places to intervene so that children at risk might be able to take that left turn that I talked about earlier.

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Q And in a fairly short manner we'll try to go through the ones that are listed on the literature that you received.

I think the first one is individual factors talking about early anti-social behavior and it talks about arrests at the age of 13?

A Yes. What this list does is list under individual, family, community, school, factors that the more of these you have, the more likely you are to develop delinquency. Under childhood factors the very first one that is listed in that section is called early anti-social behavior and the three sub-categories are arrest before the age of 13, troublesome behavior age 8 to 10 and behavior problems age 3 to 5.

Q How would Gary fall into those three categories?

A He has a yes on all three of them.

Q And what about the emotional factors?

A Under the emotional factors it's not learning to express anger under the age of 5.

Q Where would he fall in there?

A Yes.

Q What about the next one?

A High behavioral activation impulsive --or hyperactive.

Q Can you answer that one way or another?

A I put a maybe on that because no one diagnosed him as hyperactive or impulsive but certainly the family

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descriptions of him were, so I said maybe.

Q Next is impulsive behavior at the age of 12 or 13?

A Again I put a maybe because I don't have a documentation of that. There certainly are antidotal reports of.

Whether it was consistent I'm not sure. So.

Q And then it talks about poor cognitive development and says lower verbal skills or poor academic achievement, what did you classify him there?

A Definitely, yes.

Q And then the second topic under that was mild neuropsychological deficits that impact language, aggression, attention, hyperactivity and oppositional behavior. Do you have an answer for that?

A Well, he certainly had many of those descriptors whether they can be traced to mild neurological deficits, he didn't have any neuropsych testing done at that time so I can't tell. Since he has so many of them, there is certainly a likelihood that there was some kind of damage that may have come from prenatal conditions.

Q And hyperactivity, restless, squirming, fidgety children in kindergarten and predictable delinquency?

A Again, family reports of that. No school diagnosis per se of ADHD.

Q Then it goes on to discuss family factors. Under the parenting topic it talks about that there was a high level

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of parenting conflict. Did you find that?

A Yes. That in, I mentioned earlier, inadequate parenting is the strongest predictor of early anti-social behavior.

And parenting conflict, poor monitoring behavior and low level of positive involvement. I had yes on all three of those so in all three areas of parenting, he had all three risk factors.

Q Then under maltreatment, abused children often offend more frequently and at a younger age. And how did you classify Gary there?

A Yes.

Q And family violence, we discussed that at length. Did he witness violence?

A Yes.

Q Did he experience the violence?

A Yes.

Q What about alcohol abuse and incarceration?

A Yes.

Q He witnessed both, right?

A Yes.

Q Maternal psychological distress therefore unavailable to children?

A Yes.

Q And it says maternal psychological, what are they

referring to there?

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A His mother.

Q What about divorce?

A Yes.

Q More likely to have anti-social course if non-compliance behavior before the age of 10. He talks about some topics under there. Can you go into that a little bit?

A Yes. The children of divorce and, again, you're looking at the total of things but that's another one of the factors that leads to more delinquency when you couple them with all of these other problems.

Q And the family anti-social behaviors, anti-social parents have increased levels of family conflict or poor supervision, more family breakdown and direct more hostility to their children?

A Yes.

Q Was that attributable to Gary's case?

A Yes.

Q Another factor they list was teen-age parenthood, being born to a teenage parent predicts adolescent delinquency. Does that exist here?

A No.

Q And, finally, near the end, family structure, single parent home increases risk. Was that true here?

A It was yes and a no. He was raised in some ways by a single mom but it wasn't in a single parent household.

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But nobody had real authority. So it was a yes and a no.

Q The greater number of children, the greater risk of delinquency. Two children wouldn't indicate that, would you think?

A No.

Q Association with peers, bad peer influence, non-delinquent juveniles become delinquent. Is that a fair statement in this case?

A Yes. Gary began hanging out with much older kids at a very young age when he was skipping school.

Q When he was young he was hanging out with older kids, bad role models?

A Yes.

Q Peer rejection?

A Yes.

Q And what made you make that conclusion?

A Gary was obese as a child. He said that there often wasn't family cooked meals, that they got government supplements. They ate fast food. They stole from mom when she would come home drunk. They would go out to Taco Bell. So he had an obesity problem up until early adolescence and that he had a lot of teasing and rejection from that. Kids who have that kind are --often grow up to be suspicious. They don't make good peer relationships. So they have fewer positive options. Then

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that linked them to join more deviant groups.

Q The final major topic under the Department of Justice list for delinquency is school and community risk factors.

Under school it says failure to bond at school leads to delinquency. How would Gary fall in that category?

A Obviously, he didn't take to school.

Q Poor school performance increases every measure of delinquency even when control for IQ and attention problems exist?

A He had very poor school performance.

Q Poor achievement of bonding to school are related to or predict plans for school?

A Yes. He had no inclination that he would ever go on to school. That was of no interest to him.

Q Community factors. Poor and disadvantaged families?

A Yes.

Q Disadvantaged neighborhood, development of anti-social behavior?

A Yes.

Q And disorganized neighborhoods increase anti-social behavior. Was his neighborhood disorganized by your review of the records and talking to people?

A Yes.

Q All of these decreases residents willingness to intervene with unlawful children?

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A I don't know about that.

Q Neighborhood can expose you to norms favoring crime?

A Yes.

Q Did you see that in this case?

A I did.

Q And access to weapons increase violence. Was that in this case as well?

A Yes. Gary told me he started carrying a gun when he was 12.

Q Going over that, can you, how many yeses, maybes or nos did you come to?

A I think that there were 26 yeses, 5 maybes and 3 nos. I'm not sure exactly. That's awfully close.

Q At the very beginning of the testimony you listed several things that you thought warranted mitigating circumstances in this case and you talked for some time about those.

And the conclusions you made and testified to were based upon everything you talked about today?

A Yes.

Q You feel those are warranted in this case based upon your review of the file, interview with witnesses and interview with Mr. Eye, is that right?

A I certainly do.

Q And based upon your experience and your work in this field?

1 A Yes.

2 Q Thank you.

3 Nothing further.

4 THE COURT: Let's go ahead and take our afternoon

5 break. We'll take about 15 minutes. Please don't discuss the

6 case. Keep an open mind. We'll see you back here at about

7 3:25.

8 (The following proceedings were had OUT OF THE

9 PRESENCE AND HEARING OF THE JURY:)

10 THE COURT: We'll be in recess.

11 (Recess)

12 (The following proceedings were had OUT OF THE

13 PRESENCE AND HEARING OF THE JURY:)

14 THE COURT: Are we ready, folks?

15 All right. Let's bring in the jury.

16 (The following proceedings were had IN THE PRESENCE

17 AND HEARING OF THE JURY:)

18 THE COURT: You may be seated.

19 Mr. Gibson.

20 MR. GIBSON: Thank you.

2 CROSS-EXAMINATION

2 BY MR. GIBSON:

2 Q Good afternoon, Doctor.

2 A Good afternoon, Mr. Gibson.

2 Q Doctor, what is your billable rate for this case?

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A My, I have a special rate for state agencies and which is \$150 for travel, \$170 for evaluations and consultation and work and research and 225 for testimony.

Q 225 for the day or is that per hour?

A Per hour.

Q Per hour?

A Yeah.

Q What time did we start the clock this morning?

A I think I got here about 10.

Q Took your seat in the courtroom back here?

A Yes, sir.

Q Listened to the testimony, correct?

A Yes, sir.

Q And started billing for that, correct?

A Yes, sir.

Q Now, you would agree with me, would you not, that this is not Jackson County Family Court, correct?

A Doesn't look like it.

Q No, it doesn't, ma'am. And this is, in fact, not the juvenile delinquency proceeding, is it?

A Of course not.

Q In fact, although for the last two hours give or take we've been referring to Gary Eye as a child, you would agree with me, would you not, that this individual seated right over here is a man, is that correct?

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A Yes.

Q In fact, he's age 20 plus as he's sitting there today, correct?

A Now, yes.

Q You would also agree with me, would you not, that an individual who commits a crime at age 17 in the State of Missouri is considered an adult? Is that not correct?

A I think at 17 they still have to be certified as an adult.

Q I think you better check that, ma'am.

A Well, I will if it ever comes up.

Q In fact, with respect to certification, you're aware that this individual here was certified while he was still considered legally a juvenile, is that not correct?

A That's correct. Actually the thing that I was confusing there for a moment is that 18 you can't be considered for the death penalty under the age of 18. So I wasn't clear in my delivery on that.

Q Understood.

Now, you indicated that you have reviewed among other things his juvenile history. Is that fair to say?

A Some of it.

Q Some of it?

A Yeah.

Q So you're aware at one point he was placed on probation, correct.

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A Yes.

Q You're aware that that didn't work so he was then placed on intensive probation, correct?

A Yes.

Q You're aware that didn't work either. And so that after that he was sent to McCune Home for Boys, correct?

A Correct.

Q Now, while we were talking earlier, while you were talking with Mr. Sandage I believe you indicated that the first time that this individual has been sober in his life is since he was incarcerated on this case. Is that what you told us?

A I think I said for over a year.

Q For over a year. Because, of course, they weren't giving him drugs at the McCune Home for Boys?

A No. He was there for nine months or less, I think.

Q And they weren't giving him drugs at Bowling Green either, right?

A No.

Q And despite those experiences, he continued to use drugs after he got out, isn't that correct?

A Always.

Q Now, how many reports did you prepare for this case, ma'am?

A Two. I did an affidavit about age and I did a report of

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mitigating factors.

Q Well, specifically, I am inquiring as to your report about mitigating factors. There is only one of those, correct?

A That's correct.

Q Like you to take a look at Government's Exhibit 316, please, for identification purposes, if you would?

A Yes.

Q Do you recognize that?

A Yes.

Q Is that your signature on the back?

A Yes.

Q Now, this is a copy of the report that you prepared for this case, correct?

A It is.

Q Now, when you were talking with Mr. Sandage I believe you indicated that you spent eleven and a half hours with Mr. Eye. Is that what you told us?

A Yes.

Q Your report reflects 10.8 hours, does it not?

A Yes.

Q Did we spend some extra time after the report was generated?

A No. I re-added it up last night. I apparently had made an error on my addition of the 10.8.

Q Looks like you made another error on the time you spent

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with the family as well because I believe you told us today it was 17 hours?

A I did spend time with family after this report was generated.

Q But you didn't generate any additional addendums or additional explanations or any other reports, is that correct?

A No opinions had been changed at that point.

Q No opinions had been changed?

A Right. It was additional documentation of specific events.

Q Now, with respect to the juvenile history that you reviewed for Mr. Eye, by any chance did you happen to speak to his juvenile probation officer?

A I did not.

Q Do you think that perhaps that might have been of some assistance to you in preparing your testimony or in evaluating Mr. Eye?

A Had I been testifying in the original phase one, it would certainly have been part of it. I didn't see that it was germane for this part 2.

Q Now, you testified as to Mr. Eye's development but you didn't think it would be germane to speak to a probation officer who had worked with him? Is that what I understood you to just say?

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A What I testified to about his development was what is appropriate development and what I knew of his behaviors during those particular time periods, yes.

Q Well, for example, in talking about Mr. Eye and his development I noticed you use very general terms. Specifically, as it relates to brain development. Do you recall that testimony?

A Mostly.

Q Well, you're not under a psychiatrist, correct?

A Not under?

Q I said you're not a neuropsychiatrist, correct?

A No, I'm certainly not.

Q And you don't hold yourself out to be a neuropsychologist, do you?

A No.

Q For the ladies and gentlemen of the jury, can you explain to them what a neuropsychiatrist is?

A Well, a neuropsychiatrist would be a psychiatrist which means that the person is a medical doctor, they've gone through full medical school so they know how to birth babies and set broken legs and so forth and then they specialize in the neurology of the brain.

Q And distinguish that, please, from a neuropsychologist?

A A psychologist is a person who goes to a university for four to five years post undergraduate and specializes in a

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field of psychology. And a person who is a neuropsychologist is trained to administer neurological tests.

Q Neurological testing meaning the brain and the nervous system, correct?

A That's correct.

Q Although you spent a great deal of time talking to us about the development of the brain, am I correct in saying that not one neurological test was administered to this individual over there?

A I saw no need for that, no.

Q You saw no need for that?

A No. Because the kind of issues that I was describing in terms of brain growth are not issues that you test. They are about the development of the human brain in time.

Q Generally?

A Yes.

Q Based on the literature that you've read?

A Yes.

Q Based on studies of individuals other than the defendant sitting over here at the counsel table, correct?

A Correct.

Q You didn't have an MRI in front of you, correct?

A Correct.

Q Didn't ask for an MRI?

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A No, not specifically. No.

Q And nothing in the medical records that you obtained or reviewed indicated there was any kind of that type of testing, correct?

A Correct.

Q Now, in reference to the medical records that you did review, I suspect you were perhaps or perhaps Mr. Sandage was looking for some evidence of brain injury or head trauma or something to that effect. Would that be fair to say?

A I'm not sure what he looked for. That would always be in my assessment to see whether there would be specific brain trauma, yes.

Q Absolutely. And in the hundreds of pages of medical records that you reviewed, that I'll mark as Government's Exhibit 314, you didn't find any head trauma, neurological injury, brain damage, correct?

A That's correct which is why I didn't testify to any neurological brain trauma or damage.

Q Just paint it with a really broad brush as to the development of the human brain?

A Painted with some really specific research about at what age does the brain develop.

Q And then you are asking us to apply this to this individual in the absence of any raw data or any concrete

1 testing of any kind, isn't that correct?

2 A I think it's generic enough that it is applicable to all
3 humans.

4 Q Now, you also indicated that with respect to the emergency
5 room visits where the records you reviewed and -

6 Your Honor, by the way, I would at this time
7 seek to admit, collectively, Government's Exhibit 314
8 which are the medical records involved that I just passed
9 up to the doctor.

10 MR. SANDAGE: No objection, Your Honor.

11 THE COURT: 314 is admitted.

12 MR. GIBSON: With the exception, for clarification of
13 the record, I did not include medical records from March 3 of
14 2005 in what I just passed up.

15 THE COURT: Record will reflect that 314,
16 Government's Exhibit 314 does not include the medical records
17 from North Kansas City Hospital on March 3, 2005.

18 BY MR. GIBSON:

19 Q Now, in all of the medical records that you reviewed, or
20 at least that's in front of you there, the defendant's
21 mother took him to the emergency room, isn't that correct?

22 A That's correct.

23 Q And you would agree with me, would you not, that this
24 family was of modest means?

25 A Yes.

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Q And, in fact, had no discernable health insurance that we're aware of, is that fair to say?

A That's correct.

Q And so is it possible or conceivable that like a lot of families in that circumstance, rather than having a pediatrician they sought medical care that was available?

A I understood that they also had a pediatrician that they some times saw. What I was told by the grandmother was that Joyce didn't typically take him to the doctor at a time in a timely way and so they would end up in the emergency room.

Q You were told that Joyce wouldn't take him in a timely way and yet mom is the one who takes him every single time?

A Yes. She would be the only one with legal authority to take him to the emergency room.

Q And there is nothing in those medical records to indicate any serious injury of any kind, is that correct?

A No.

Q Is a dog bite, you talked about that?

A Dog bite to the face that left some nerve damage.

Q And I believe some difficulty breathing, perhaps associated with asthma?

A Correct.

Q And various symptoms of flus and colds and ear aches and so forth?

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A Some of it was.

Q And to your knowledge Joyce Eye was never arrested for neglect or abuse, was she?

A Not to my knowledge.

Q Now, with respect to the probation officer, well, let me ask you this way. When you talked to the family, or you talk to this defendant, you are relying on them to provide you accurate information, is that correct?

A On one level to which I then compare it to the reports of other family members and reports of other documents.

Q And you would look at the other documents out of concern that perhaps the information you're being provided is either self serving or inaccurate, correct?

A Some times.

Q You would want to verify that and you would want to check that, make sure what you're being told is consistent with what actually happened to the best that you can, right?

A Sure.

Q And so if Joyce Eye had appeared in Family Court and indicated that her son's educational problems, main problems in school surrounded his numerous absences. That she would take him to school and he would leave the facility without her knowledge. That I would like him to return to school in order to earn his high school diploma. And she hoped her son would be able to attend Van Horn

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High School. If she said that to the Family Court during one of his many proceedings, that's the type of information you would want to have in order to evaluate what he's telling you, isn't it?

A I would also juxtapose that to the very first time he was at court, age 13, his mother didn't show up. And there were several court proceedings in which his mother and there was no family member there. So the fact that she said that at that time may or may not have had a lot of credibility to me.

Q And yet the system was there to pick up the pieces, is that not correct? He had a probation officer. We already discussed that, right?

A Yes.

Q And so if his probation officer had reported to the court at his certification hearing on May 13 of 2002 that Gary has a long history of defying authority. He runs from them and fights police officers. He did not show up for appointments when the court first attempted to intervene. Eye is sophisticated and mature for his age.

Would that be information that would have been helpful to you in evaluating what you were being told by Mr. Eye and his family members?

A Well, I would take that into consideration. None of that is a surprise to me. None of that contradicts what I

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believe would be the position of a parole officer. It certainly is indicative of the same behavior that he told me that he did, which is that he did run. That he didn't go to school. That he had a great deal of trouble submitting to authority. That he was angry when people told him what to do.

Q So his probation officer's observation, that is he is, quote, sophisticated and mature for his age, that is consistent with what you've been explaining to us this morning?

A In some ways it would be. I think that as I have explained that when children are subjected to trauma that is greater than what they can handle, they develop what psychology calls an as-if-personality where they pretend to be and I used his macho and bravado as an example of the as-if-personality that I saw in Gary.

Q Now, are you familiar with the term amenable as it relates to the juvenile system?

A I'm not sure that I understand, no.

Q You've never heard that term used?

A I'm not sure that I recall it right now.

Q Have you ever appeared in juvenile court, either before or on behalf of the juvenile delinquent or on behalf of the prosecution in a delinquency proceeding?

A I have.

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Q You have?

A Yes.

Q In a delinquency proceeding?

A Yes.

Q Do you have any reason to disagree with me that the term amenable refers to whether or not the defendant can be rehabilitated within the confines of the juvenile system?

A That sounds right.

Q That sound correct. So if the probation officer observed in May of 2002 that this defendant is not amenable to any program available to the juvenile officer, that he is dangerous and the community needs to be protected from him, would that have been information that would have been of use to you in rendering your opinions and conclusions today?

A That would be consistent with how I would have seen him at that time.

Q As dangerous and that the community needs to be protected from him, that's how you would have viewed Mr. Eye in 2002?

A Probably.

Q Now, you don't have any reason to disagree with me that Ms. Eye told the Family Court that she did not approve of any of her son's associates that, quote, they keep coming back after I tell them not to. That Vincent Deleon won't

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leave my son alone. He steals cars and smokes pot. You don't have any reason to disagree with that, do you?

A No. I think all that happened.

Q All that happened.

Now, let's talk about the family and the neighborhood for a little bit. And let's start with Krystle Eye, if we might. Krystle Eye is who in relation to the defendant?

A Older sister.

Q Older sister. And Krystle Eye grew up in the same household, correct?

A Technically speaking.

Q Technically speaking. Well, it's where her bed was, right?

A Yes, she had a bedroom.

Q She had a bedroom. It's where her mother lived, right?

A Part-time.

Q Part-time. It's where her grandmother lived?

A Yes.

Q Okay. And that's where Gary spent most of his time growing up, correct? When he's not, excuse me, incarcerated or being taken off the street by juvenile authorities?

A Actually what he told me was that he spent about 20 percent of the time at home, 40 percent of the time

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living with friends and 40 percent of the time on the street. So he didn't have a bedroom at home. So it wasn't exactly the same home that he grew up in.

Q Well, if he's spending it on the street, you would agree with me, would you not, that that is a choice on the part of Mr. Eye?

A Not in the way that you're using the word choice, no, I don't agree.

Q Somebody put a gun to his head and told him to get out of the house?

A Those are not the only kinds of choices that humans are faced with.

Q You would agree with me, ma'am, would you not, that to the degree that Mr. Eye, and whatever degree that might be, chose to be on the street, that would have been a bad decision on his part, right?

A I agree that he was on the streets because home was intolerable. He needed a sense of some place to belong. He was looking for a peer group where he could have some sense of belongingness. He was out looking for food. I agree that he was often away from home for a variety of very important reasons.

Q And so if one of those reasons was, I choose to be with my friends, good, bad or indifferent, that is still a choice, correct?

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A That part would be.

Q If I choose to leave the house in search of food as opposed to staying back and asking grandma for some, that's a choice, is it not?

A Not if grandma doesn't have any.

Q Was grandma ever arrested for neglect or abuse of these children?

A No.

Q Now, with respect to Krystle Eye, I assume that you were aware that Mr. Sandage and his investigator spoke with several of these family members and generated reports, correct?

A These family members?

Q Well, several family members like, for example, they spoke with Krystle Eye?

A Yes, sir, and so did I.

Q Did they share with you the interview of Krystle Eye, specifically the one dated December 7, 2007?

A That one doesn't come to mind at the moment but I read a great number of reports.

Q Well, do you remember telling us earlier, and correct me if I'm wrong, but I believe you indicated that Mr. Eye told you that he would buy his needles from his mother to engage in his drug use, is that correct?

A Some times.

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Q Some times.

A Early on he stole. Then he said at some point she would sell him a box of a hundred for between 15 and a hundred dollars.

Q I don't recall you telling us that he stole them on direct. Did I miss that or did you forget to mention that?

A I think I said the latter part, it was part of a narrative.

Q Part of a narrative. So the short answer then I believe would be, no, you didn't tell us that when Mr. Sandage was talking with you, is that correct?

A Evidently not.

Q Evidently. But Krystle, in fact, did report that on December 7 of 2007. In fact, she said she knows that the boys, including Gary, used to steal his mom's insulin needles to use them?

A Yes, I knew that.

Q And you knew that the needles were insulin needles for diabetes?

A Yes. Joyce, initially, told me that she never had needles. Then in the second interview she said, yes, of course, I did. And she knew that Gary took them.

Q I see. Took her awhile to come around, did it?

A I'm not sure whether that was sort of fessing up or

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whether she has memory difficulties.

Q Now, you also told us and I believe you still have your report in front of you. I'd like to start on the second page with reference to what you have identified as what you perceive to be the third mitigating factor.

Now, in your report you indicate that beginning at age ten, he, in reference to Gary Eye, began regularly using marijuana, is that correct?

A Yes.

Q Nowhere in your report that you prepared in anticipation of appearing in court does it indicate that he was seven when he started using drugs?

A That was a consistent use. His report is that when he was fishing with his Uncle Rick somewhere around seven or eight, that he had his first marijuana. But that he began consistent use at age ten.

Q I understand where it came from now, ma'am. I'm just curious as to why it didn't make it into your report. You would agree with me, would you not, there is a difference between 7 and 10?

A Well, but the sentence is correct. He began regularly using it. This was a report that was asked for like a week or so ago and that I generated in 36 hours. So it was a pretty quick, very overview synopsis in order to give you what I thought you had asked for.

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Q So it wasn't an effort by you to be complete or accurate, is that what you're saying?

A No, sir, you can not get me on that one. It wasn't an effort to be, to contain everything that I was going to say in a three hour direct examination. It was an attempt to give you a full outline of the areas in which I was going to be talking.

Q So it had nothing to do with the fact that you were in court today listening to the testimony when Gary's family testified prior to you and used the age seven, that had nothing to do with it?

A Absolutely not. The very first time I met Gary he told me age seven back in August. I have it in my notes from that time.

Q Now, I believe you indicated that generally juveniles in your judgment are prone to seek the most excitement for the least effort, is that correct?

A That's what current research indicates, yes.

Q You used the analogy of a video game, is that correct?

A Yes.

Q But we still agree, do we not, that on March 9 of 2005 Gary Eye was not a juvenile, correct?

A Correct.

Q However, most excitement for the least effort, that would seem or could seem to include the effort it would take,

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with a slight effort it would take to pull the trigger on a handgun, is that correct?

A I've never shot a handgun. I couldn't tell you how much effort it takes.

Q You've never shot a handgun. But Mr. Eye told you that he's been carrying a gun since he was age 12, is that right?

A That's correct.

Q Now, with respect to the use of street drugs as you identified in your third mitigating factor, among the things that Gary told you, in fact, among the things that the entire family told you is this just wasn't a using problem. This was a dealing problem. Correct?

A As time passed, yes.

Q As time passed. In fact, I believe you concluded that he identified himself as a teenager, as a drug dealer?

A Yes.

Q And in terms of any damage that might have been done to his brain or his brain development through the ingestment of drugs, that you would agree with me, would be self inflicted, would it not?

A Well, to the extent that people who do drugs are often doing so to handle psychological problems. And to that extent it's, it is what they do but there is a reason for it. Just like there, it's not an excuse, but it is the

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reason.

Q Not an excuse for a choice that he made but there is a reason. Is that what you're telling us?

A Well, you use choice a lot more freely than I do. I think that people's behavior makes sense and that historic things that happen in children's lives and in juvenile's lives make those choices pretty difficult to get turned around.

Q Well, ma'am, no one presented to you a picture of Gary Eye being held to the ground while drugs were crammed into his mouth, is that correct?

A That is correct.

Q Nobody wrestled him to the ground and jabbed a hypodermic syringe in his arm, correct?

A I'm not sure. I didn't hear that.

Q No one told you that either, did they?

A No, they didn't.

Q And no one told you he had a gun to his head while he was out dealing drugs to other individuals in the community?

A None of that is the point I was making.

Q I understand, ma'am. I understand completely the point you want to make. But would you agree with me or disagree with me that there was nothing that anyone told you or anyone suggested either in the audience now or sitting over here at counsel table that somebody was forcing this

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individual to sell drugs in his community? Would you agree with me?

A In a lower tone of voice I would certainly agree with that.

Q Now, you're aware, are you not, that, Mrs. Tebo, Gary's grandmother, I assume like with Gary's sister's statement, you were given an opportunity to review the statements that have been taken from Betty Tebo and from Joyce Eye and Richard Eye and so forth, were you?

A Yes.

Q So when Betty Tebo reported on August 23 of 2006 that Joyce never mistreated Gary, you concluded that, well, Betty must be lying, is that right?

A I concluded as Deborah did, that, or Ashley did this morning, that grandma didn't want to know things and grandma didn't pay attention.

Q And you also then chose to disregard Joyce's interviews where she said she had not abused Gary, isn't that correct?

A I don't know that I disregarded them. I considered it in kind of the context that she's hung over and she tells me in the morning that she only drinks once or twice a month and every member of the family told me that she drank on a daily basis. She told me she had never been gone from home overnight. So I took it in that context.

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Q Now, you also talked a lot about the grandfather Oney?

A Not a lot but some.

Q It did come up, you would agree with me?

A It did come up.

Q So when Betty Tebo described Gary and Oney as having a good relationship in her interview on August 23, 2006, and that they were very close, that in your estimation was also inaccurate, is that correct?

A No one else ever mentioned that. Gary didn't mention that. None of the other family members mentioned that he was particularly close to his grandfather.

Q None of the other family members who have obviously come forward today on Gary's behalf, is that right?

A Or any of the ones that I interviewed. There certainly was a good deal of discussion that he was close to his Uncle Mike. But I did not hear much discussion that he was close to his grandfather.

Q Well, you also reviewed the interview of Richard, correct?

A Yeah.

Q And Richard did not indicate there was any physical abuse of Gary, did he?

A No, he didn't mention that. He also told me that he almost never did drugs and he never sold drugs and he never did drugs in front of his nieces and nephews.

Q And so you chose to accept Mr. Eye's version rather than

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Richard, is that correct?

A I chose to accept the version of everybody else in the family who said that they knew that was true.

Q Well, I don't recall anyone else testifying today that Richard was physically abusive and beat Gary. Could you refresh my recollection as to which individual today took the stand and said that?

A Not ones that took the stand. Although I think Ashley mentioned it. But I interviewed a lot more people than people who took the stand today.

Q You interviewed a lot more people than were present to be cross-examined, is that correct?

A That's correct.

Q So we're relying on you for your account of their interviews, is that fair to say?

A That's the purpose of an expert witness, yes.

Q Now, you would agree with me, would you not, with respect to your fifth mitigating factor which you have described as the emotional development that he lost by non-involvement with education. That's how you frame that one, correct?

A That's correct.

Q It's hard to be involved with the educational system if you don't show up, wouldn't you agree?

A Definitely.

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Q And so if Gary were, in fact, dropped off for school as his mother told the Family Court, and he left on his own and walked off, that would be reflective of a choice on Gary's part, would it not?

A If that were, if she, in fact, took him there. She's the only one that said that. She didn't tell that to me.

Deborah didn't tell that to me. The only one I heard was that Uncle Mike originally got them to school. I have a great deal of difficulty believing the things Joyce reported about her parenting.

Q And so you're making that judgment for us with respect to the opinions you're presenting today, is that fair to say?

A I am presenting a broad range of behaviors that Joyce has exhibited, that a number of people have talked about. And the jury can use all of those behaviors to determine whether they believe that those statements that she made are credible.

Q Let's talk about the sixth mitigating factor which you have identified as at the time of the, you have described it as alleged crime, that he, being Gary, was ill with acute pneumonia, influenza and bronchitis, is that correct?

A That's correct.

Q You're not suggesting, ma'am, are you, that this defendant engaged in a willful premeditated killing because he had

1 bronchitis, are you?

2 A I don't believe that that's what that statement says, no,
3 sir.

4 Q And influenza, we're talking about flu symptoms, correct?

5 A Severe flu symptoms.

6 Q Not severe enough to be admitted however. They sent him
7 home with some medication, correct?

8 A What I understand is that they talked about admitting him
9 and that he declined and that because he was under a false
10 name, he went in under his mother's name Tebo. And that
11 he left because he didn't want to stay.

12 Q Now, why do you suppose, he went to the emergency room
13 using a false name?

14 A I think there was a warrant out for him at the time.

15 Q That would be shocking, wouldn't it?

16 MR. SANDAGE: Objection, argumentative.

17 THE COURT: Overruled.

18 MR. GIBSON: Mark this as Government's Exhibit 317.

19 Mr. Sandage, these would be the medical records from
20 March 3.

21 MR. SANDAGE: They're already admitted in evidence
22 under Defendant's Exhibit 62.

23 MR. GIBSON: Now, we got them twice.

24 BY MR. GIBSON:

25 Q Are those the medical records you were referring to,

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Doctor?

A Looks like the same.

Q And he's using the name Tebo, correct?

A Yes.

Q Now, as I understand it, and correct me if I'm wrong, you indicated that with respect to what you were asked to do today in these proceedings, it was not necessary for you to review the discovery regarding the actual offense, itself, is that correct?

A That's correct.

Q Okay. And if I understood you correctly, and please if I'm wrong stop me, but you specifically didn't want to talk to Gary Eye about the episode, itself, on March 9th?

A Correct.

Q And those medical records that you have in your hand right now, those are dated March 3 of 2005, correct?

A That's correct.

Q And yet in your report in your sixth mitigating factor you concluded at the time of the offense he was high on methamphetamine, is that right?

A That's correct.

Q And that information was, certainly wasn't information that came from those medical records, right?

A No. It was from information before the incident itself.

I talked to him about the days between this and the crime.

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Q The days before which were relevant to you but not the day of?

A My job was not about the crime itself. And that I was instructed by defense counsel to not discuss the crime itself. What I was discussing was Gary Tebo's prior life and what things the law considers to be mitigating factors.

Q Gary Tebo or Gary Eye?

A Gary Eye.

Q Because that's the name he was using with you I assume?

A Yes, of course.

Q Now, nonetheless, you concluded in your report that at the time of the offense or as you say alleged crime, he was high on methamphetamine, correct?

A Yes.

Q Right there black and white?

A Yes.

Q Okay. So are you basing that, did I understand you to say you're basing that on the fact he told you he had ingested methamphetamine some time prior to the actual date of the offense?

A Yes.

Q And based on that you extrapolated and concluded that therefore he must have been high on March 9th of 2005?

A He told me he used it for several days because he was

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feeling so terrible, yes.

Q Did you discuss amounts?

A I think I did but I don't have a recall of that at the moment.

Q Well, it's a little difficult to determine whether or not he would still be under the influence if you don't know how much he ingested and when and where, wouldn't you say?

A It was my determination at the time that I listened to him say how much it was that he was significantly high.

Q Because that would be helpful in mitigating factor No. 6, correct?

A I perhaps erroneously concluded that would have been covered under phase one.

Q Now, let's talk about factors 7 and 8, because I notice that you use the word maturity in both. Indicating that at least from the 11 and a half hours that he spent with you, he demonstrated some level of maturity, is that correct?

A I noted it as maturity that he's gained. The differences that I saw between the first and the third interview.

Q Okay. How long did the first interview consist, how much time?

A Four hours.

Q Then go away for six months and you come back and you talk to him again, is that right?

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A Uh-huh.

Q How much time did you spend with him the second time?

A Three and a half hours.

Q Three and a half hours. So at the time you concluded he had experienced a watershed of maturity, you had seen him for a total of seven and a half hours, is that right?

A I think that the watershed of maturity is a little bit of an exaggeration beyond what I said. What I said is that in the second interview which was 3 and a half hours, I noticed an increase and a month later when I saw him again for another 4 hours, I saw even more. So in the seven and a half hours in the last two months, I noticed a comparison to the first four hours.

Q And each time you meet with him you agree with me, would you not, that each time your interview process is getting closer and closer to his trial date, is that correct?

A Of course.

Q And you explained to him the first time you met him you were there because his counsel had obtained your services on his behalf, correct?

A Correct.

Q And you said that meeting went a little rough, that he was, I'm sorry what was the phrase you used?

A I'm not recalling.

Q He was tough or tough kid or something like that?

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A Tough kid may have been what I used.

Q So even though you were there to help him, that interview didn't go so smoothly. Is that fair to say?

A Well, there wasn't antagonism. We didn't have any fights. But he was distant and defensive and difficult to talk with. I, typically, go in and see people for 4 to 6 hours for an evaluation. I am accustomed to the amount of rapport that I can typically accomplish across that kind of an interview. I've done 500 of these. I have a standard in my mind of what usually happens.

Q Now, you said you've done 500 of these but, correct me if I'm wrong, I believe you indicated that you only testified four times in capital cases, is that correct?

A No. I indicated that four out of the last seven I had decided to go forward, that there were four or five other capital cases that preceded where one was mitigation and a couple of them, two were mitigation and two were affirmative defenses. But that I testified in about 50 criminal cases out of the 500 I have evaluated.

Q Have you ever testified for the prosecution, ma'am?

A Yeah, I have.

Q How many times?

A Two or three.

Q Two or three out of 50?

A Uh-huh.

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Q And how many of the times that you testified for the prosecution were those capital matters?

A They were not.

Q None. I also noticed that you appeared to give a presentation for a Public Defender group, is that correct?

A I have been asked to do so on a couple occasions.

Q Ever done a similar presentation for prosecutors or government attorneys?

A I have done one for the general bar but the prosecutors have never asked me, no.

Q Now, let me ask you this. If one of your patients came to you and said, doctor, I know I wasn't in a relationship with this individual prior to him being arrested and charged with capital murder, but now that he's awaiting trial and we talk to each other through phone calls and letters, I'm thinking it might be a good idea to get married. If your patient said that to you, would you be at all concerned about your patient?

A It --there would be lots and lots and lots of variables on that. I certainly would want to explore what it meant to her.

Q Seems reasonable to think a lot of red flags would perhaps go up, would it not?

A Red flags isn't the way I think about doing therapy.

Q But therapy might seem to be in order, is that fair to

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say?

A You can't diagnose people without a whole lot more information than that.

Q Well, with respect to what you have identified as an 8th mitigating factor, that is that Mr. Eye has made a marital commitment to his wife, you are aware, correct, I believe you already talked about this, that Mr. Eye was not in fact married to his wife Stephanie until after he had already been indicted and was awaiting trial for capital murder?

A Yes, I am.

Q And so in evaluating that relationship and determining whether in your judgment, at least it represented a mitigating factor or not, would you agree that it would perhaps be useful to have available to you correspondence or conversations between the two?

A I have seen some of that.

Q You have seen some of it. Have you heard any of them?

A No.

Q Would it have been helpful to hear how they interact with each other on the phone, do you think?

A Well, actually, I heard them on the phone a couple times when I was at Stephanie's house.

Q At Stephanie's house you heard them talking on the phone so Stephanie I assume, obviously, knew you were there,

1 correct?

2 A Yes.

3 Q Okay. Did Mr. Sandage or anyone from the defense team
4 share any letters with you between the two?

5 A Seems like I've seen some letters, no particular content
6 is coming to mind but seems like I've seen some letters.

7 Q Well, let me see if I can refresh your recollection with
8 the government's -

9 MR. SANDAGE: May we approach?

10 THE COURT: Yes.

11 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
12 PROCEEDINGS WERE HAD:)

13 MR. SANDAGE: In the Government's Exhibit list they
14 outlined two letters. I suspect that's letters you're getting
15 ready to get into, is that correct? Is the highlighted area
16 the area that you're going-

17 MR. GIBSON: Uh-huh.

18 MR. SANDAGE: One, I think that the segment that he's
19 going to discuss is prejudicial and outweighs any probative
20 value. Two, I don't think that this witness can lay the proper
2 foundation. She doesn't know the handwriting, can't attest who
2 wrote it, who received it, things of that nature.

2 THE COURT: I'm not sure that the foundation
2 objection is well taken at this stage, Lance. The rules of
2 evidence don't apply.

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1 It is prejudicial, however, it goes directly to this
2 mitigator. Mitigator is that he has a strong relationship with
3 Stephanie and that that augers against the imposition of the
4 death penalty. I don't see how he can fairly prohibit the
5 government from offering evidence which refutes that.

6 MR. SANDAGE: In all fairness then, Your Honor, if
7 that is the case, the rule of completeness, I want the whole
8 letter read.

9 MR. GIBSON: He has redirect available to him if he
10 wants to go through the rest of the letter with him, I have no
11 problem with that. But I don't think I need to go through the
12 whole letter.

13 THE COURT: I won't require you to go through the
14 whole letter but I will allow you to offer the entire letter
15 and go through it with her. Overruled.

16 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

17 BY MR. GIBSON:

18 Q Are you still waiting for your water?

19 A No, I have it. Thank you.

20 MR. GIBSON: With the Court's permission I'd like to
21 display for the witness what has been previously marked as
22 Government's Exhibit 307.

23 THE COURT: Government's Exhibit --Are you offering?

24 MR. GIBSON: I will be, yes, sir.

25 THE COURT: Government's Exhibit 307 will be

1 admitted. And the record will reflect it is over Defendant
2 Eye's objection.

3 BY MR. GIBSON:

4 Q Now, do you see the letter in front of you, Doctor?

5 A With some difficulty.

6 Q With some difficulty. Well, we'll blow up a portion in a
7 second but you have no reason to disagree with me, do you,
8 that this is a letter written by Gary Eye to his wife
9 Stephanie, do you?

10 A I don't have any idea. All I can see is a page of some
11 handwriting on it.

12 Q Let's go to page 2 and see if perhaps, if perhaps this
13 refreshes your memory, if, in fact, you were shown it.

14 Paragraph at the bottom of the page, do you see that?

15 Starting with, oh, yeah. Do you see that?

16 A Yes.

17 Q You tell me if I'm reading this correctly. Oh, yeah. And

18 I'm very serious about if I catch you doing anything

19 you're not suppose to, I'm going to cut off your titties

20 and make you eat them. That's not mean. That's just me

2 telling you the truth ahead of time.

2 Did I read that correctly?

2 A You did.

2 Q Was this one of the letters that Mr. Eye or his counsel

2 shared with you in preparing for your testimony today?

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A I think I read this one.

Q You think you read this one. And so does the tone or content of this letter, if we look at the front page again, specifically at the top, you can see it's addressed to Stephanie and dated April 27 of 2006, is that correct?

A That's correct.

Q Now, does this have any impact at all on your opinion as to whether or not his marital commitment is a mitigating factor?

A No.

Q No. Because this threat of violence has no concern for you?

A No.

Q And why would that be?

A It's not that it has no concern. I talked with Gary and with Stephanie about these kinds of interactions that occurred between them. And what I learned was that Gary had a great deal of anger, initially, and that he had lots of those kinds of violent statements, both on the phone and in letters. As a psychologist what I read here is, I'm afraid you're going to leave me so I'm going to make the biggest baddest threat I can make so that I can try and scare you into not leaving me.

If I could finish. And that Stephanie's response to those kinds of statements was that she

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1 understood he was frightened and that she responded with
2 reassurances that she wasn't going to be unfaithful to
3 him. And that those kinds of comments had dropped
4 significantly in their relationship to where they were now
5 very seldom present.

6 Q Well, let's see how quickly they dropped, shall we? I
7 believe you indicated that you did not listen to any of
8 the telephone calls between Gary and his wife or had you?

9 A I saw some transcripts.

10 Q You saw some transcripts. Well, let's play Government's
11 Exhibit 305A for you from our exhibit list, telephone call
12 dated July 21 of 2006 between Mr. Eye and his wife and see
13 if that's one of the ones that you listened to?

14 THE COURT: Before it's played, is it being offered?

15 MR. GIBSON: Yes.

16 THE WITNESS: I already said I hadn't listened to
17 any.

18 MR. SANDAGE: Same objection as at the bench.

19 THE COURT: The objection is overruled. 305B will be
20 admitted and may be played.

2 MR. GIBSON: 305A.

2 THE COURT: A?

2 MR. GIBSON: Yes, sir. I'm sorry.

2 (The tape is being played.)

2 BY MR. GIBSON:

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Q Now, Doctor, would that exchange be evidence of increased maturity and a commitment that Mr. Eye has made to his wife?

A Well, compared to earlier, perhaps. It was pretty difficult to understand the words. I certainly heard fuck a lot. And that he was angry about something that had occurred. And I heard her say, I'm not doing that. And staying calm with him.

Both of them described to me that they had a lots of those interchanges and that he would get very agitated. He was in an impotent situation. He had no sense of control over his life. And that he continued to do that. But that by 2007 those were almost nonexistent. I also know that you're playing, you know, 30 second pieces out of 3 or 4 hours a day for 3 years.

Q So the I'll fuck you up comment has no bearing on your opinion that this is a mature and committed relationship?

A I think that many, many people say things in anger that they would never do. And that I don't believe that Gary would hurt Stephanie. I think that that is the language that he talked. That is the language of the street. That is a kind of way that he knew how to express his frustration and impotence. I don't approve of it. I don't think that it was good for their relationship. And what I heard from both of them is that it took them a lot

1 of work to get through that but that they are largely
2 through that.

3 MR. GIBSON: Your Honor, I would offer at this time
4 305B which was also played along side 305A, the two portions
5 were just played, is that correct? No. I'm sorry.
6 Then we're about to play 305B.

7 THE COURT: Step up, please, just a second before we
8 do that, Mr. Gibson, please.

9 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
10 PROCEEDINGS WERE HAD:)

11 THE COURT: How is this different from what we've
12 already heard, Eric?

13 MR. GIBSON: She's indicating to us there is a
14 maturity progression. These two phone calls would belie that.

15 THE COURT: The first one was dated July 21, 2006.
16 This is dated July 28, 2006. Don't you think we've heard
17 enough?

18 MR. GIBSON: Respectfully, Your Honor, no, I do not.
19 In this particular excerpt is a disagreement over a dropped
20 call. Stephanie's phone allegedly went out and Gary's reaction
21 at the fact the phone inadvertently cut out is not consistent
22 with the idea this is a committed and genuine marital
23 relationship.

24 THE COURT: How many more of these do you have?

25 MR. GIBSON: Just this one, Judge, and then I have

1 one more letter.

2 THE COURT: All right. I'll allow this one over the
3 defendant's objection but that will be all of these?

4 MR. GIBSON: That's it.

5 MR. SANDAGE: Your Honor, I forgot to bring it up.

6 If Mr. Gibson can, please, let the jury know the date and time
7 of this as relates to the overall. He forgot to do that in the
8 first admission.

9 MR. GIBSON: I gave the date.

10 THE COURT: Okay. Please do that.

11 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

12 MR. GIBSON: Your Honor, with that in mind we're
13 going to play 305B which was an imported telephone call from
14 CCA which was further identified on disk ID3 provided to
15 defense counsel in discovery and reflects a call dated July 28
16 of 2006.

17 THE COURT: You may proceed.

18 (The tape is being played.)

19 BY MR. GIBSON:

20 Q Now, Doctor, does that call subsequent to the earlier
2 July 21st call, does that in your estimation evidence
2 maturation and growth in this relationship?

2 A I don't make decisions on maturation and growth based on
2 30-second segments.

2 Q Just eleven and a half hours of interviews?

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A That's my job.

Q Doctor, you were telling us earlier that if Gary were going out on the street in search of food that that would not necessarily represent what we would consider a choice, is that correct?

A I'm saying that a pre-adolescent who is hungry, who's going out to get food isn't the same thing as a choice to leave home, as a choice to stay in school and so forth. That there are some drives, there are some needs that people have which are more basic than being home and going to school.

Q Well, how did you reconcile what you're telling us now with Krystle Eye's interview of September 20, 2006 where she told the defense investigator that their grandmother was the one who made sure they were taken care of. She's the one who worked in the home and bought them things such as school clothes. Her grandmother did struggle financially but did not let them know. She would get new clothes. And her grandmother and grandfather when alive worked really hard. She does not remember going to the doctor regularly. Anything about that situation that suggests that they were without food?

A Well, I think that there was some change in circumstance after the grandfather died. I also think that there was, as I mentioned earlier, a substantial difference in the

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1 treatment between Krystle and Gary and everybody in the
2 family mentioned that. Even Krystle acknowledges that she
3 got many kinds of things from her grandmother that her
4 brother did not get.

5 Q Now, Doctor, I believe you also told us that towards the
6 end of your interviews, perhaps it was in March of this
7 year, that Mr. Eye expressed regret for stealing cars, car
8 thieving, I believe is the way you put it. Is that
9 correct?

10 A Perhaps.

11 Q Perhaps he expressed regret or perhaps that's the way he
12 put it?

13 A Perhaps that was my language.

14 Q And that he expressed some regret as to what he was
15 putting his wife through, is that right?

16 A And the rest of his family.

17 Q And the rest of his family.

18 And among the letters that you were shown, did
19 they include Government's Exhibit 308, a letter from Gary
20 Eye to Stephanie Fabela dated January 18th of 2006.

21 If I could have that displayed to the witness
22 and I'll be moving that in evidence as well.

23 BY MR. GIBSON:

24 Q Looking at the front page -

25 MR. SANDAGE: Same objection as before, Your Honor.

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1 THE WITNESS: I do.

2 BY MR. GIBSON:

3 Q Letter addressed to Stephanie dated January 18 of 2006,
4 correct?

5 A Yes.

6 MR. GIBSON: Would Your Honor permit us to admit the
7 letter?

8 THE COURT: Government's Exhibit 308 is admitted over
9 defendant's objection and may be published.

10 BY MR. GIBSON:

11 Q Let's go to page 3, please. First full paragraph.

12 Again, Doctor, tell me if I'm reading this

13 correctly. Baby, guess what, mamma. I got up this

14 morning about 4:30 a.m. and got the paper and I was

15 reading it and came across my name in there. It was about

16 me and you. I'm so happy that we're really going through

17 with, and, that. I love you, baby. I hope you're okay

18 with being in the paper with me. I hope you don't get

19 mad. It didn't say your name. I think that was to help

20 protect you since I'm Gary and, you know, I've got a lot

21 of --in a mess. Baby, remember that I am a star now.

22 Whatever I do, the media is going to jump on it. I hope

23 you're all right with this. Are you?

24 Is that in your estimation an expression of

25 remorse, Doctor?

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1 A It's not about remorse. It's about his concern for his
2 wife.

3 Q It's not about remorse, correct?

4 A Well, not directly at this point, no.

5 Q Almost a celebratory tone there with the, baby, I'm a star
6 now, wouldn't you agree?

7 A I don't know what that meant to him. I think it means she
8 needs to be careful. When ever I was with him, that was
9 often a theme that he was very concerned about what ever
10 behavior might be attributed to him could reflect on her
11 and that she could be in danger.

12 Q Baby, I'm a star, in your judgment means Stephanie Eye
13 needs to be careful, is that correct?

14 A I think that's the context of the whole paragraph, yes.

15 Q I see. Thank you.

16 THE COURT: Mr. Sandage?

17 REDIRECT EXAMINATION

18 BY MR. SANDAGE:

19 Q Mr. Gibson asked you on cross-examination questions
20 regarding brain development?

21 A Yes.

22 Q And the general terms in which you describe brain
23 development. Did you talk in those general terms, Dr.
24 Hutchinson, because that's the terms which apply to
25 Mr. Eye?

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A Yes. And a lot of that was research that's duplicated in other court briefs regarding age as it relates to different judicial matters.

Q And there was no, through your examination of Mr. Eye, the records, witnesses, anybody that you talked to, there is no reason for you to ask for an MRI to do examination regarding the brain and because of some sort of injury or anything of that nature?

A No. I saw no evidence of brain trauma.

Q And the testimony that you talked about on direct examination was that the maturity level of the actual brain at the time that Mr. Eye committed the offense at 18 and a half years of age?

A That's correct.

Q There was quite a bit of discussion in cross-examination regarding Gary skipping school. Do you remember that line of questioning?

A I sure do.

Q Do you have any understanding of, in the context of the court system or in the school, who is generally held responsible for a child skipping school?

A The parent.

Q And, again, for the jury's, refresh the jury's memory, what time frame are we talking about as to when Gary began skipping school?

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A Fifth grade, so he was like ten or eleven years old.

Q And it's been your history doing work in this field and interviewing and doing clinical work that it's normally the parent that's held responsible for a kid skipping school?

A That's correct.

Q You heard questions regarding choices. And you said that you didn't necessarily agree with the definition or at least the definition that was being asked of you through Mr. Gibson regarding choices. Do you remember that line of questioning?

A I do.

Q Would you like to clarify how you would define choices for a person, well, for what we've talked about over the last several hours?

A Well, a choice is when there are, when you really do have I could do this or I could do that. If you're in the middle of a snow ball rolling down the hill, you don't have a choice I think I'll roll over to that street. When you are in an abusive, neglectful, intoxicated home, that snow ball gets to rolling and you're inside of it and I don't believe that an eleven-year-old at that point has the, quote, choice to redirect himself to have that snow ball start rolling back uphill.

Q Kids at the age of 12, 13, 14, 15, 16, all kids have

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choices, right?

A Some.

Q And some make good choices?

A Yes, they do.

Q And some make bad choices?

A That's correct.

Q And where do they, how do they arrive at those choices?

Describe what creates someone to ultimately make a choice?

A Well, the same list of risk factors that I gave, said that the things that help fight those factors on the individual level are being female, having very high intelligence, having some very strong pro-social kind of activity, like I mentioned if you're really good at basketball or really get hooked into Boy Scouts or something, and having a resilient temperament, that some people do seem to be able to come out of a home situation that others don't do as well in. And that we don't get to choose that temperament. That's a biological factor that gets settled not by us.

There are also lots of protective factors like intervention with the parents and intervention through the schools, where all of these at-risk-kids and if those things are done, then those, that chance to turn that choice becomes more viable.

Q And, Doctor, we were, at the conclusion of the direct

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examination we were, you're just discussing that kind of check list we went through at the end of the testimony, you said you saw 26 yeses and some nos and some maybes?

A Yes.

Q What conclusions can you draw from the list of the factors that you talked about as it relates to Mr. Eye?

A Well, it's just such a huge preponderance of negative factors. Actually, I counted them up in between breaks, there were 27 yeses, 4 maybes and 4 nos. I mean, that's just an enormous snow ball. That's an enormous push toward all of the things that we wouldn't want our children to do. He had almost all of them. I mean, it couldn't hardly have been worse.

Q Doctor, Mr. Gibson asked you on cross-examination regarding whether or not you knew if Gary's mom, Joyce, had ever been prosecuted for neglect. Do you remember that question?

A Yes.

Q And your answer to that question was you didn't recall that, right?

A That's correct.

Q Do you have an opinion on whether or not she should have been charged with neglect?

MR. GIBSON: Objection.

MR. SANDAGE: He brought it up on cross.

1 THE COURT: Overruled.

2 THE WITNESS: Certainly there were many things that
3 should have classified as neglect. One of the things that I
4 talked with Deborah about was her guilt that she didn't report
5 her sister. That there were lots of times that she had a great
6 deal of angst about whether she should but her loyalty to her
7 family overrode that and she wished it hadn't.

8 BY MR. SANDAGE:

9 Q And in other cases you had, other than Mr. Eye, have you
10 seen cases where parents have been neglectful yet never
11 prosecuted?

12 A Incredibly horrific cases, yes, that, the exception is
13 when there is prosecution. Particularly in, A, this kind
14 of a neighborhood where there aren't neighbors who are
15 vigilant. If you're in a more affluent neighborhood,
16 there's likely to be a neighbor who's going to say, what's
17 going on over there? But when you have a neighborhood
18 where everybody is doing about the same thing, nobody is
19 reporting anybody else.

20 Q Mr. Gibson also discussed with you regarding whether or
2 not you got into the offense conduct for which Mr. Eye has
2 been convicted. Do you remember that line of questioning?

2 A Yes, sir.

2 Q And you, I think you testified that Mr. Eye's lawyers, me
2 included, asked you not to get into that area. Do you

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remember that?

A That's right. It was irrelevant to the questions.

Q And explain to the jury why it's irrelevant to the questions for which you're here today testifying?

A When I'm hired, there are particular questions that I'm asked. Sometimes I'm asked, is the person competent to stand trial, in which case I just talk about their competency. I don't talk about the crime. Sometimes I'm asked to talk about what was their state of mind at the time of the crime, in which case I don't talk about competency. I just talk about the crime. And in this case I was asked to say, are there mitigating factors that the law identifies that you could explain to a jury and so that was my approach.

Q He also asked you how many times you had testified and how many times had been for the prosecution, you said a couple?

A Yes.

Q He asked you a line of questioning regarding if you had ever done any death penalty cases?

A Yes.

Q Have you ever been asked by the government to testify in a death penalty case?

A No.

Q If asked and approached by the government would you take

on that job just like you do any other job that comes across your desk in your occupation?

A Of course. One of the reasons that it's so uncommon for private psychologists such as myself is that on the state level cases, most of the evaluations are done at Fulton or in Kansas, they're done out at Larned. So the state evaluations are almost always done in-house state facilities. And the Public Defenders or the defense attorneys hire private people to do that. So they're the ones who are looking for people to hire. So that's who I have been hired by.

Q And he also got into your hourly rate and how you bill these types of cases. Isn't it, in fact, true you're here on a court order of what your hourly rate will be?

A Yes.

Q And is that above or below your normal hourly rate?

A It's below my usual rate.

Q Near the end of the cross-examination you were asked to review two letters from April of 2006 and January of 2006. I suspect you still remember that line of questioning?

A Yes.

Q I'm going to ask you, these are in evidence and the jury can ask for these to read them. But I would ask you to read them to yourself then give some opinions on what the overall tenor of those types of letters are.

1 May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. SANDAGE:

4 Q Take your time. The second letter is several pages so you

5 might want to skip around.

6 Do you have a flavor for the letters?

7 A Well, I've read the first one. Can I comment on it first?

8 Q Yes. That would be fine.

9 A On the one dated 4-27, I haven't read this one yet. He

10 goes on for a page and a half about how you're the most

11 wonderful, most beautiful woman in the world. Can't wait

12 to see the baby girl. The boys look so cute. They all

13 are so good looking. I miss my family. I'll do anything

14 to make sure my family is safe. Baby, love you.

15 Let me get to answering your letter. You'll

16 keep me forever. You treat me so well. I'm so happy. It

17 goes on for that.

18 And then there is the four lines that he asked

19 me to read about if you do the things that I don't want

20 you to, I'll cut off your titties. Then he goes back to

2 how much I love you.

2 Q Describe to the jury what that might be, I mean what is

2 your overall impression of the letter having gotten to

2 read it all?

2 A Well, it's street talk. But that it's predominantly a

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love letter.

Q And we're getting close to the hour of 5. I'm almost done with redirect examination. But the highlighted areas is what Mr. Gibson asked that you read or that he read to you. Can you read to the jury the second paragraph that's highlighted then the remainder of that paragraph?

A Baby, remember that I'm a star now. Whatever I do, the media is going to jump on it. I hope you're all right with this. Are you? We never really talked about this. I never thought it would be an issue. But I guess they're never going to leave me be. And since you're my wife, you should tell me honestly how you feel about this issue.

Q All right. Does that help maybe place in context this alleged celebrity status that Mr. Gibson was asking you about in cross-examination?

A Yes. It's obviously a statement of concern that she might be hurt or harmed by the amount of press he gets.

Q And that he is in the press on a regular basis?

A Right.

Q Also in the context of the time frame the two letters are January 18 of 2006, April 27 of 2006. The two audio tapes that we were listening to were July 21 of 2006 and July 28 of 2006. In your interviews with Mr. Eye and Ms. Eye and the rest of the family, was that fairly early on in their relationship?

1 A Yes, it was.

2 Q And I think you testified on direct examination that in
3 your meetings with Mr. Eye that you've seen his conduct
4 move away from this behavior to a more positive way, is
5 that correct?

6 A Yes. What he told me was that some time in the middle of
7 2006 he decided that he had to change his ways and that he
8 had been doing much better through 2007.

9 Q Just to wrap up, do you believe that Mr. Eye would do well
10 in a structured maximum secure facility?

11 A Yes, I do.

12 Q And what do you base that opinion on?

13 A I think that he is committed to maintaining the
14 relationship with his wife and with her children. I think
15 that when Gary is off drugs, he's a very different person.
16 I think that he has reached some level of maturity to say
17 that the life of the gangster isn't what he wants any
18 more.

19 Q Thank you. Nothing further.

20 THE COURT: Recross?

21 RECROSS-EXAMINATION

22 BY MR. GIBSON:

23 Q Doctor, correct me if I'm wrong, but all this discussion
24 about violence in his neighborhood and alleged violence in
25 his family, it is your theory that violence begets

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1 violence. That is Gary is violent or was violent because

2 that's the environment he came from, is that correct?

3 A That's partially true.

4 Q Partially true. And yet when Gary verbalizes his threats,

5 when he expresses his desire to cut off his wife's

6 titties, you choose not to believe him in that letter, is

7 that correct?

8 A I choose to believe that that's a letter of frustration

9 and anger. If he had a knife and was headed toward her, I

10 would make a different interpretation. But writing a

11 letter from a secure setting in which that's not possible,

12 I think it's different, yes.

13 Q You did not attend the trial, correct?

14 A No. I was not allowed, no.

15 Q I didn't think so.

16 MR. SANDAGE: Is there a question?

17 THE COURT: Are you finished, Mr. Gibson?

18 MR. GIBSON: I am.

19 THE COURT: Anything further? This witness may be

20 excused I take it.

2 MR. SANDAGE: May be excused.

2 THE COURT: Thank you, Doctor. You are excused.

2 Anything further from the defense?

2 MR. SANDAGE: Your Honor, defense rests the second

2 phase of its case.

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1 THE COURT: Any rebuttal from the United States?

2 MR. GIBSON: No, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, we're
4 going to go ahead and break for today.

5 Please remember the admonition not to discuss the
6 case. Don't make up your mind. Don't read, watch or listen to
7 any news reports of the trial. We'll ask you to be back here
8 at 8:30 in the morning at which time you will receive your
9 final instructions and then hear the summation of the
10 attorneys.

1 Thank you very much for your attention today. Good
1 night.

1 (The following proceedings were had OUT OF THE
1 PRESENCE AND HEARING OF THE JURY:)

1 THE COURT: We're in recess. Good night.

1 (End of session)

1 MAY 13, 2008 -DAY 15

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Good morning. Please be seated.

5 Charlie, would you come up for a moment, please?

6 I have read your filing on the issue of future

7 dangerousness and lack of remorse. It does not change my
8 opinion.

9 On the tapes that you want to play, I have listened
10 to those. It's Webster, Perkins and Davis?

11 MR. ROGERS: Davis already testified.

12 THE COURT: Can't play Perkins without playing Davis.

13 MR. ROGERS: Exactly.

14 THE COURT: Webster is the one who is unavailable?

15 MR. ROGERS: That's correct.

16 THE COURT: Perkins is available but I understand she
17 is somehow related to Mr. McCay?

18 MR. ROGERS: Right. And we released her from the
19 subpoena during the first phase.

20 THE COURT: The rules of evidence don't apply at this
2 stage. However, it seems to me there is some fundamental
2 fairness issues in allowing you to sponsor a witness without
2 giving the government an opportunity to question that witness.
2 Certainly that's true with respect to Perkins. Maybe

2 less so with Webster inasmuch as she is unavailable to either

1 side here.

2 And, frankly, I don't know that any of those
3 witnesses add anything to the body of evidence which is already
4 before the jury. I suppose one compromise would be to allow
5 you to play the tape of Webster only. I assume the government
6 objects to that?

7 MR. KETCHMARK: We would, Your Honor. And part of
8 the rationale, obviously, is I don't know what steps, if any,
9 they took to try to secure her other than the representation
10 that she's out of town. And I don't know if out of town means
11 Columbia or if it means halfway across the country. Obviously,
12 from our point of view, clearly with respect to Ms. Perkins, I
13 think she is available. She's here. They got her served once,
14 they could produce her. And we have an opportunity to
15 cross-examine her. However with respect to both of them, I
16 think this is duplicative information of what they already
17 presented in terms of the witnesses who testified in the guilt
18 phase with respect to the point. I don't know, I haven't
19 candidly reviewed. I know the Court said you have the
20 statement of Ms. Webster. I do know in some of the other
2 statements in particular there were opinions based on whether
2 or not Mr. Sandstrom and Mr. Eye were racists. And, obviously,
2 that was precluded by the Court in its initial motion in limine
2 and I think to now allow that to now come in and not subject

2 those people to cross-examination is improper and impermissible

1 and really doesn't add anything to the whole point of what
2 they've already been able to present through the live witness
3 testimony.

4 THE COURT: I guess this is where I likened, if the
5 government were to bring in a videotaped statement of someone
6 whose testimony was contrary to that of Ms. Webster, for
7 example, that Mr. Sandstrom did use racial epithets on a
8 regular basis and that person opined that Mr. Sandstrom was a
9 racist. Then the government wanted me to let that tape in and
10 you not have an opportunity to question the witness, I think
11 you would object very, very strenuously to that. And so it
12 seems to me that fundamental fairness here requires that you
13 either bring the witnesses in and allow them to question them
14 or I exclude it. So that will be the ruling.

15 MR. ROGERS: Your Honor, for the sake of the record,
16 would you mark the video DVD as a Court's Exhibit and treat it
17 as an offer of proof in this matter?

18 THE COURT: Yes, I'll be glad to do that.

19 Lindsay, do you still have it? Would you give it to
20 Eva and have her mark it as the next sequential Court's
2 Exhibit?

2 MR. ROGERS: Thank you.

2 THE COURT: Thank you. Are we otherwise ready?

2 MR. KETCHMARK: Your Honor, from the government's

2 perspective, yes.

1 THE COURT: If the jury is here, Eva, let's bring
2 them in.

3 Absent some request from the parties, I don't intend
4 to read all of the special verdict forms. I may read one as
5 illustrative then point out the differences. But, otherwise, I
6 don't plan to read them all.

7 MR. KETCHMARK: That's fine.

8 MR. SANDAGE: No objection by Mr. Eye, Your Honor.

9 (The following proceedings were had IN THE PRESENCE
10 AND HEARING OF THE JURY:)

11 THE COURT: Please be seated.

12 Mr. Rector, you don't have a set of new instructions?

13 JUROR NO. 10: No, sir.

14 THE COURT: Does everyone else have a set of new
15 instructions?

16 Bear with us just moment.

17 All right. Why don't you take a moment and insert
18 those into your notebooks. I think they will fit.

19 All set?

20 All right. We're going to start reading these in
2 just a moment. And turn to Instruction E7 because I have
2 previously read Instructions E1 through E6. Following the
2 instructions we'll talk about one of the verdict forms. There
2 are four verdict forms as you will discover and I'll point out

2 the differences between these special verdict forms.

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1 Following that, each side will have up to 45 minutes
2 to summarize and argue what they believe the evidence in this
3 case should require. And then you will begin deliberations for
4 this phase.

5 (Instructions E7 thru E17 were read by the Court.)

6 THE COURT: That last sentence is a typographical
7 error. It should read Section 7 includes the certification
8 that is discussed in Instruction E16. If you'll make the
9 change, please, in your instruction.

10 I'll re-read that final paragraph in its entirety.

11 You're each required to sign the special verdict forms in
12 Section 6 to confirm your agreement with the forms as completed
13 by your foreperson. Section 7 includes the certification
14 discussed in Instruction E16.

15 (Instruction E18 and E19 were read by the Court.)

16 THE COURT: And then there are four special verdict
17 forms following the instructions. The first is the special
18 verdict form to Count 3. That form is 13 pages long.

19 Please turn through those 13 pages to the special
20 verdict form on Count 4. That form is, likewise, 13 pages
21 long.

22 Behind that is the special verdict form as to Count
23 5. Hold that verdict form with your fingers.

24 And then 13 pages later is the special verdict form

25 as to Count 6.

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1 And when you start to go through these you'll see the
2 similarities between these. I'll go through Special Verdict
3 Form No. 5. When I finish, I will point out the difference
4 between the special verdict form as to Count 5 and the special
5 verdict form as Counts 3, 4 and 6.

6 Special verdict form as to Count 5, which is the
7 count charging tampering with a witness resulting in the death
8 of William McCay by Defendant Gary Eye. First, you are
9 required to make your finding that the defendant was at least
10 18 years of age. You will note that by writing yes or no under
11 Section 1. If you find no, then stop your deliberations, cross
12 out Sections 2, 3, 4, 5 and 6 and proceed to Section 7. Each
13 juror should then carefully read the statement in Section 7 and
14 sign in the appropriate place, if the statement accurately
15 reflects the manner in which he or she reached his or her
16 decision. You should then advise the Court that you have
17 reached a decision.

18 If you answered yes with respect to the determination
19 in this Section 1, proceed to Section 2 which follows.

20 And Section 2 requires you to find, to make your
2 finding and record your finding as to the requisite mental
2 state. The first is, do you, the jury, unanimously find that
2 the government has established beyond a reasonable doubt that
2 the defendant intentionally killed William McCay? Yes or no.

2 Your foreperson will then sign.

1 1B. Do you, the jury, unanimously find that the
2 government has established beyond a reasonable doubt that the
3 defendant intentionally caused serious bodily injury which
4 resulted in the death of William McCay? Again, you will write
5 yes or no. And your foreperson will sign.

6 And then if you answered no with respect to all of
7 the determinations in this section, then stop your
8 deliberations, cross out Sections 3, 4, 5 and 6 of this form
9 and proceed to Section 7. Each juror should carefully read the
10 statement in Section 7 and sign in the appropriate place if the
11 statement accurately reflects the manner in which he or she
12 reached his or her decision. You should then advise the Court
13 that you have reached a decision. If you answered yes with
14 respect to one or more of the determinations in this Section 2,
15 proceed to Section 3, which follows.

16 Section 3 sets out the statutory aggravating factors.

17 The instruction tells you to write yes or no in the appropriate
18 blank. Do you, the jury, unanimously find the government has
19 established beyond a reasonable doubt that the defendant
20 committed the offense of tampering with a witness resulting in
2 the death of William McCay after substantial planning and
2 premeditation as set out in Instruction E10? You will write
2 yes or no. Your foreperson will sign it.

2 The instructions then tell you if you answered no

2 with respect to the statutory aggravating factor in this

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1 Section 3, then stop your deliberations. Cross out Sections 4,
2 5 and 6 of this form and proceed to Section 7 of this form.

3 Each juror should then carefully read the statement in Section
4 7 and sign in the appropriate place if the statement accurately
5 reflects the manner in which he or she reached his or her
6 decision. You should then advise the Court that you have
7 reached a decision. If you found the requisite age in Section
8 1 and the requisite mental state in Section 2 and answered yes
9 with respect to the aggravating factor in this Section 3,
10 proceed to Section 4 which follows.

11 Section 4 then lists the four non-statutory
12 aggravating factors. I'm not going to read each one of them to
13 you but there is a space for you to make your finding, either
14 yes or no. And for the foreperson to sign followed by these
15 instructions. Regardless of whether you answered yes or no
16 with respect to the non-statutory aggravating factors in this
17 Section 4, proceed to Section 5 which follows.

18 Then Section 5 gives you these instructions for each
19 of the following mitigating factors. You have the option to
20 indicate in the space provided the number of jurors who found,
21 who have found the existence of that mitigating factor to be
22 proven by a preponderance of the evidence, otherwise stated by
23 the greater weight of the evidence. If you choose not to make
24 these findings cross out each page in Section 5 with a large X

25 then continue your deliberations in accordance with the

1 instructions of the Court.

2 A finding with respect to a mitigating factor may be
3 made by one or more of the members of the jury and any member
4 of the jury who finds the existence of a mitigating factor may
5 consider such a factor established in considering whether or
6 not a sentence of death should be imposed, regardless of the
7 number of other jurors who agree that that factor has been
8 established. Further any juror may also weigh a mitigating
9 factor found by any other juror even if he or she did not also
10 find that factor to be proven.

11 Then that's followed by the 15 mitigating factors
12 which are included in the instructions. And then spaces for
13 you to write in mitigating factors which one or more of you may
14 find that are not listed in the actual instructions.

15 And then that section concludes with this
16 instruction, regardless of whether you choose to make written
17 findings of mitigating factors in Section 5 above, proceed to
18 Section 6 and Section 7 which follow.

19 Section 6 is the place where you record your decision
20 as to whether or not by unanimous vote you believe that a
21 sentence of death should be imposed. Whether or not by
22 unanimous vote that a sentence of life imprisonment without
23 possibility of release should be imposed.

24 Section 7 is the certification that I mentioned to

25 you earlier. First, by signing below each juror certifies that

1 he or she agrees with the propositions indicated by the
2 foreperson's signature in parts one through six of this special
3 verdict form. There are twelve signature lines.
4 By signing below each juror certifies that
5 consideration of the race, color, religious beliefs and
6 national origin or sex of the defendant or victim was not
7 involved in reaching his or her individual decision and that
8 the individual juror would have made the same recommendation
9 regarding the sentence for the crime or crimes in question,
10 regardless of the race, color, religious beliefs, national
11 origin or sex of the defendant or the victim. Twelve signature
12 lines and a place for your foreperson to date it.
13 There are two differences between the special verdict
14 form that I just went through with you and the special verdict
15 forms for Counts 3, 4 and 6. The first difference is that the
16 special verdict forms for those counts identify the crime
17 alleged in that count. For example, the special verdict form
18 as to Count 4 identifies it as the verdict form to be used for
19 the crime of use of a firearm during the commission of a
20 violent felony resulting in the death of William McCay by
2 Defendant Gary Eye.
2 And then if you turn to Section 6, beginning on page
2 11, you have the option of imposing a sentence of death, the
2 option of imposing a sentence of life imprisonment without the
2 possibility of release and the third option of imposing a

1 sentence lesser than death or life imprisonment without
2 possibility of release.

3 Are you ready?

4 MR. KETCHMARK: Yes, Your Honor.

5 THE COURT: You may begin.

6 MR. KETCHMARK: May it please the Court.

7 Ladies and gentlemen, there's no doubt that the death
8 penalty should be used sparingly. It should be reserved for
9 those special defendants whose crimes so offend our society's
10 collective conscience that the only true and just punishment is
11 a sentence of death.

12 Now, ladies and gentlemen, the crimes committed by
13 this defendant, Mr. Eye, are just such crimes. The crimes that
14 he committed strike at the very fabric and ideals on which this
15 country is founded. The notion that a person should be able to
16 walk free down a public street, use that facility without fear
17 of persecution or worse, execution, based solely on the color
18 of their skin.

19 The principle that not only do you kill a man because
20 of the color of his skin, but you hunt him down and you execute
2 him to silence him as a witness, strikes at the very core upon
2 which our system of justice is found.

2 Ladies and gentlemen, there is no doubt that this is
2 a very important decision. But it's a decision that is made

2 easy or easier based on the facts of this case. Because the

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1 parting and ultimate execution of William McCay is exactly the
2 types of offenses that the death penalty should be used in.
3 Now, the Judge went through lengthy instructions with
4 you. And they're all important. And the instructions give you
5 clear guidance on how you need to proceed. And, again, in
6 looking at the instructions, the first thing you need to
7 determine from an eligibility standpoint, before you begin the
8 weighing process as you remember us discussing in voir dire
9 several weeks ago, the three foundational requirements you have
10 to determine is No. 1, the age of the defendant being 18 at the
11 time of the offense. And that's stipulated to. It's not in
12 dispute. The second is that there is a mental state of
13 intentionally killing or intentionally inflicting serious
14 injury resulting in death. And, again, by your guilty verdicts
15 last week, you have already found that Mr. Eye, when he hunted
16 down and executed Mr. McCay, did so with the requisite mental
17 intent. The next is the requirement that a statutory
18 aggravating factor be present. And in Instruction No. E10, the
19 Court sets forth that the allegation here is that the murder of
20 Mr. McCay was done after substantial planning and
21 premeditation.
22 And, ladies and gentlemen, as Mr. Gibson reminded you
23 yesterday, substantial planning and premeditation doesn't
24 require complex thought processes. It doesn't require a well
25 thought out or a sophisticated scheme. The terms are defined

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1 for you in that instruction. And they tell you that planning
2 means mentally formulating a method for doing something or
3 achieving an end. Premeditation means thinking or deliberating
4 about something beforehand and deciding whether it's important.
5 And, again, by your verdicts last week you have already found
6 that premeditation existed. So the question and the focus at
7 this stage is whether that premeditation was substantial. And
8 in looking for the answer to that question you look to the
9 instruction that tells you that substantial planning and
10 premeditation, neither considerable nor significant amount of
11 planning and premeditation beyond the minimum required for the
12 commission of the offense. Beyond the minimum required for the
13 commission of the offense.

14 Now, Mr. Gibson told you correctly under the law that
15 premeditation can be formed in an instant. And so what you
16 need to do is, there is not in these instructions a stop clock
17 that tells you this is what qualifies as substantial. But in
18 looking at the facts and applying them to the law, it's clear
19 that the actions that this defendant undertook in the
20 commission of these crimes, is more than sufficient to satisfy
2 that definition.

2 And, again, looking back at the evidence and
2 reminding you, the discussions in the stolen Intrepid on the
2 way to the stadium, hours before Mr. McCay's execution, Mr. Eye

2 is saying, I'll kill a nigger quick. You do one, I do one.

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1 Now, in addition to conversations in the Intrepid,
2 you've got discussions at the Sandstrom residence. And when
3 they're leaving the Sandstrom residence, they're going to Inner
4 City Oil to pick up Jonnie Renee. Do you remember what this
5 defendant, Gary Eye, was saying? The next nigger is on site.
6 Ladies and gentlemen, that shows you in his thought process
7 that he has already formed the thought that he is going to
8 execute a black person. Now, it might not have been Mr. McCay
9 because unfortunately or fortunately at that point their paths
10 hadn't intersected like they did at the alley. But he knew it
11 was going to be an African-American. And after the discussion
12 and his statements setting out what his intention is as they're
13 going to Ms. Chrisp's house, and the statement about, shit,
14 you're about to witness a homicide, further evidences that this
15 plan is premeditation, it's in play. The wheels are going.
16 They simply haven't found Mr. McCay.
17 And even when they drop Ms. Chrisp off, she knew.
18 She knew. Because she tells her cousin who she hadn't talked
19 to, be careful.
20 Now, as they go back and they leave and they go to
2 Inner City Oil and they're driving in the car down 8th Street
2 and they're going to Leon's. And they're going to get a car
2 and look at the car with the good beats. As Defendant
2 Sandstrom is turning that car and they see, Mr. Eye sees

2 Mr. McCay, an African-American man who is alone, unlike at the

1 Inner City Oil where there's too many other witnesses, he's
2 alone, he's the one. And Defendant Eye by his very next
3 statement says, there he is. Hit the alley.
4 What's the discussion going down the alley? Give me
5 the strap. Asking for the gun. Planning. Premeditation.
6 You don't have the heart, dawg.
7 Give me the strap.
8 Getting to the end of the alley, pointing the gun out
9 the window at Mr. McCay, a wholly innocent person doing nothing
10 wrong but using a public street, walking to work.
11 One shot. Two shots. Conscience decisions. Now the
12 fact that he doesn't hit Mr. McCay does nothing to negate his
13 intent. It does nothing to stop what he intended to do. The
14 fact that he's a bad shot does not impact that whatsoever,
15 ladies and gentlemen.
16 And when does this happen? Well, we know from
17 Mr. Thompson at 6:00 in the morning. Then the discussion. The
18 driving around the block. The circling. The looking. The I
19 can't believe I shot him point blank in the face and he didn't
20 die. This notion then of what are we going to do? We got to
2 find him. His words. He's the one suggesting the need to go
2 out and, yes, Ms. Rios seconds that. But it's his idea.
2 Extension of this process that had been churning throughout his
2 words, his actions, leading up to that moment.

2 Discussion, deliberations, planning. The leaving of

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1 that location of the first shooting and going down, hunting,
2 trolling, looking for Mr. McCay. Coming down 9th Street and
3 seeing him turning up Van Brunt over on 8th and then back down
4 on Brighton. Stopping the car. Getting out. Decisions. Gun
5 in the hooded sweatshirt. Approaching Mr. McCay. Decisions.
6 The execution of not only Mr. McCay but the plan that he set
7 into motion, that he formulated hours before, that ultimately
8 results in Mr. McCay's demise.

9 Now, what do we know? We know that that 9-1-1 call
10 came in, the first one at 6:12. We know that between the first
11 shooting and the second shooting he's got almost a quarter of
12 an hour. That's not even backing up to the statements before
13 they ultimately saw Mr. McCay. The statements after. His best
14 friend, Mr. Deleon. We're playing a game called, nigger,
15 nigger, nigger.

16 Ladies and gentlemen, when you apply those facts and
17 you look, again, at the definition, considerable or significant
18 amount of planning or premeditation beyond the minimum required
19 for the instant, the minimum required for the commission of the
20 offense. Look at all of that and contrast that with
21 premeditation that you can form in an instant.

22 Now, once you examine that and you put those facts
23 into the law and you find that that is satisfied, then record
24 that on your verdict form. You have done the three preliminary

25 findings that are necessary to establish an eligibility for a

1 sentence of death.

2 But that's not the end of what the task is for you in
3 your deliberations. Because the Judge went over the
4 non-statutory aggravating factors that you also need to
5 consider. The non-statutory aggravating factors are set forth
6 in Instruction E11. The first is the impact and the loss of
7 the life of William McCay, not only as a person himself but the
8 impact it had on his family, his friends. You see, because you
9 had the opportunity to hear that Mr. McCay was not an object
10 just of this defendant's crimes. He was a person. He was a
11 person who got up and went to work in the morning. He was a
12 person who had dreams and aspirations. He was a person who
13 liked to read. You remember his backpack. He had multiple
14 books from the library. He had a Bible that he read with his
15 brother during their morning devotions. You can consider that,
16 ladies and gentlemen.

17 The next non-statutory aggravating factor is that
18 this defendant, Mr. Eye, selected William McCay as an object of
19 his crime and one of the motivating factors was because of
20 Mr. McCay's race. You already found this factor to be present
2 by your guilty verdicts that were returned on Counts 1 and 3.
2 Ladies and gentlemen, Mr. McCay was a wholly innocent
2 person, walking to work. Walking to work. He's executed
2 because of the color of his skin. This is a selection of him

2 that's random in the sense that it could have been any

1 African-American. Unfortunately for Mr. McCay and for his
2 family, it was him.
3 Now, it's important that you also remember and look
4 at an instruction that the Court gave you, it's E16. And this
5 is an instruction that talks about in considering the death
6 penalty you can't consider race, color, religion, national
7 origin or sex of either the victim or the defendant in your
8 deliberations. That is an important instruction to understand
9 because what that instruction is saying is we are not asking
10 you as the United States to impose the death sentence on
11 Mr. Eye because of the fact that he is white or the fact that
12 Mr. McCay was an African-American. That is not what we're
13 asking. What we're asking you, what is entirely permissible
14 under the law, is that you look at this defendant's motivating
15 factors. What was his motive in selecting Mr. McCay? That's
16 where race comes in. That's where it's appropriate for you to
17 consider. That's why the Court instructs you that that can be
18 found as a non-statutory aggravating factor and that is
19 something that you can consider and properly so in determining
20 whether or not a death sentence is appropriate.
21 The third non-statutory aggravating factor is
22 obstruction of justice. And you'll recall, ladies and
23 gentlemen, about Mr. Buchanan coming in here and testifying
24 about Mr. Eye soliciting \$5,000 to have witnesses killed and
25 you also recall the testimony about Defendant Eye and Defendant

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1 Sandstrom's plan. We got a plan. We're going to pin this on
2 Regennia Rios. Two eyewitnesses seen you do it. How do you
3 like me now, bitch? You can consider those factors and the
4 obstruction as it relates to an appropriate sentence.

5 The fourth factor is the future dangerousness as
6 evidenced by this defendant, Gary Eye's lack of remorse.
7 Ladies and gentlemen, there has not been one shred of evidence.

8 MR. SANDAGE: Your Honor, may we?

9 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
10 PROCEEDINGS WERE HAD:)

11 MR. SANDAGE: I don't mean to interrupt closing, Your
12 Honor, but Mr. Gibson did the exact same thing. There's been
13 no shred of evidence the defendant has shown any remorse.
14 That's not our burden. The burden is on the government. He's
15 burden shifting in his opening, now in his closing.

16 MR. KETCHMARK: I'm going to go from here and talk
17 about what the evidence was, what his reaction was after the
18 crime. I don't think it's burden shifting.

19 THE COURT: It comes real close.

20 MR. SANDAGE: Gibson went there in opening.

2 THE COURT: By focusing on the evidence which you
2 believe shows lack of remorse, I'm tempted to instruct the jury
2 that the defendant has no burden to prove lack of remorse.

2 MR. SANDAGE: I would ask you to do that, Your Honor.

2 THE COURT: But you can focus on those items that you

1 believe does show.

2 MR. KETCHMARK: That's where I'm going.

3 THE COURT: I will instruct the jury.

4 MR. KETCHMARK: Okay.

5 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

6 THE COURT: Ladies and gentlemen, I have told you

7 previously that the defendant has no burden to prove to you

8 that the death penalty should not be imposed in this case.

9 That means that the defendant has no burden to prove lack of

10 remorse. It is the government's duty to prove the facts that

11 would cause you to conclude that there was lack of remorse.

12 Mr. Ketchmark.

13 MR. KETCHMARK: Thank you, Your Honor.

14 Ladies and gentlemen, look at the facts. Look at the

15 facts in terms of the actions taken by Mr. Eye following the

16 murder of William McCay. Look at the fact that he took pride

17 in his handiwork. You'll remember from the testimony how at

18 the Stanley house when the T.V. is turned on and the police are

19 reporting that it's three black males that are the suspects.

20 His response was to laugh and find it funny.

2 You'll remember how they drive by the crime scene at

2 9th and Brighton as Mr. McCay is laying there on the ground

2 with the medical personnel fighting to save his life. His

2 response is to laugh. And find it funny and say, here, nigger,

2 nigger, nigger, as he's in the car with his friends. Is that

1 the actions of a remorseful individual?
2 You'll remember the testimony about the conversations
3 that happened in the Stanley, outside the Stanley house, in the
4 presence of Stephanie. You'll remember the conversations in
5 the Chirino basement. All the time where he is bragging about
6 what he did and why he did it. And, ladies and gentlemen,
7 you'll remember the testimony from his best friend, Mr. Deleon,
8 who said if he could save anybody he could, it would be this
9 defendant. Now, this defendant said they were playing that
10 game. And how in the days after this defendant asked
11 Mr. Deleon if he wanted to play the game. Is that the
12 reactions of a remorseful individual?
13 Then you'll remember just yesterday his
14 correspondence where he says he's a star and, yeah, they can
15 try to spin that however they want with their paid expert. But
16 if you look at that and you see the little smiley face. The
17 media jumps on whatever I do because I'm a star now. Ladies
18 and gentlemen, he considers this to be his 15 minutes of fame.
19 Is that the actions of a remorseful individual?
20 And this notion of mercy, I anticipate you might
21 hear, and ask yourself, ladies and gentlemen, the concept of
22 mercy is only relevant and only useful in a civilized society
23 if mercy is reserved for individuals who are truly deserving.
24 Is somebody who laughs and brags about their handiwork
25 deserving of mercy? Is somebody who targets and kills an

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1 innocent person because of their race deserving of mercy? Is
2 somebody who executes a witness to preclude them from reporting
3 a crime deserving of mercy?

4 Ladies and gentlemen, when you take the evidence and
5 you apply it to those aggravating factors, you put that in the
6 mix and you weigh that against the mitigating factors and the
7 question and the law tells you in Instruction E14 that if you
8 find that the aggravating factors, the fact that he has
9 substantially planned and premeditated these crimes, the fact
10 that he targeted Mr. McCay because of his race, the fact that
11 he has obstructed justice, that he is not remorseful and that
12 is evidence of his future dangerousness and the impact that his
13 crimes have on the loss to the McCay family, when you put those
14 all on the scale of justice and you take that and you weigh
15 that against the mitigation evidence.

16 MR. SANDAGE: Your Honor, may we approach?

17 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
18 PROCEEDINGS WERE HAD:)

19 MR. SANDAGE: The word in the instruction is
20 sufficiently weigh, outweigh, not just weigh.

21 MR. KETCHMARK: I believe I said that.

22 MR. SANDAGE: You did not. You said just weigh.

23 THE COURT: Whether he did or not you can point it
24 out in your closing. Overruled.

25 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

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1 MR. KETCHMARK: And, ladies and gentlemen, when you
2 take those factors in aggravation and you put that on the scale
3 of justice and you weigh that against the mitigation, the
4 question is whether this evidence, this evidence in aggravation
5 sufficiently outweighs the mitigation evidence. And the
6 mitigation evidence, his cousin who was raised in the same
7 environment, his sister who was raised in the same environment,
8 talking about going to the zoo, that maybe his mom wasn't the
9 best person, his aunt tries to help fill that void but they're
10 not turning out like him. They're not sitting in that chair,
11 convicted of these crimes. And the mitigation expert as
12 Mr. Gibson correctly pointed out, she picks and chooses the
13 information and she's the one that decides what she believes is
14 credible and relevant. Well, you heard from a cousin and aunt
15 who grew up with him, who know him, who spent more than 24
16 hours trying to digest his past.

17 Additionally, Ms. Rios. The instruction in the
18 mitigation is equally or more culpable? Ask yourself, is
19 Ms. Rios the one making the statements about killing in the
20 night leading up to the tragic death of Mr. McCay? No. It's
2 this defendant. Is Ms. Rios the one with the gun in her hand
2 when the shots are being fired in the alley? No. It's this
2 defendant. Is Ms. Rios the one who even brought the gun in the
2 car? No. Is it this defendant who says we've got to find him?

2 It's not Ms. Rios. She's not the one driving the car. She's

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1 not the one playing the game. She's not the one bragging about
2 it. And you remember the jail phone call, ladies and
3 gentlemen, the discussion about the game.

4 You were selected out of 340 some potential jurors
5 and you were selected because you took an oath and you said you
6 could follow the law. And it is an important decision. It's a
7 very important decision. The law is clear and the facts are
8 clear and justice demands the ultimate penalty.

9 Thank you, ladies and gentlemen.

10 THE COURT: Mr. Sandage.

11 MR. SANDAGE: Yes, sir. Thank you, sir.

12 May it please the Court.

13 THE COURT: Go ahead.

14 MR. SANDAGE: First of all, this will be the last
15 time that anybody from Mr. Eye's defense team will get up and
16 speak before you. The government will have an opportunity
17 after I conclude my comments. So I will take this opportunity
18 to thank you for your service and I truly do mean that. This
19 has not been an easy process for anybody involved especially
20 you, twelve citizens, 14 including the alternates, that come in
2 from the western part of Missouri. They come in and sit
2 through this. And I do, I thank you for your attention, your
2 patience and your understanding.

2 We understand that you have a difficult decision

2 before you. Gary and his defense team, me included, believe

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1 you will rise to the occasion, consider all of the information

2 and return a just and fair punishment.

3 Mr. Ketchmark said he anticipated I would get up here

4 and talk to you about mercy. I am going to talk to you about

5 mercy because I think that's a factor or something you should

6 consider. Justice must be tempered with mercy. Isn't that

7 what this country is all about? It's what sets us apart from

8 other countries.

9 We, as a people, we want to do what is right. We

10 want to be fair. And we want to be reasonable people. I'm

11 asking you to consider mercy and to consider forgiveness on

12 behalf of the person I have had the privilege of representing,

13 Gary Eye.

14 At the outset of Mr. Ketchmark's closing arguments to

15 you he said this should be an easy or easier decision based

16 upon the evidence you heard in the trial and the evidence that

17 you heard during the second phase yesterday. I challenge that.

18 This cannot be an easy decision for anybody. No matter what

19 you heard over the week and two days of testimony. No matter

20 what you heard yesterday. This cannot be considered an easy

2 decision. And I ask you to reject that premise that

2 Mr. Ketchmark alluded to in his closing argument.

2 Your verdicts on Thursday regarding the events of

2 March 9, 2005 hold my client, Gary Eye, accountable for his

2 decisions. What this phase of the trial is about is what is a

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1 just and fair punishment. Make no mistake about it, I told you
2 in opening statements what we would ask for. We're asking for
3 you to return a verdict of, a sentence of life in prison
4 without the possibility of parole. There is no other options.
5 There are only two options. Life without the possibility of
6 parole or death. There is, based upon your verdict in Count 5
7 of the indictment, those are the only two options that are
8 before you.

9 What is this hearing not about? What is this hearing
10 not about? What we have had over the last day, yesterday and
11 what we're doing this morning. This is not a hearing about the
12 statements made by Mr. Eye's co-defendant Steven Sandstrom, the
13 recording you heard during the first phase of the trial, the
14 letters you heard from him. You heard repeatedly from the
15 Judge to only consider that evidence against Mr. Sandstrom.
16 And I would ask that you, again, take that back with you in
17 your jury deliberations and only hold Mr. Eye accountable for
18 the things that he said.

19 This hearing or this hearing or your verdict or your
20 sentence is not about putting a stamp of approval on the drug
2 culture or drug addiction or drug sales or any street crimes of
2 violence. If you return a life verdict without the possibility
2 of parole, that will not be sending a message to this community
2 that you, the twelve jurors that are deciding the fate of my

2 client, are somehow putting a stamp of approval on that. The

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1 reason that you heard evidence yesterday about drug culture,
2 drug abuse, drug dealing, street violence, street crime, things
3 that were happening in the northeast part of Kansas City was
4 because I believe it helps paint the picture, frame the issue
5 of what brought Gary Eye to the corner of 9th and Spruce or in
6 the alleyway and eventually to the corner of 9th and Brighton
7 where he took the life of Mr. McCay.

8 Third, I, like many of you, were saddened to hear the
9 testimony of Mr. McCay's family. Who wouldn't be? It's a
10 natural reaction. However, nothing done in this courtroom
11 today or in your deliberations, unfortunately, can bring
12 Mr. McCay back, for what Mr. Eye did which was take him away
13 from this planet. So nothing you do will bring him back. So I
14 ask you to consider that when you're weighing the factors
15 regarding victim impact.

16 What is this hearing about? Plain and simple. An
17 appropriate punishment for Gary Eye. What is an appropriate
18 punishment? The government talked to you a little bit and you
19 heard the jury instructions that took some time to go through
20 them all as they always do. These are a little bit shorter
2 version than you had of the guilt phase but nevertheless
2 they're equally important. I ask you to read each and every
2 one of them.

2 At the outset I'd like to direct your attention to

2 E8. Instruction E8. It talks about the very first decision

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1 that you have to make. And it is whether or not Gary Eye is 18
2 years of age at the time of the crime. We don't dispute that.
3 We stipulated to that. Mr. Gibson read the stipulation into
4 evidence at the outset of their case in chief yesterday
5 morning.

6 That stipulation also tells you that Mr. Eye's date
7 of birth is September 9 of 1986. He was 18 and a half years
8 old at the time of the crime. But for six months, you would
9 have, six months earlier some time in late November, give or
10 take a couple of days, you would have to answer that question
11 no, he is not 18 year old at the time of the crime. I think
12 that is something that you can take into consideration as we
13 get later on and talk about some of the mitigating
14 circumstances. I think there's a couple circumstances that are
15 very powerful as related to that issue.

16 The next issue is regarding the mental state of mind
17 of Mr. Eye at the time of the events of March 9 of 2005. I
18 would ask you just to recall the testimony that you heard over
19 the last week or ten days and apply that testimony to the law
20 as it relates to that issue.

21 The next key is to look at the statutory aggravator.
22 Statutory aggravator that's, that discussion is found in
23 Instruction E10. Mr. Ketchmark went into quite a bit of detail
24 regarding Instruction E10, talking about substantially, well,

25 talking about planning and premeditation. He talks about

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1 substantial a little bit. Read the instruction closely, ladies
2 and gentlemen of the jury. It has to be substantial planning.
3 It has to be more than the minimum of the crime that was
4 committed. I would ask you to bring, as we always have, as any
5 juror is asked to do, to bring common sense, their life
6 experiences into this courtroom and into the jury room when
7 you're deliberating and consider what substantial planning
8 means to you.

9 A hypothetical example would be, if someone was to
10 plan a trip out of town, planning might be, we plan to go to
11 Des Moines next weekend. Substantial planning might be setting
12 certain things in motion ahead of time, a hotel, a car rental,
13 places that you're going to eat, making a budget. That's what
14 I take substantial planning to be. I do not believe that the
15 government has met their burden on substantial planning. I
16 don't dispute that this was a premeditated murder. You found
17 so. I respect that decision. Mr. Eye respects that decision.
18 Mr. Osgood respects that decision. This instruction, however,
19 challenges you as jurors to look at substantial planning and
20 premeditation. So don't get bogged down on just premeditation.
2 You have to look at it in the context of substantial planning
2 as well.

2 Ladies and gentlemen of the jury, you heard from
2 Regennia Rios who told you that after the corner, after the

2 shooting at 9th and Spruce they drove straight down 9th Street,

1 took a left on Van Brunt, took a right on 8th Street, took
2 another right on Brighton and ended up at the corner of 9th and
3 Brighton. I challenge the government's contention that that
4 took some twelve minutes or so. Her testimony doesn't support
5 that. She was asked about it on direct examination, vigorously
6 crossed about that by both counsel for Mr. Eye and counsel for
7 Mr. Sandstrom. And I would ask you to recall that testimony
8 and as you apply the facts from that case, from that to
9 substantial planning, I do not believe and I will argue to you
10 or recommend to you that you find no, as to substantial
11 planning. If that is your inclination, if that is your
12 decision, unanimously to find there is not substantial
13 planning, then you must vote no. The E8 will, excuse me,
14 Instruction E10 will tell you that your inquiry is over. Your
15 deliberations are concluded. And Mr. Eye will be serving the
16 rest of his life in prison without the possibility of parole.
17 Discuss with you briefly if I might, the
18 non-statutory aggravators that the government alleges in their
19 filings and that the Court has asked you to consider. First
20 the victim impact. It would be disingenuous for me to come
2 here and tell you that the loss of Mr. McCay did not impact his
2 family and his loved ones. We would only ask that you give
2 that proper weight and consideration when determining what is a
2 fair and just punishment for Mr. Eye.

2 The racial issue, the second non-statutory mitigating

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1 factor, you heard quite a bit of testimony in the first phase
2 of this trial regarding that issue. I would ask you to recall
3 the testimony yesterday regarding Mr. Eye as relates to racial
4 beliefs or tensions. You heard from Janice Nichols, his
5 teacher at the Bowling Green Correctional Institution, who told
6 you that she specifically recalled Mr. Eye and that she does
7 not recall him ever having any problems with any of the other
8 inmates and some of those inmates were of minority.

9 You also heard from Mr. Alton Clay at McCune who made
10 similar comments.

11 I think that the most revealing testimony on this
12 whole issue over the last, during the first phase and into the
13 second phase in Mr. Eye's case was the testimony of Don
14 Caldwell. That was the gentleman who told you he didn't
15 remember faces and names but he could remember events and
16 things about people and that he specifically remembered things
17 about Mr. Eye. And what did he tell you that he remembered?
18 He remembered that in group session for the most part Mr. Eye
19 was a quiet, reserved individual or kid or young man. But at
20 one point another member in that group session stood up and
2 talked about the stresses of being bi-racial. And it was only
2 then for the, like the first time according to Mr. Caldwell did
2 Mr. Eye stand up and talk to that other child, that other
2 juvenile about bi-racial issues and how he had to embrace both

2 of his races in his family. I speak to you, ladies and

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1 gentlemen of the jury, I don't believe that that sounds like
2 someone who has a great deal of racial animosity. It doesn't
3 change the fact that you convicted him of killing Mr. McCay
4 based upon his race. But I think when you look at it in terms
5 of the statutory aggravators, the non-statutory aggravators,
6 things you heard yesterday from these witnesses should be taken
7 into account.

8 Three was the obstruction of justice. You didn't
9 hear any new evidence yesterday regarding anything else that
10 Mr. Eye did to obstruct justice. You found him guilty of
11 burning the car. We concede that.

12 You heard testimony in the first trial regarding
13 Mr. Buchanan who said that Mr. Eye supposedly paid, was going
14 to ask Mr. Buchanan for \$5,000 to have Mr. Sandstrom hurt,
15 injured or killed. I would ask you to consider that testimony
16 in your deliberations and challenge the credibility of
17 Mr. Buchanan on that issue. There is no shred of, piece of
18 evidence that this government turned over to you that anything
19 that supports that, outside Mr. Buchanan's testimony. However,
20 as it relates to Mr. Buchanan and Mr. Sandstrom, his own
2 cousin, you had volumes of letters introduced regarding his
2 actions with Mr. Sandstrom and what they were going to do and
2 Mr. Buchanan was left. I just don't think that the evidence
2 and the credibility of Mr. Buchanan on this issue suffices.

2 On the issue of future dangerousness and lack of

1 remorse, you heard the Judge just instruct you again in our
2 closing arguments here this morning that it's not the burden of
3 Mr. Eye or Mr. Eye's defense team to present any evidence that
4 he lacked remorse. There is no doubt that the comments made by
5 Mr. Eye immediately following the events of March 9 of 2005 are
6 troubling. I would ask you to take that in the context of what
7 was happening. He was high on methamphetamine. The people
8 that came before you and testified about what the comments
9 were, some don't recall exactly. They recall a couple years
10 ago. Some changed their mind. All of them admit to you that
11 they were high on methamphetamine as well. All of those, you
12 should pay particular attention and put a particular weight on
13 them as you weigh this factor against the others.

14 And now if I might I would like to spend some time
15 obviously talking to you about what we believe the mitigating
16 factors are in this case. And those can be found in
17 Instruction E12.

18 And the instruction talks about something along these
19 lines, any juror persuaded of the existence of a mitigating
20 factor must consider it in the case. That the standard of
2 proof to establish a mitigating factor is the greater weight of
2 the evidence. This burden is lower than the government's
2 burden. You look at the evidence compared to what is opposed
2 to it. And after considering that, if you as jurors feel it is

2 more likely than not true, you must consider it.

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1 First mitigating factor that we talked about or that
2 the Judge layed out was that Regennia Rios was equally culpable
3 and that that can be a factor for your consideration.
4 Mr. Ketchmark discussed this with you. I believe that she is
5 equally culpable. For her actions. More importantly is that
6 this government gave her immunity. She serves no punishment
7 for her crimes in this case. Granted she came to you and sat
8 in that chair in orange. But that orange, she was in jail and
9 in prison serving a prison sentence, not for the crimes she
10 committed on March 9th but for the crimes that she lied to law
11 enforcement about the crimes on March 9th. Mr. Eye has, your
12 decision on Mr. Eye is far different than no punishment at all.
13 It is either life imprisonment without the possibility of
14 parole or death. I ask you that, that you can consider this
15 factor and weigh that factor that Ms. Rios, someone who is
16 equally culpable as Mr. Eye is going to serve no time, gets
17 immunity from the same government that stands here before you
18 today and asks you that you take the life of Mr. Eye.
19 The second one of our mitigating factors is criminal
20 history. You heard that Mr. Eye had stole cars, did drugs, and
2 crimes of that nature. You did not hear any evidence presented
2 in this case that he committed crimes of violence. This would
2 be for all practical purposes the first crime of violence he
2 has ever committed and for that he will spend the rest of his

2 life in prison or face the death penalty.

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1 The third mitigating factor was alcohol, drug abuse
2 or intra-family violence and lack of employment as a
3 contributing factor. There's been no evidence to the contrary.
4 And as I just told you at the beginning of my discussion on
5 mitigating factors, you look at the evidence that's more likely
6 than not and if there's nothing opposed to it, then you must
7 consider it. And I would say that factor 3, that you must
8 consider it.

9 You heard the discussions of Ashley Tebo, Debbie Tebo
10 and Dr. Marilyn Hutchinson. Ashley Tebo did not live in that
11 house. She told you honestly, truthfully, from her on the
12 stand what it was like to live in that house. How difficult it
13 was. Probably more importantly you heard from her mother
14 Debbie Tebo that wanted to pull Gary Eye out of the house. You
15 heard his sister Krystle Eye was treated differently in the
16 house. I would challenge you or ask you to recall the evidence
17 that was the primary reason Debbie, his aunt, wanted to get him
18 out of the house. Because he was treated far differently in
19 that house than Krystle or anybody else. Her attempts to do
20 that obviously failed. I don't know if you should hold Gary
2 Eye responsible for her failures.

2 You heard discussions, Dr. Marilyn Hutchinson used
2 several big words yesterday, half of which I don't understand.
2 But she did use a term called transmutation. And, basically,

2 what I took from that is, is that the violence that we see in

1 our homes and our neighborhoods pass on from generation to
2 generation to generation. And I would ask you to consider her
3 testimony and consider it in the context of mitigating factor
4 No. 3. And that all of those things set out in that mitigating
5 factor came from generations before him, Mr. Eye, to today and
6 he is passing those on.

7 There's quite a bit of discussion about Joyce Eye,
8 his mother. You heard the testimony from Dr. Marilyn
9 Hutchinson when she was asked on cross-examination whether or
10 not if Dr. Hutchinson knew if Joyce had ever been charged with
11 neglect or child abuse. Her answer to that question was
12 honestly no. On redirect examination, I followed up with what
13 I think is a fair question, should she be charged? Her answer
14 to that was yes. Is that Gary's responsibility for the actions
15 of his mother? I would say not. I would ask you to consider
16 the testimony that you heard over the last couple, yesterday
17 regarding Joyce and how, Ms. Tebo or Joyce Eye, and how it
18 relates to factor No. 3.

19 Factor No. 4, defendant had less positive guidance,
20 supervision, nurturing than most children. I just ask you to
2 recall the testimony of Dr. Hutchinson on this topic. There
2 has been no evidence to the contrary. So in weighing it, I
2 think that you can give it due consideration.

2 Mitigating Factor No. 5 regarding the violence

2 between family members while Gary was growing up. I don't need

1 to sit here and recount for you what we heard from several
2 different witnesses. Unlike closing arguments in the first
3 phase when we were asking you to recall evidence over a week,
4 week and two days, in this phase you heard it all yesterday. I
5 suspect and I believe that all that evidence and all that
6 testimony yesterday is still fresh in your mind. But I believe
7 that there is sufficient evidence before you to find the factor
8 that there was violence between family members while Gary was
9 growing up.

10 Same with No. 6, which was neighborhood violence.
11 You heard that for the better part of two weeks, the
12 neighborhood violence. You heard it from the government's own
13 witness, Mr. Thompson, who was the gentleman eating at the G &
14 E Cafe on March 9 of 2005. And on cross-examination we asked
15 him how often that he heard gunshots in the neighborhood and he
16 said often. You also heard similar testimony from Debbie Tebo
17 that over the course of time from her as a child to an adult
18 she has seen a change in the community and that that community
19 in the northeast part of Kansas City is far more violent today
20 than it was back when she was a child.

2 Factor No. 7 was regarding school or lack thereof.

2 Testimony was that Gary skipped school. I sense from the
2 government through cross-examination that they were trying to
2 hold Gary Eye responsible for skipping school when he was in

2 the fifth and sixth grade. I asked Ms. Hutchinson who is

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1 generally held responsible for those types of absences and she
2 told you an honest and true answer to that question and that is
3 the parents are generally held responsible for that conduct.

4 Factor No. 8 was that Gary Eye dropped out of school
5 and it effected his development. I think that was proved
6 through the testimony of Janice Nichols, the teacher at Bowling
7 Green, who told you when Mr. Eye showed up at Bowling Green in
8 late 2001 or early 2002 that he tested two grade levels below
9 what he should have been testing at.

10 And also, again, Dr. Hutchinson addressed those
11 issues and talked about a life of what happens when you drop
12 out of school at age 12 and go to the street and things like
13 that, that happen.

14 Factor No. 9, at the age of 12 Gary was selling drugs
15 and his mother was accepting part of this money. That was the
16 testimony that you heard from Dr. Hutchinson. I would ask you
17 to consider that testimony and consider the position Mr. Eye
18 must have been in to have to have done the things that he had
19 to do to help support his family at the age of 12.

20 Factor 10 was Mr. Eye was 18 at the time of the
21 crime. I alluded to that almost at the outset of my comments
22 to you. I think that is among the most important factors for
23 your consideration. That a simple six months in a young man's
24 life is what separates him from facing the death penalty and

25 not facing the death penalty. I think if you place that in the

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1 context of life in general, growing older and getting older and
2 being able to be more mature, learn right from wrong, things
3 that you might not have gotten when you were a younger man,
4 that this might be a factor that should weigh heavily in your
5 decision for a punishment of life imprisonment without
6 possibility of parole.

7 Factor No. 11 talked about how drugs contributed to
8 his poor decision making. I said to you in opening statements
9 yesterday that our comments are not excuses. They're not
10 justifications for what happened on March 9th. You have held
11 Mr. Eye accountable for that. We respect that decision. But I
12 think it would be unfair to leave Mr. Eye's drug abuse and drug
13 usage out of the equation when you're weighing the factors of
14 life and death. Clearly that had to have contributed to his
15 poor decision making and you actually heard no evidence to the
16 contrary.

17 You also heard that on March 3th of 2005, just
18 roughly six days before the homicide, that Mr. Eye was in North
19 Kansas City Hospital and diagnosed with pneumonia, bronchitis
20 and influenza. That he was very sick. That he was asked to
2 stay. The records support it. And the evidence from the
2 investigation Dr. Hutchinson did was that they wanted him to
2 stay but he didn't want to because he was there under a false
2 name and he had a warrant outstanding. That they gave him a

2 prescription that he couldn't fill. And that he began to self

1 medicate by the use of narcotics.
2 You heard the testimony of Dr. Hutchinson tell you
3 when someone is sick as he was by the medical records before
4 you, they're an exhibit, you can ask for them and read them,
5 not only our body but mind are somehow compromised. Again, not
6 an excuse or justification for what happened but I believe it
7 helps paint the picture where Mr. Eye was on March 9th of 2005,
8 both mentally and physically.
9 Factor No. 14, is that during his incarceration he
10 has become more thoughtful, control his temper and worked out
11 conflicts. And I'm going to discuss that in No. 15 regarding
12 his marital commitment with his wife in the context of one
13 discussion. I think you do need, I would ask you to read those
14 entire letters that were admitted into evidence. One is a
15 three-page letter, I believe one paragraph the government got
16 into. The other one is a twelve-page letter. I would ask you
17 to read that and place the comments the government is asking
18 you to weigh to impose the death penalty against the overall
19 tenor of that letter. And you will see from that letter that
20 Mr. Eye does love his wife, that they do have a commitment to
21 one another and they will try to help.
22 One of the issues that I asked on cross-examination
23 of Dr. Hutchinson was the time frame in which all the evidence
24 on this issue the government gave you. And it was early '06 to
25 the middle of '06. Some two years, coming up on two years

1 removed, some of it over two years removed from today. And
2 then I asked Dr. Hutchinson how do you reconcile those because
3 the government challenged her on how you could make
4 conclusions, how do you reconcile those letters and those
5 audiotapes to your conclusions that you are making and things
6 that you're saying on the stand? And she said, it's a
7 maturation process. It's an evolution. It's a change in Gary
8 Eye. And I think that's important to know. They're asking you
9 to look back two years ago. I'm asking you today to look at
10 who Gary Eye is today and whether or not the appropriate
11 sentence is life imprisonment without the possibility of parole
12 or death.

13 I did skip over one mitigator, and you probably wish
14 I had but I better come back to it, and that was the brain, the
15 brain development. Dr. Hutchinson gave you true, honest
16 testimony regarding where the brain is at the age of 18 and a
17 half years of age. If his brain is actually still developing,
18 still growing. The law allows for people over the age of 18 to
19 be punished for their crimes, crimes that, punishment that
20 you'll have to consider for the crime Mr. Eye committed. But I
21 ask you to take that into consideration and some of the other
22 comments I made to you regarding those issues. And that the
23 drug abuse and the drug usage that Mr. Eye had should be taken
24 in the context. I believe she told you that that type of drug

25 abuse can slow down the maturation process of the brain. And

1 she told you, frankly, that in the beginning of her
2 conversations with Mr. Eye, she didn't particularly care for
3 him, that he challenged her and he challenged his defense team,
4 he challenged his wife. But there's been an evolution, a
5 maturity level. And she told you the brain generally starts to
6 mature at the age of 20. Well, Mr. Eye is 21. That makes
7 sense. You can apply the real live testimony that you heard
8 from her regarding her interaction, regarding Ashley Tebo
9 telling you that just in the five months ago when she last got
10 a letter from her cousin Gary, that the tenor of the letter had
11 changed that he had become a changed person. I would say that
12 goes right to the mitigating factor of the brain and the
13 maturity level and the maturation process of Gary Eye's brain.
14 Ladies and gentlemen, much of yesterday's
15 cross-examination asked Dr. Hutchinson to discuss choices, that
16 Gary Eye had choices. True sense of the word, everybody has
17 choices. Dr. Hutchinson told you, yeah, we all have choices.
18 I would ask you to consider what, Dr. Hutchinson's testimony
19 regarding Gary's life, what it was like to be born into that
20 family and reach the point that he did. And how many of those
21 did he have choices? Sure, at the age of 7 was anybody holding
22 a gun to his head and asking him to smoke the marijuana
23 cigarette? I would be foolish to tell you that's what
24 happened. Or at the age of 10, and keep in mind who the

25 testimony was who first presented that drug to him, his Uncle

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1 Rick. And then at the age of 10, 11, 12. At this point he's
2 in full blown drug addiction. Sure, he has choices. But he's
3 a 12-year-old. Other 12-year-olds have different choices to
4 make, where they're going to go to school, where they're going
5 to eat, where they might go on vacation after talking to their
6 parents. Those weren't decisions Gary Eye got to make. He was
7 on the street at the age of 12. He was having to take money
8 out of his mom's purse to buy food. Those aren't the types of
9 choices that I think one considers. You react. You make a
10 choice because you have to.

11 All of that aside, and I'm sure Mr. Gibson will talk
12 about it, Mr. Eye had a choice on March 9th. No doubt about
13 it. He made the wrong choice. You have heard the evidence in
14 the first phase of the trial. That evidence you returned a
15 guilty verdict. We respect that verdict. This is about what
16 the punishment is for that verdict. He made a bad choice. A
17 horrible choice. A choice I suspect he regrets. You have
18 heard that he's been remorseful more recently than he has at
19 the time of the crime. Again, I would challenge you to think
20 about the terms of Dr. Hutchinson's testimony and how those
21 type, how it complies with the maturation process of the brain
22 and maturity level and when in a structured environment like
23 Mr. Eye is in right now, how he begins to prosper, flourish,
24 change his life when he doesn't have community pressures or his

25 other external pressures to get back involved in drugs, get

1 back involved in street crimes.

2 Ladies and gentlemen of the jury, if you return a
3 life, a verdict of life without possibility of parole, he'll
4 never be back on the street. He'll spend the rest of his life
5 in prison. The choice before you today is where Mr. Eye will
6 die. Will Mr. Eye die behind the walls that Janice Nichols
7 described to you at her prison facility or will he die at the
8 hands of the government when they execute him if you return a
9 recommendation for a death sentence?

10 Honestly, ladies and gentlemen of the jury, you have
11 before you Gary Eye, who I believe is on the upward curve of
12 life. He has potential. We don't know what that potential is.
13 But returning a verdict of death extinguishes that curve. He
14 won't get to see it. He won't get to spend time, not time like
15 you and I spend with our wives or our significant others, but
16 the type they have become accustomed to and the type they're
17 transitioning to during this incarceration.

18 We don't know what the future holds for Mr. Eye but I
19 would ask you to consider the testimony of his cousin Ashley
20 who told you that she has seen a change in him, that she's
2 willing to make her, when she has her child, that she wants
2 Gary to be a part of her child's life. There is a lot ahead
2 for Gary. It will not be an easy life. It's a life he chose.
2 But it's a life that he should be given the opportunity to

2 live.

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1 Ladies and gentlemen of the jury, the death penalty
2 is, in my opinion, is reserved for the worst of the worst. I
3 would ask you to consider as you deliberate whether or not Gary
4 Eye is the worst of the worst. I don't believe he is. And it
5 would only be up to you, the twelve jurors, to make that
6 decision. We will respect whatever your decision will be.
7 Also sentencing Mr. Eye to life without possibility
8 of parole sends a strong message to Gary that his conduct is
9 not acceptable. It sends a strong message to the community
10 that his conduct is not acceptable. But what it does show, you
11 found something in Gary that is worth sparing his life. And
12 that's what I would ask you to consider.
13 As I wrap up here, ladies and gentlemen, I want to,
14 again, thank you for your time, your patience. These are
15 difficult issues. We discussed that in voir dire. Actually
16 discussed that clear back in October of last year when we had
17 you all down here to fill out a 30-page plus questionnaire
18 involving these issue.
19 It was as the government has talked about a
20 hypothetical situation. We talked about that a lot in voir
21 dire. The reality is now before you. I believe after you go
22 through the jury instructions and apply the law and the facts,
23 that you will return a just and fair verdict. And on behalf of
24 Gary Eye, we ask that verdict be life imprisonment without the
25 possibility of release. Thank you.

1 THE COURT: Mr. Gibson.

2 MR. GIBSON: Thank you, Your Honor.

3 There were times, there were days, there were moments
4 when the McCay family thought no one cared. That there was
5 never going to be justice. That everyone had forgotten about
6 William and who he was. They dealt with their grief in the
7 quiet moments of their lives. Then Thursday when you returned
8 your verdict, you gave the McCay family something very
9 precious. Because no one should have to experience the loss
10 that they have experienced. But how much worse would it have
11 been to think the killer would get away. So I thank you,
12 again, for your verdict. I thank you, again, on behalf of the
13 United States. I thank you on behalf of the McCay family. And
14 I thank you for the perhaps small piece of mind that they will
15 have as a result of your verdict.

16 I agree with Mr. Sandage, however, that nothing we do
17 here today can bring William McCay back. Nothing.
18 During my opening statement I used words like courage
19 and wisdom when I talked about the verdict that you render.
20 And, ladies and gentlemen, as a career prosecutor I don't use
2 those words often. I know that it is difficult to sit in
2 judgment.

2 It is not easy to be a juror, especially on a case
2 such as this. What Mr. Ketchmark explained to you in the

2 opening is that you are guided by the law, by the factors to

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1 consider and how to consider them and how to determine whether
2 or not under our laws as they apply to everyone whether this
3 defendant merits a death sentence.

4 Mr. Sandage says it's reserved for the worst of the
5 worst. Well, curiously enough, you'll not find that phrase
6 anywhere in the instructions that you have before you. Because
7 the law is blind. It applies equally to everyone. It analyzes
8 what was done and weighs it against whatever mitigating factors
9 the defendant chooses to present. There is guidance here,
10 ladies and gentlemen, and while your decision may not be
11 difficult, it will be consistent with the law. And so I
12 recognize, we recognize that you have already demonstrated
13 through your verdict that you have within you, individually,
14 collectively as a group, the wisdom and courage to see this
15 through to the end. And I ask you to keep that in mind as you
16 go back into the room and deliberate over the appropriate
17 sentence for Gary Eye.

18 This man, right here, chose to interfere with William
19 McCay's civil rights to be on our streets, in our country
20 unmolested. He chose that. He chose to execute McCay because
2 he thought McCay could identify him. Not everyone, ladies and
2 gentlemen, is willing to go the extra step and take a life, to
2 interfere with a man's right to use the public streets. Some
2 motivated by hatred would have been content to merely threaten

2 him or having missed him at 9th and Spruce to not pursue him

1 down and hunt him down blocks away.
2 But Gary Eye, Gary Eye chose differently. And that's
3 why Gary Eye is sitting over there today. His age is not in
4 dispute. You've already found the mental state required by
5 your verdict rendered last Thursday. The statutory
6 aggravators, substantial planning and premeditation, has been
7 discussed by Mr. Ketchmark. So let's move on to the
8 non-statutory aggravators.
9 Ladies and gentlemen, after your deliberations,
10 during your deliberations you're going to have to weigh what
11 this defendant did to William McCay. How he did it. The
12 manner in which he did it. And measure that against what he
13 presented here yesterday to try and justify saving himself.
14 All through this trial, and correctly so, you heard
15 about the presumption of innocence. How Gary Eye was cloaked
16 in that presumption of innocence. But now that you have found
17 him guilty, that cloak has been removed and he has been laid
18 bare before you, ladies and gentlemen. And who he is, who Gary
19 Eye is is a murderer. A killer. A person who intentionally,
20 deliberately, willfully with premeditation and malice
21 aforethought took the life of another human being. A murderer
22 with a heartless heart, cruelty of purpose, who had a
23 conscience awareness on March 9, 2005, he was going to take
24 someone's life. And unfortunately for William McCay, he
25 happened to run into him.

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1 That's who he is today. He is innocent no longer.

2 He is a killer. The defendant's age had nothing to do with
3 what he did on March 9, 2005, ladies and gentlemen. He was an
4 adult. A man. And he committed a man's crime.

5 This is about Gary Eye and the choices that he made.

6 This is about personal responsibility. This is about Gary Eye
7 being held accountable for the consequences of his actions.

8 Mr. Sandage suggests that Gary is not responsible for his
9 mother's actions while he was growing up? Recognize the
10 mitigation for what it is. We can protest to the end of time
11 that it is not being offered as a justification or an excuse
12 but that is exactly what it is. A laundry list of excuses. To
13 some extent we are all shaped by our environment but when Gary
14 Eye chose to pick up that revolver, when he chose to hunt down
15 William McCay, when he chose to brag about it afterward, he
16 cannot now be permitted to lay the mantel of guilt or blame for
17 what he did on his mother? His uncle? His grandmother? His
18 grandfather? His sister was raised in the same household and
19 she's not sitting at that table.

20 Mr. Sandage says don't hold Gary Eye responsible for
2 the environment he was raised in. I'm not suggesting that you
2 do so either, ladies and gentlemen. Hold him responsible for
2 the decisions that he made. You will never have the
2 opportunity to know William McCay. All you can do is picture

2 in your mind the type of person that he was. And what little

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1 evidence you heard in this trial. You'll never know his fears,
2 his anxieties, his joys, his future plans. And now he will
3 never realize those plans for the future because Gary Eye
4 snuffed out his life on March 9, 2005.

5 When this trial is over, you'll go back to your
6 lives. The days will turn into weeks. The weeks will turn
7 into months. And the months will turn into years. And maybe
8 years from now you'll bump into one another, or you'll see one
9 of us. You'll be hard pressed, I submit, to remember the name
10 of William McCay. Because on March 9, 2005, the day that Gary
11 Eye and Steven Sandstrom took William McCay's life, they
12 removed him from existence. And the only people who will hold
13 his name in their hearts will be his family and those that
14 loved him. But even then as the days go by, they will begin to
15 forget the sound of his voice, the sound of his laugh, his love
16 of books, his love of horses and sports, because that is what
17 happens when someone is murdered. It's like he was ripped from
18 existence. And Gary Eye did that.

19 Now, he does not have to prove anything. Gary Eye
20 was never for one moment that he set foot in this courtroom
2 required to prove anything. But look what he did put before
2 you. His own hired gun, his own purchased expert told you that
2 Eye is sorry for putting his family through this. His family
2 through this. He is sorry for putting his wife through this.

2 His wife that he married after he was charged with capital

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1 murder and wants to bring into this courtroom as a prop. He is
2 sorry for the car thievery. That's the most contrition his
3 paid doctor could summon from that witness stand yesterday.
4 As to the defendant's family, ladies and gentlemen,
5 let me say this. They are not on trial here. As much as Gary
6 Eye would apparently prefer that they were, he is here on
7 trial. What he did is not a reflection on his family. It has
8 nothing to do with them. We all have choices in life. We make
9 our own choices. And some of us do not want to be held
10 accountable for the consequences. That's who Gary Eye is.
11 I mean it's ironic. It's about his family gets up
12 here, essentially pleads for his life. But think about it. On
13 March 9 of 2005, if Eye had stopped to think for one minute
14 about all the people he would hurt in his life when he pulled
15 that trigger, we wouldn't be here today. One of the reasons
16 each and every one of us gets up every day and goes to work or
17 whatever it is that we do during the day, in life whatever we
18 do, it's because if we don't, there are people who will pay the
19 consequences, our families, our children. One of the reasons
20 some of us don't engage in criminal conduct is because we don't
2 want to get caught. But for others, for most of us it's
2 because we don't want to see our sins visited upon our family
2 members because there will be consequences for them too. But
2 Gary Eye doesn't think like that. He doesn't care about the

2 consequences for his family. Ladies and gentlemen I remind

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1 you, this is their evidence. He's stealing cars. He's smoking
2 dope. He's dealing dope. And on March 9, 2005 he took another
3 man's life. His aunt came in here and took the witness stand
4 and told you that on his release date, on his release date she
5 shows up to welcome him into her home, to take him home, to put
6 a roof over his head. And what has he done? He's already
7 gone. Not even there to meet his aunt, who is there to pick
8 him up on his release date.

9 Are we really going to discuss whether or not
10 bronchitis, the flu, contributed to the decision to pull that
11 trigger six to seven times on the date of March 9, 2005? If
12 that's not an excuse, what is it?

13 And Mr. Sandage has asked you to show mercy. And I
14 suggest to you that you temper Mr. Sandage's suggestion by
15 showing to Gary Eye the same mercy that he showed to William
16 McCay on March 9 of 2005. None. None, whatsoever. He didn't
17 have to kill William. He did not have to do this. This was
18 not something that occurred in the fraction of a second. He
19 had ever opportunity to halt this murderous endeavor. He
20 missed at 9th and Spruce and he could have stopped there. But
2 what does he do? The hard truth, ladies and gentlemen, is that
2 he should be shown no mercy because he doesn't deserve it.
2 Gary Eye has the opportunity to have his future
2 decided by twelve intelligent, principled people who are

2 objective, impartial and will follow the law. Gary Eye had a

1 chance to have his family and his friends come into this
2 courtroom and beg for his life. But, ladies and gentlemen,
3 William McCay never had that opportunity. He never had the
4 chance to have an impartial, objective, principled people
5 decide his fate because on March 9, 2005 Gary Eye was his
6 judge, his jury and his executioner. And William's family
7 never had the chance to say to Gary Eye, don't kill my son.
8 Don't kill my uncle. Don't kill my brother. They never had
9 that opportunity. And isn't it ironic, one wonders if we could
10 go back in time and give them that opportunity, if back on
11 March 9, 2005, if William McCay had fallen to his knees instead
12 of fighting for his life, if he had fallen to his knees and
13 begged Gary Eye to spare his life, would that have made a
14 difference to Gary Eye?
15 I submit to you, ladies and gentlemen, Gary Eye would
16 still have pulled that trigger. Once, twice, three times. He
17 took the life of a perfect stranger merely because of the color
18 of William's skin. And that's tells you all you need to know
19 about Gary Eye and the type of person he is.
20 Moral courage is a rarer commodity than bravery in
2 battle or great intelligence. It is the one vital, essential
2 quality required of every one of you to render a fair,
2 impartial and just verdict. I know it will not be easy and
2 perhaps even unpleasant. But justice cannot be avoided merely
2 because of an unpleasant task.

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1 A few years ago I heard a definition of retribution.
2 And I was told that retribution is defined as the reward for
3 evil done. The reward for evil done. How appropriate. I
4 submit to you, ladies and gentlemen, that the sentence of this
5 jury must be, should be based upon all of the evidence before
6 you. After you have engaged in your findings, after you have
7 done the weighing, after you have discussed this collectively
8 and reached a unanimous decision, the sentence must be death.
9 He has earned the sentence for the evil that he has done.
10 THE COURT: Mr. Quatrocky and Ms. Drew, thank you
11 again for making yourselves available. In a moment I will
12 excuse you again. I will not yet release you from your
13 summons. You will be called back in the event one of the other
14 jurors is unable to participate but in the event of a hearing
15 involving Mr. Sandstrom. Please do not discuss the case.
16 Please don't read, watch or listen to any news reports about
17 the case. Thank you and you are now excused.
18 We will recess in a moment and allow you to begin
19 your deliberations. Lunch will be provided to you. You can
20 work through lunch or not. It's up to you. You control your
2 deliberations.
2 Again, if anyone leaves the room, your discussions
2 should stop because all of you need to hear what others have to
2 say about the case.

2 It is now time for you to discuss and decide. We'll

1 be in recess until we hear from you.

2 (At 10:35 a.m. the jury retired to deliberate on its
3 verdicts.)

4 (The following proceedings were had OUT OF THE
5 PRESENCE AND HEARING OF THE JURY:)

6 THE COURT: Okay. Same rules, folks. You don't have
7 to stay in the courtroom but be no more than five minutes away
8 in the event we have a question or need you for some other
9 purpose.

10 MR. ROGERS: Lisa Nouri, the attorney for Stephanie
11 Sandstrom was here earlier, had to make another commitment.
12 She left a note for you and Mr. Ketchmark wondering if her
13 presence would be necessary, when we call Stephanie, when we
14 recall Stephanie I should say, in the event of Defendant
15 Sandstrom so I gave the note to Mr. Ketchmark.

16 THE COURT: I mean is she available?

17 MR. ROGERS: Unavailable tomorrow.

18 MR. KETCHMARK: Here's the note, Your Honor. And I'm
19 happy to call Ms. Nouri. Obviously, I think it's more
20 Ms. Sandstrom's decision. Obviously, I think for purposes of
2 her being called to testify is not the same purpose that Ms.
2 Nouri was initially appointed to represent her. So I don't
2 necessarily, I can't say she --obviously, it's her client's
2 decision. But I don't necessarily perceive there would be a

2 necessity for Ms. Nouri to be here when Ms. Sandstrom

1 testifies.

2 MR. ROGERS: I would anticipate asking her stuff that
3 would involve drug use and for which the statute of limitations
4 has not yet run. But I think you have already given her a pass
5 on that from the case in chief.

6 THE COURT: I don't, obviously, nobody can say with
7 certainty --you folks can be seated or leave, whatever you
8 choose to do.

9 Nobody can say with certainty that she is forever
10 immune from prosecution for any crime she may have committed.
11 I don't know whether she is likely to incriminate herself from
12 her testimony. It may well be that she would. My sense of it
13 is that she will not be prosecuted for anything that she may
14 say. So ultimately I think the decision on whether she
15 proceeds to testify without her attorney is hers to make. And
16 if she chooses to take the stand, we'll hear her testimony. If
17 she, she is subject to subpoena?

18 MR. ROGERS: She's still under the subpoena that
19 brought her here before.

20 THE COURT: I assume she'll be here and she will
2 either testify or invoke the Fifth Amendment. That will be all
2 I can say about that at this time.

2 We, you may have said all you need to say or intend
2 to say with respect to the final instructions that I proposed

2 for Mr. Sandstrom but I certainly don't want to foreclose your

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1 completing your record on those instructions. You don't have
2 them with you and I have no reason to think that you would
3 bring them but I'm prepared to talk about them if you wish to
4 do so while the jury is out.

5 MR. ROGERS: I don't know that I have a final copy.

6 MR. KETCHMARK: I'm not certain -

7 THE LAW CLERK: Final copy was not made. They're
8 identical except for the mitigators. And I gave you a copy of
9 just the mitigators a couple days ago.

10 MR. KETCHMARK: Obviously, I assume the mental state
11 would change.

12 THE LAW CLERK: Mental state would change as
13 motivation on Count 1--acquitted on--

14 MR. KETCHMARK: Correct.

15 THE LAW CLERK: But other than that, those are the
16 only changes.

17 MR. ROGERS: I think we made a sufficient record,
18 Your Honor. I do not see the horse being resurrected, let me
19 put it that way.

20 THE COURT: All right. If you change your mind, let
2 me know. Otherwise, I'll assume that you believe your record
2 is completed on the Sandstrom instructions and those are the
2 ones we'll give.

2 Anything further?

2 MR. ROGERS: Just in terms of scheduling purposes,

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1 Judge, and I know you don't know any better than I do how long
2 this -

3 THE COURT: If this jury comes back today I intend to
4 bring them back tomorrow to start the hearing on Mr. Sandstrom.
5 If it does not come back today then whether we start tomorrow
6 afternoon with Mr. Sandstrom or Thursday, simply depends on the
7 timing.

8 MR. ROGERS: I don't need anybody for today.

9 THE COURT: You do not need anyone today. I don't
10 expect, well, I will not proceed with Mr. Sandstrom today.
11 All right. We're in recess.

12 (Recess)

13 (The following proceedings were had OUT OF THE
14 PRESENCE AND HEARING OF THE JURY:)

15 THE COURT: Good afternoon. Be seated, please.

16 I am informed that the jury has reached its verdicts.

17 I am prepared to read all 13 pages of each special
18 verdict form if the parties want me to. Alternatively, I can
19 satisfy myself that the predicate findings have been made and
20 turn simply to Section 6, which is the determination by the
21 jury. What is your pleasure?

22 MR. SANDAGE: I don't know. No, don't need all the
23 pages read, Your Honor.

24 THE COURT: Mr. Ketchmark?

25 MR. KETCHMARK: I think that is sufficient if the

1 defense is requesting it, Your Honor.

2 THE COURT: I will thumb through the first 10 page of
3 each special verdict form and satisfy myself that the predicate
4 findings have been made by the jury and then I will read
5 Section 6 of each special verdict form. And I will note that
6 the form has been signed by all the jurors including the
7 certification.

8 Will you want the jury polled?

9 MR. OSGOOD: No, Your Honor.

10 MR. KETCHMARK: No, Your Honor.

11 THE COURT: All right. Let's bring them in, please.

12 (The following proceedings were had IN THE PRESENCE
13 AND HEARING OF THE JURY:)

14 (At 4:50 p.m. the jury returned to open court with
15 its verdicts.)

16 THE COURT: Please be seated.

17 Mr. Whitworth, has the jury reached its verdicts?

18 THE FOREPERSON: We have, Your Honor.

19 THE COURT: Would you, please, pass the verdict book
20 to Ms. Fees?

21 All right. The verdict forms are in proper order.

22 To the gallery, let me repeat what I told you last
23 week. This is always a very emotional part of the proceeding.
24 I'll ask that you control your emotions. If you think that you

25 will be unable to do that, please remove yourself now. And if

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1 it develops that you are unable to do that, please leave the
2 courtroom. And the court security officers are authorized to
3 assist you.

4 Before the jury came in, the attorneys agreed that I
5 could satisfy myself that the necessary findings have been made
6 for the jury to reach its verdicts as recorded in Section 6 of
7 each of the special verdict forms and that I not read each of
8 those pages. And so I turn directly to Section 6 of special
9 verdict form on Count 3.

10 We determine by unanimous vote that a sentence of
11 death shall be imposed. The jury has marked the blank, no.
12 Section B, we, the jury, by unanimous vote determine
13 that a life sentence without possibility of release shall be
14 imposed. The jury has marked the word, yes.

15 Special verdict form as to Count 4. Section 6A. We
16 determine by unanimous vote that a sentence of death shall be
17 imposed. The jury has marked no.

18 Section 6B. We determine by unanimous vote that a
19 sentence of life imprisonment without possibility of release
20 shall be imposed. The jury has marked yes.

2 Special verdict form as to Count 5. Section 6A. We
2 determine by unanimous vote that a sentence of death shall be
2 imposed. The jury has marked no.

2 Section 6B. We determine by unanimous vote that a

2 sentence of life imprisonment without possibility of release

1 shall be imposed. The jury has marked yes.
2 Special verdict form as to Count 6. Section 6A. We
3 determine by unanimous vote that a sentence of death shall be
4 imposed. The jury has marked no.
5 Section 6B. We determine by unanimous vote that a
6 sentence of life imprisonment without possibility of release
7 shall be imposed. The jury has marked yes.
8 All verdict forms have been signed by the foreperson.
9 The certification certifying that each member of the
10 panel agrees with the propositions indicated in the various
11 special verdict forms have been signed by all twelve jurors.
12 The certification with respect to race, color,
13 religious belief, national origin or sex of the defendant has
14 been signed by all twelve jurors.
15 May I see the attorneys at the bench, please.
16 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
17 PROCEEDINGS WERE HAD:)
18 MR. KETCHMARK: We're not in a position to give you
19 an answer because our protocol doesn't allow us to do so. What
20 I might suggest is, I don't know if there is a number that they
2 could call in. Obviously, what I need to do is review the
2 verdict forms in their entirety with respect to the other
2 potential findings and then go have discussions with my office.
2 Then we'll have to get in touch with Washington.

2 THE COURT: The first two non-statutory aggravating

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1 factors, not the last two. They didn't clearly identify any
2 mitigators. All were lined through. I'll make it available to
3 you. What if we were to ask the jury to come back tomorrow at
4 a time certain? That would give you an adequate period of time
5 to talk to Justice.

6 MR. KETCHMARK: Yeah. And I don't know if the Court
7 would maybe entertain, I'm concerned with the department being,
8 I don't know what our success will be trying to get in touch
9 with people in Washington this evening. We'll actually try but
10 if the Court might entertain having them come back, say late
11 morning or some period so we can or even 1:00 p.m. right after
12 lunch. Then we can attempt, obviously, to make contact
13 tonight. If we're able to, I'll let the Court know as soon as
14 we have an answer.

15 THE COURT: I will instruct them to return at
16 1:00 p.m. tomorrow. I'll also have the alternates return at
17 1:00 p.m. And if the government decides to proceed with
18 Mr. Sandstrom, we'll start at 1:00 p.m. Let me know as soon as
19 you do.

20 MR. KETCHMARK: I absolutely will, Your Honor. We'll
21 go downstairs and have discussions and as soon as I can give
22 the Court an answer, I will.

23 THE COURT: Anything further before I release them
24 for the day?

25 MR. KETCHMARK: No.

2506

1 MR. OSGOOD: No.

2 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

3 THE COURT: You have my sincere thanks for your hard
4 work today. I'll ask you to return tomorrow at 1:00 p.m. at
5 which time we'll be prepared to take up the case against
6 Mr. Sandstrom.

7 Please don't discuss the case with anyone until you
8 are finally discharged. Do not read, watch or listen to any
9 news reports about the case.

10 With my thanks you are now dismissed until 1:00 p.m.
11 tomorrow.

12 (The following proceedings were had OUT OF THE
13 PRESENCE AND HEARING OF THE JURY:)

14 THE COURT: Shall I have copies of this made for you?

15 MR. KETCHMARK: If you could, Your Honor.

16 THE COURT: Steve, would you take charge of that?

17 MR. ROGERS: Your Honor, may I request copies of that
18 too?

19 THE COURT: Of course.

20 That seems to be it for the day unless there's
21 something further.

22 MR. KETCHMARK: No, I think that's all.

23 THE COURT: 1 p.m. tomorrow. Good night.

24 (End of session)

2507

1 MAY 15, 2008 -DAY 16

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: All right. We'll go on the record.

5 Everyone I think knows by now that the Department of Justice is
6 trying to decide whether it wishes to proceed in its request
7 for the death penalty against Mr. Sandstrom.

8 Yesterday was spent with the local U.S. Attorney and

9 his assistants working feverishly to try to get a decision from
10 the Department of Justice in Washington. And that continued
11 until the early hours, I guess, of this morning and resumed at
12 7 this morning with a scheduled conference call.

13 The result of all of that has been that there is no
14 decision.

15 It was my intention to resume the trial at 8:30 this
16 morning. However based upon a conversation that I had with the
17 U.S. Attorneys involved in the case this morning, I am inclined
18 now to postpone the resumption of the trial until 8:30 tomorrow
19 morning. That will surely give the Department of Justice ample
20 time to make its decision. However I am unwilling to leave
2 this jury in the dark. And so it is my intention to bring them
2 in the courtroom when all are here and tell them why they're
2 waiting. And then excuse them and have them report back at
2 8:30 tomorrow morning at which time the trial will either be

2 resumed or the government will withdraw its request for the

1 death penalty.

2 I wanted to make this announcement on the record and

3 I wanted to make the announcement so that Mr. Sandstrom and his

4 attorneys would have an opportunity to make whatever record

5 they choose to make before I summon the jury in.

6 Charlie?

7 MR. ROGERS: Your Honor, I don't know, this is a

8 first for me. I don't know if I choose to make a record. I

9 have no objection to the Court's proposed postponement of the

10 penalty phase for another day. Seems like, I'm confident that

11 the government is not stalling around and playing games and

12 coming up with new aggravation. And I'm confident if it turns

13 out they were, you wouldn't let them use the -So that being

14 said, we have no objection to the postponement. It's more wear

15 and tear on me as an old guy but I'm used to it by now as an

16 old guy.

17 As to the Court's proposal to announce to the jury,

18 we have no objection to that either.

19 THE COURT: Okay. Let's see if the jury is here.

20 Don't bring them in yet. Just let me know if they're

2 here.

2 THE COURTROOM DEPUTY: They're here.

2 (The following proceedings were had IN THE PRESENCE

2 AND HEARING OF THE JURY:)

2 THE COURT: Please be seated.

1 Good morning.

2 Welcome back.

3 You have doubtlessly been curious as to why we didn't
4 resume yesterday at 1 as announced. The reason is that in
5 light of your verdicts in the case of Gary Eye, the Department
6 of Justice wanted time to decide whether it wanted to withdraw
7 its request for the death penalty against Steven Sandstrom.
8 The local United States Attorney's Office worked very
9 hard all day yesterday into the late hours of the evening and
10 early hours of the morning resuming with a conference call at
11 7:00 a.m. this morning in an attempt to get an answer from the
12 Department of Justice in Washington DC. As of this time the
13 decision has not been made.

14 We are left with then two options. One is to begin
15 the trial this morning, the next phase of the trial and submit
16 the question to you.

17 The second option is to postpone the resumption of
18 the trial again to give the Department of Justice more time to
19 make that decision.

20 I have decided to postpone the resumption of the
2 trial again, until 8:30 tomorrow morning, at which time we
2 would either begin the next phase of this trial or the United
2 States will withdraw its request for the death penalty against
2 Defendant Sandstrom and your job will be over.

2 I apologize to you for the delays. I assure you that

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it is beyond the control of this court and beyond the control of these attorneys. But it is something with which we have to deal.

And so I'm going to release you, again, in just a moment and you can go about your business. I do want you to come back at 8:30 tomorrow morning. Either we will resume the trial at that time or I will discharge you at that time. And I'll tell you that it is my practice to talk to jurors after they have completed their work and I will want to talk with you after you have completed your work.

So please forgive the delay. Understand that it is for a worth while purpose. And we will see you here tomorrow morning at 8:30. Thank you. You're excused.

(The following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY:
)

THE COURT: Anything further this morning, folks?

MR. KETCHMARK: Not from the government.

MR. ROGERS: Not from Mr. Sandstrom, Your Honor.

THE COURT: All right. We'll be in recess until tomorrow morning.

(End of session)

1 IN THE UNITED STATES DISTRICT COURT

VOL 17 -

1 MAY 16, 2008 -DAY 17

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Good morning. Be seated, please.

5 David?

6 MR. KETCHMARK: Good morning, Judge, how are you?

7 (A discussion was had off the record.)

8 (The following proceedings were had IN THE PRESENCE
9 AND HEARING OF THE JURY:)

10 THE COURT: Please be seated.

11 Good morning. Welcome back.

12 We will be proceeding in the second phase against the
13 defendant, Steven Sandstrom.

14 I will begin by reading instructions to you which
15 will found familiar. These parallel the instructions I read
16 with respect to Mr. Eye. Nevertheless, I'm required to do so.
17 They are in writing and they will be available to you during
18 your deliberations.

19 (Instruction Nos. S1 through S6 were read by the
20 Court.)

21 THE COURT: Is the government ready to open?

22 MR. GIBSON: Yes, Your Honor.

23 THE COURT: You may proceed.

24 MR. GIBSON: Good morning.

25 Thank you for your sacrifice. Thank you for your

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1 patience. Thank you for your work. And thank you most
2 importantly for your commitment to seeing that justice is done.
3 This has been a long road that we've been traveling
4 but we're coming to the end. And you are experienced jurors
5 and you have been experienced and attentive throughout this
6 process. So I don't think that it's necessary to completely
7 explore once again findings you need to make and the facts that
8 necessarily support some of those findings. But there are some
9 changes from one defendant to the other because, as you recall
10 from the very beginning when we started talking to you about
11 this process, this is an individualized process. It's not a
12 cookie cutter approach. There is not a one-size-fits-all
13 determination to be made. Mr. Sandstrom is entitled to a
14 complete, full and fair examination of the evidence against
15 him. And the government is entitled to a full and fair and
16 complete examination in support of its position. And from the
17 very beginning you have all indicated you would be fair to the
18 government. You have indicated you would be fair to
19 Mr. Sandstrom. And you executed your duty throughout these
20 proceedings. Once again, I thank you.
21 Now, with respect to the specific factors at play
22 here, in this particular proceeding, once again going to note
23 that age is not a dispute here. In fact, you are going to hear
24 a stipulation as to age. The defendant was 19 at the time of
25 the offense and that is part of the evidence.

2513

1 With respect to the mental state, the mental states
2 as indicated by the Court and also indicated in your
3 instruction packet are slightly different than the mental
4 states alleged against Gary Eye. The mental states here are
5 intentionally participating in an act or aiding and abetting an
6 intentional act contemplating that the life of a person would
7 be taken or intending that lethal force would be used in
8 connection with the person. That's Option 1.
9 Option 2 is intentionally and specifically engaged in
10 or intentionally aided and abetted one or more acts of violence
11 knowing that the act or acts created a grave risk of death to a
12 person, other than one of the participants in the offense.
13 Ladies and gentlemen, by your verdicts that you have
14 already rendered, those findings are essentially made as well.
15 Now, with respect to the statutory aggravating
16 factor, we've had a lot of discussion about that. So what I'd
17 like to do is move to the non-statutory aggravators and the
18 evidence that you have heard and the evidence that you're going
19 to hear in support of those factors. And as we do that, ladies
20 and gentlemen, based on the evidence that you heard already and
21 the findings that you have made already, it should be clear
22 that we would remind you, that but for Steven Sandstrom,
23 William McCay would still be here. This offense, our presence
24 in this very courtroom, could not have taken place, absent the
25 participation of that man right there.

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1 As you recall from the evidence Gary Eye only first
2 expressed his intent to harm an African-American after Steven
3 Sandstrom had announced that he shot at a nigger at 7-Eleven
4 and that is the conversation that started this entire tragic
5 episode. It was Sandstrom's gun. The so-called dirty duece
6 duece. It was Sandstrom driving the stolen Intrepid. This
7 killing could not have happened without Steven Sandstrom.
8 And I, again, remind you as you heard from the
9 evidence already, Vincent Deleon had more than enough time to
10 get out of that car. Jonnie Renee Chrisp had more than enough
11 time to get out of car. Regennia Rios knew before they even
12 arrived at Inner City Oil to pick up Jonnie Renee what was
13 going to happen that evening.
14 Now, ladies and gentlemen, Steven Sandstrom was
15 driving that car. Steven Sandstrom executed the series of
16 decisions, any one of which could have reversed direction of
17 the events of March 9 of 2005. But that's not what happened.
18 Those are not the decisions that he made.
19 Now, with respect to the non-statutory aggravating
20 factors, you've already heard from William McCay's family. And
21 I would ask you to reflect back upon that testimony and I would
22 also ask you to recall Mr. Sandstrom and his counsel
23 participated in that hearing and had every opportunity to
24 examine those witnesses. That evidence is before you now, just
25 as surely as if we were presenting it fresh.

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1 With respect to the second non-statutory aggravating
2 factor, the defendant intentionally selected William McCay as
3 the object of the offense because of the actual or perceived
4 race of William McCay. Again, I would submit to you based upon
5 your findings and the verdict already rendered, that factor has
6 been determined.

7 So now, the hearing will turn towards the evidence
8 that we expect you will hear regarding the last two
9 non-statutory aggravating factors. As you recall from your
10 determination on Count 9 already, this defendant, Steven
11 Sandstrom, distinguished himself with his efforts to obstruct
12 justice, to frustrate your ability to determine what happened
13 here. Recall how it was Steven Sandstrom who led the way to
14 23rd and Manchester. It was the Intrepid driven by Sandstrom,
15 without discussion, as to where they were going, on March 9th
16 of 2005 that resulted in that car being burned, to prevent it
17 from being used as evidence, unsuccessfully, but that was the
18 intent nonetheless. Now, you already made findings regarding
19 that.

20 But then let's move to more specific behavior that
21 you've already heard with respect to obstructive conduct. You
22 recall how Steven Sandstrom elected to bring his sister into
23 these events by instructing her to retrieve his murder weapon,
24 from his girlfriend's house, and give it a bath. Remember how
25 the FBI and the dive team recovered that weapon exactly where

1 Stephanie had told them she had tossed it. It wasn't the
2 government who brought Stephanie Sandstrom into this. It was
3 Steven Sandstrom. Recall Sandstrom's repeated threats to
4 Regennia Rios. His solicitation of his cousin, Justin
5 Buchanan, to kill -

6 MR. ROGERS: Your Honor, may we approach?

7 THE COURT: Yes.

8 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
9 PROCEEDINGS WERE HAD:)

10 MR. ROGERS: For the record, I'd like to at this
11 point renew my objections set forth in our written pleadings on
12 the record regarding evidence of threats beyond the scope of
13 the investigation is not relevant to the pled statutory
14 aggravator or non-statutory, I mean.

15 THE COURT: I'll show your objections as continuing
16 throughout this phase of the trial.

17 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

18 MR. GIBSON: Recall this defendant, Steven
19 Sandstrom's solicitation of his cousin, Justin Buchanan, to
20 kill Regennia Rios, Vincent Deleon and Larry Stanley. Recall
21 how when Regennia's whereabouts were unknown to Sandstrom and
22 his cohorts and family, that he communicated those threats to
23 Rios through an individual he knew to be her best friend, that
24 he knew would communicate those threats, Carolyn Galyean.
25 Indeed, once again you have already made a finding regarding

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1 Sandstrom's conduct in this regard with respect to your trial
2 verdict.

3 Recall also you heard from the evidence that when
4 Regennia Rios could not be located, how this man, this man,
5 proposed as a demonstration to Regennia Rios, that Justin
6 Buchanan should instead take out Regennia's mom. Who had
7 nothing to do with this whatsoever. Merely as a demonstration
8 to Regennia Rios as to the consequence of what would happen if
9 she came in here as she did and take that witness stand.

10 Recall the sound of Sandstrom's voice on the recorded
11 calls that you heard instructing Kristina and Jonathan to
12 communicate to Regennia that he was going to hurt her. He was
13 going to break her jaw. That he wanted her to die a horrible
14 death. That was the evidence you have heard, ladies and
15 gentlemen.

16 But not content to stop there, you also heard how he
17 wrote to Kristina Chirino and instructed her to persuade
18 Vincent Deleon, her cousin, to lie and tell the authorities
19 that Eye had forced him to go back and finish off McCay.

20 The government submits that the evidence introduced
21 at trial demonstrating his consciousness of guilt at trial also
22 supports the non-statutory aggravating factor of obstruction of
23 justice here.

24 And, finally, defendant poses a threat to future
25 dangerousness based upon the probability that he would commit

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1 criminal acts of violence that would constitute a continuing
2 threat to others, as evidenced by his lack of remorse for the
3 offenses committed in this case.

4 Now, you have already heard what passes for remorse
5 in telephone calls and letters of Steven Sandstrom. No genuine
6 remorse whatsoever. There has not been and there will not be
7 evidence of genuine, genuine, honest remorse for what has taken
8 place. Remorse, perhaps, for being caught. Remorse, perhaps,
9 for having to face you all. But not remorse for having taken
10 the life of William McCay.

11 Ladies and gentlemen, today you're going to hear
12 additional evidence from Sandstrom's correspondence, from his
13 writings, demonstrating his contempt for the system, his lack
14 of remorse and his potential for violence toward those charged
15 with guarding him.

16 The government, obviously, has referred to the trial
17 of this case. The Court has already instructed you may
18 consider the trial evidence. And that, in conjunction with the
19 additional evidence you're going to hear today, is going to
20 form the basis for the decisions you're going to have to make.
21 And after you have heard all of the evidence, the government
22 will appear before you, again, and ask you to speak, to speak
23 with one voice as our community and impose the sentence
24 required by your deliberations. Thank you.

25 THE COURT: Mr. Rogers?

1 MR. ROGERS: Please the Court.

2 THE COURT: Go ahead.

3 MR. ROGERS: What the fuck are you doing? Go get

4 Gary. Those are the words you have already heard from their
5 star witness, Regennia Rios. She told you that when Gary Eye
6 shot and killed William David McCay, Steven Sandstrom was in a
7 state of shock. She said he was still in a state of shock and
8 she's referring to that moment less than two minutes earlier
9 when she told Steven Sandstrom, you've got to go find him. He
10 saw our faces and we could catch a case. You remember the
11 evidence.

12 Their only statutory aggravating circumstances is
13 substantial planning and premeditation. The Judge has told you
14 what that means. It's more than necessary for the commission
15 of the offenses. Substantial planning and premeditation. And
16 this is not a case where you can attribute to Steve Sandstrom
17 Gary Eye's planning and premeditation. This is not a case
18 where you can attribute to Steve Sandstrom Regennia Rios'
19 planning and premeditation. This is a case, as Mr. Gibson
20 says, where you have to make an individualized determination.
21 And if you make an individualized determination on the evidence
22 that you have already heard, there is no way that all twelve of
23 you can agree beyond a reasonable doubt that Steven Sandstrom
24 in engaged in premeditated, substantial planning and
25 premeditation to cause the death of William McCay. It's just

1 not there.

2 You know, Mr. Gibson talked about your verdicts that
3 you have already rendered. Apparently he didn't hear your
4 verdict on Count 1 where you found Mr. Sandstrom not guilty of
5 the shooting in the alley. So the government has not proved to
6 you beyond a reasonable doubt that Mr. Sandstrom was involved
7 in planning to shoot or harm a black person for walking down
8 the sidewalk there at the alley.

9 So the kind of substantial planning and premeditation
10 they give you for Mr. Eye does not apply to Mr. Sandstrom.
11 He's already been found not guilty of the stuff that led up to
12 the Spruce alley shooting.

13 So what does apply? Let's see what the evidence was
14 and what matters. Gary Eye fires two or three shots. Steve
15 Sandstrom pulls out of the alley and he's saying stuff like,
16 you're tripping, man. You shouldn't have done that. You're
17 taking it to a whole new level. Gary Eye says hit the block.
18 They go around the block.

19 No body. No body. No indication that anybody was
20 shot there seconds before.

2 Gary says, we've got to find him. Testimony is Steve
2 looks to Regennia for guidance. And Regennia says, you've got
2 to go find him. He saw our faces. We might catch a case.

2 That's not planning on Steve's part.

2 After that, what happens between there and 9th and

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1 Brighton? All Steve does is drive the car and follow orders.
2 He's not planning anything. Drive. Go find him. Continues
3 eastbound on 9th Street. Get to Van Brunt, Gary said turn
4 left. Steve turns left. Gets a block away on 8th Street, Gary
5 says turn right. Steve turns right. Get to Brighton, another
6 block and a half, 2 blocks, however far it is, Gary says turn
7 right. Steve turns right again. Gets close to 9th Street,
8 Gary says pull over. Steve pulls over. Still in shock as
9 Regennia testified. No planning whatsoever by Steve. He's
10 just driving the car, turning where he's told to turn.
11 By the way, do not get confused or distracted by
12 their twelve-minute search of the neighborhood argument. There
13 is no testimony about that. And the only testimony you have
14 about what happened in that car between Spruce alley and 9th
15 and Brighton is the testimony of Regennia Rios. And she does a
16 direct turn by turn testimony. And she testified that that
17 takes approximately, takes less than two minutes. That was her
18 words, not my words, not Mr. Osgood's words. Her words, less
19 than two minutes.
20 So where they come up with twelve minutes, well, you
21 heard Mr. Joe Thompson. And he says, well, I usually get there
22 around 6 to have breakfast when I go there three days a week to
23 the G & E Cafe. Then you heard the 9-1-1 call, first call
24 after the shooting is at 6:12. Joe Thompson didn't say I heard
25 the shots at exactly 6. He didn't say it couldn't have been

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1 ten after 6. He says, I usually get there around 6.
2 He also told these agents when they talked to him in
3 the summer after the incident, that he was sitting inside at a
4 table, eating breakfast when he heard the shots. So just
5 consider what actually did happen according to Regennia Rios,
6 whose testimony you must have believed or else we wouldn't be
7 here. And you can see that Steve Sandstrom did not engage in
8 any substantial planning and premeditation.
9 So I guess I should sit down and shut up and wait for
10 you to deliberate and reach that verdict. You know, it's not a
11 lack of confidence that keeps me talking. It is the
12 seriousness of the stakes. This kid's life is in your hands.
13 He's going to die in prison. You've already determined that by
14 your guilty verdict on Count 5. But you will have the power to
15 decide whether he dies when God chooses or when the government
16 chooses. So that's pretty high stakes. Life. And so I think
17 I have to go further. I don't think I can rely on my
18 confidence that you will continue to carefully follow the law
19 and do what you believe is the right thing under the evidence.
20 So I have to keep talking to you and keep presenting evidence
2 as if you're going to get to that weighing stage. And if you
2 get to that weighing stage, then I think it will be clear there
2 is only one just, fair result in this case.
2 So what are you going to hear to weigh on the side of
2 life for Steve Sandstrom? Well, first of all, you have already

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1 heard evidence of the first mitigating factor that Gary Eye,
2 equally or more culpable in the death of William McCay than
3 Steven Sandstrom, will not receive the death penalty. You
4 decided that yourselves Tuesday.

5 You've heard that Regennia Rios, equally or more
6 culpable in the death of William McCay, will not receive the
7 death penalty. The prosecutors decided that in the summer of
8 2005 when they gave her total immunity for her conduct
9 regarding the death of William McCay. Total immunity. A free
10 pass.

11 You know, Mr. Gibson says but for Steven Sandstrom
12 this never would have happened. I don't know if that's true.
13 I do know they haven't proved that beyond a reasonable doubt
14 but that may or may not be the case. Somebody else might have
15 driven the car. Regennia might have driven. Gary might have
16 driven and got out to do the shooting. There's no way to tell.
17 But we do know that but for Regennia Rios, William McCay would
18 still be alive because she's the one who ordered Steve
19 Sandstrom, go find him. That he looked to her for guidance.
20 He's telling Gary, you're out of control. You've taken it to a
2 whole new level. You're tripping. Rios is the one that orders
2 Steve to find him instead of saying, hey, no harm, no foul.
2 Let's go home. Regennia Rios is the "but for" factor in this
2 case. And they gave her a free pass.
2 Let's look at the other mitigating factors that have

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1 more to do with Steve, who is what he is, how he got to be in
2 that car on the night of March 8th, morning of March 9th.
3 You will hear from family members and you will hear
4 from the principals themselves. You're not going to hear from
5 people who had contact with the family or who even grew up
6 there but through some strength of character or some lucky
7 combination of circumstances got out of the situation. You're
8 going to hear from Mike Sandstrom. Steve's dad. You're going
9 to hear that he is a crack cocaine addict and has been a crack
10 cocaine addict for all of Steve's life. Longer than that.
11 You're going to hear about Bonnie, hear from Bonnie
12 Sandstrom, Steve's mom, also a crack addict since the 1980s.
13 You'll hear that both Mike and Bonnie were in prison
14 at different times. You will hear that when they were out of
15 prison, they went back to smoking crack. They still smoke
16 crack. I suspect you'll hear they smoked crack yesterday. I
17 suspect you'll hear that they plan to smoke crack today after
18 they're done testifying. They're addicts. It's what they do.
19 You will hear they supported their crack addiction through a
20 series of what by themselves would be minor crimes,
21 shoplifting, stealing from their own family members, stealing
22 from everybody else. You'll also hear that they taught their
23 kids to steal, to support their habit.
24 You'll hear from Steve's siblings. You already heard
25 from Stephanie. She testified for the government about

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1 throwing away the gun. You're not going to hear unless they
2 ask her any more about throwing away the gun. But you'll hear
3 about growing up in that household. What her life has been,
4 how she and Steve love each other, despite circumstances in
5 which they grew up. You'll hear that they, that Steve before
6 his arrest was very close to her daughter Hailey. And you'll
7 hear about the impact that executing Steve Sandstrom would have
8 on her especially since she came in here and told you about
9 throwing away the gun, testified against her own brother. And
10 so you'll hear how she would feel if her testimony led to his
11 execution.

12 You already heard from Justin Buchanan, the cousin,
13 and you saw him on the witness stand. When Mr. Gromowsky asked
14 him about his relationship with Steve, asked him about getting
15 Steve started smoking marijuana at the age of eleven. That's
16 already evidence you heard from their witness, Justin Buchanan.
17 And asked him about Steve being the little kid who followed his
18 older cousin around like a puppy dog. You saw Justin Buchanan.
19 And you saw him cry. And he's a hard core guy. He's a
20 criminal. He's an inmate. A convict. "No love 4 rats"
2 tattooed across his belly. You saw him cry on the witness
2 stand. And from that you can infer the impact it would have on
2 him, if his cousin were executed based upon his, Justin's,
2 testimony.
2 You'll hear from Steve's little brother, John. Also

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1 grew up in that house. And hear what it's like.
2 You know, you'll also hear some expert witness
3 testimony. You'll hear from a social worker, both masters
4 degree in social work and masters degree in public health, who
5 has done some investigation into Steve's background and things
6 like that. You may hear other evidence that sort of depends on
7 where we are.
8 After you have heard all of the evidence in this
9 case, both for the government and I will have an opportunity to
10 speak with you further.
11 You know, you shouldn't get there. I hope you don't
12 get there. But if you do get there, I want you to be able to
13 balance the factors which brought Steve Sandstrom, high on
14 meth, driving a stolen car on March 9, 2005 when Gary Eye
15 decided to take it to a whole new level. Shot a guy at 9th and
16 Spruce from the alleyway and within a couple minutes shot and
17 killed William David McCay at 9th and Brighton.
18 By your verdicts last week you have held Steven
19 Sandstrom responsible for his role in the death of Mr. McCay.
20 He will be, you have already decided, severely punished. He'll
2 serve a life sentence in a federal penitentiary. And there is
2 no such thing as parole in the federal system as Judge Smith
2 has told you repeatedly. He will never get out of prison.
2 At the close of all the evidence in this part of the
2 trial, we will ask you to do justice and to show mercy, to

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1 follow the law, and to follow your conscience and to sentence
2 Steven Sandstrom to life in prison. At the end of all the
3 evidence, we will ask you to choose life, not death for Steve.
4 Thank you.

5 THE COURT: Mr. Ketchmark.

6 MR. KETCHMARK: Thank you, Your Honor.

7 At this time, Your Honor, a couple preliminary
8 things. We would ask the Court incorporate in the testimony
9 from the guilt phase as part of the record in this proceeding
10 as well as the victim impact testimony of the Reverend Cedric
11 McCay and Rodney McCay.

12 THE COURT: Government's motion is granted.

13 MR. KETCHMARK: Additionally, Your Honor, we have a
14 stipulation between the parties that has been marked as
15 Government's Exhibit 331. And it's a stipulation with respect
16 to age and I would tender that as evidence at this time and
17 request leave to read that to the jury.

18 THE COURT: Without objection, Government's Exhibit
19 331 is admitted and may be read.

20 MR. KETCHMARK: Thank you, Your Honor.

2 Ladies and gentlemen, Government's Exhibit 331 reads
2 as follows. Stipulation. It is hereby agreed and stipulated
2 by and between the United States and the defendant that
2 Defendant Steven Sandstrom was born on August 26, 1985 and
2 therefore would have been 19 years old at the time of these

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1 offenses on March 9, 2005. And it bears the signature of all
2 of the attorneys as well as the defendant, Steven Sandstrom.

3 With that, Your Honor, I would call Special Agent

4 Heith Janke to the stand.

5 HEITH JANKE, GOVERNMENT'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. KETCHMARK:

8 Q Special Agent, could you, please, introduce yourself to
9 the ladies and gentlemen of the jury and spell your last
10 name or your full name, I guess, for the court reporter?

11 A Heith Janke, H-E-I-T-H, J-A-N-K-E.

12 Q And, obviously, you're with the FBI. How long have you
13 been employed with the FBI?

14 A Since September of 2004.

15 Q And you're one of the co-case agents, along with Special
16 Agent Gothard, who has been handling this investigation
17 since it was undertaken back in early or mid 2005, is that
18 correct?

19 A I am.

20 Q And you have obviously heard the testimony of Special
2 Agent Gothard but is it accurate to state that you also
2 participated in several of the collateral threat
2 investigations that blossomed during the course of the
2 investigation into the events surrounding the death of
2 William McCay?

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1 A I did.

2 Q And you're aware, are you not, Special Agent Janke, that
3 in addition to doing additional interviews there was also
4 subpoenas that were served on several correctional
5 facilities to obtain potential correspondence that might
6 be used as evidence, is that correct?

7 A Yes.

8 Q And, again, obviously, the jury has heard in the guilt
9 phase several of those portions of correspondence that we
10 deemed appropriate as it related to consciousness of
11 guilt, is that correct?

12 A They have.

13 Q In addition, have I asked you to review a few select items
14 of correspondence because we thought there was information
15 that might be relevant to this jury in making a
16 determination as to what the appropriate punishment would
17 be in the event that we got to this stage of the
18 proceedings?

19 MR. ROGERS: I'll object, Your Honor. I don't think
20 the jury cares whether Mr. Ketchmark thought something was
2 relevant or not. I think that's the Court's call.

2 THE COURT: That objection is overruled. Proceed.

2 MR. KETCHMARK: In particular what I'd like to do,
2 Ms. Marko, if you could, show to both Special Agent as well as
2 the jury at this point I believe Government's Exhibit 121 which

1 was previously offered and admitted in the guilt phase.

2 BY MR. KETCHMARK:

3 Q And, Special Agent, do you see on the screen in front of
4 you what has been previously offered and admitted as
5 Government's Exhibit 121?

6 A Yes.

7 MR. KETCHMARK: Ms. Marko, if you could just blow up
8 the top small portion of that in terms of the exhibit number.

9 BY MR. KETCHMARK:

10 Q And is that Government's Exhibit 121? Does that indicate
11 to be correspondence authored to a JB with a date of
12 June 7th of 2005?

13 A Yes.

14 Q And, again, I think the jury remembers but who is JB?

15 A Justin Buchanan.

16 MR. KETCHMARK: Ms. Marko, if you could go to the
17 third page and highlight the bottom portion.

18 BY MR. KETCHMARK:

19 Q And, again, Special Agent, on Government's Exhibit 121, if
20 you could, am I reading correctly where it states, I put
21 in like ten JPOs to see the mental health doctor. They
22 keep playing me off. What the fuck, do I have to snap and
23 kill somebody or beat the case workers ass to get their
24 attention or what? They get me fucked up. By Friday they
25 better call me or I'm going to show my ass.

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And then at the bottom it indicates that it is signed by, much love, your little cousin, Steven, AKA High-speed?

A That's correct.

Q And, again, just so the jury recalls Government's Exhibit 121 was a letter that would have been obtained from what location?

A Crossroads Correctional Center.

Q Would that have been pursuant to the subpoena that you and Special Agent Gothard served on that facility?

A Yes.

Q So that was not obtained directly from Mr. Buchanan but it was obtained from the prison?

A That is right.

Q Now, if we could for just the witness and counsel's display, please, Exhibit 124.

Do you see what's contained on the screen that's been marked as Government's Exhibit 124, Special Agent Janke?

A Yes.

Q And is, what is Government's Exhibit 124?

A It is a letter written to Justin dated 4-29-05.

Q And, again, is this a letter that appears to have been written by this defendant, Steven Sandstrom?

A Yes.

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1 Q And can you tell the ladies and gentlemen and the Court
2 where this letter was obtained from?

3 A Crossroads Correctional Center.

4 Q Also pursuant to the same subpoena that was mentioned?

5 A Yes.

6 MR. KETCHMARK: At this time I move admission of 124.

7 MR. ROGERS: Subject to our continuing objection,

8 Your Honor.

9 THE COURT: 124 is admitted. Defendant's objection
10 is overruled. It may be published.

11 MR. KETCHMARK: Thank you.

12 Again, Ms. Marko, if you could highlight the top
13 portion of that letter.

14 BY MR. KETCHMARK:

15 Q And, again, at the top does this appear in Government's
16 Exhibit 124 that is written to Justin and has a date of
17 April 29th of 2005?

18 A Yes.

19 MR. KETCHMARK: Ms. Marko, if we could go to page 3,
20 please?

21 BY MR. KETCHMARK:

22 Q And, again, Special Agent, would you read along and verify
23 I'm reading correctly starting with, I ain't have no 45.

24 Just a dirty duece duece. Smiley face. But I'll, but I
25 get you all that way together with 9 of them deals

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1 resolver. But nice, underlined. Believe me that deal was
2 an end weapon, all day quiet, and 9 shots for that ass and
3 no kick at all. I backed 6 rugs off at the mall when I
4 took their Durango. I was like, who wants it first? I
5 got 9 for you all. Shit. They went back in and I rolled
6 out on 22s with four 12-inch Cerwin Vega with Vegas amps
7 pounding, following in the hemi, and my girl followed in
8 the hemi. Is that correct?

9 A Yes, sir.

10 MR. KETCHMARK: Again, if we could show for purposes
11 of the witness and counsel, Government's Exhibit 137.

12 BY MR. KETCHMARK:

13 Q Special Agent Janke, do you see Government's Exhibit 137?

14 A I do.

15 Q And is this also a copy of a letter that would have been
16 obtained pursuant to the subpoena served on Crossroads?

17 A It was.

18 MR. KETCHMARK: Your Honor, at this time I move the
19 admission of Government's Exhibit 137.

20 MR. ROGERS: No additional objection, Your Honor.

21 THE COURT: We'll show this as admitted subject to
22 the defendant's objection. It may be published.

23 MR. KETCHMARK: Thank you.

24 Ms. Marko, if you could just highlight the top
25 portion.

1 BY MR. KETCHMARK:

2 Q And, again, this references Government's Exhibit 137, JB,
3 and this appears to have an author date of September 15 of
4 2005?

5 A That's correct.

6 MR. KETCHMARK: Ms. Marko, if you could go to the
7 portion on page 2.

8 BY MR. KETCHMARK:

9 Q And, again, Special Agent, tell me if I'm reading
10 correctly. It says, spray body. Smiley face. Anything
11 to help me fight them off, exclamation. Yeah, I'm on my
12 toes. I got a thumper just in case a rug or two gets out
13 of line and I can't handle them. A lot of people come in
14 and say you're racist to me but then they realize I'm not.
15 Just in case one of them tries to get tough, I'm going to
16 put this fiber glass in their neck. Yeah. Lay back.
17 Fuck that stupid shit. Feel me? Double A is good to use
18 but I love my wet towel twisted up. I'll crack a skull.
19 Did I read that correctly, Special Agent?

20 A Yes.

21 Q And, again, starting here, tell me if I'm reading
22 correctly over to the top of the first sentence.

23 Yeah, my girl's stepdad knows I'll kill him if
24 he hits her. He's seen me slam Vince then put a .357 Mag
25 in his mouth. I about did his ass. But my girl stopped

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1 me. I'm getting soft, huh, exclamation. Smiley face. In
2 2002 he would have been over with fucking me, huh,
3 question mark. In 2002, I didn't give a fuck. I was on a
4 kill everybody mission.

5 Is that read correctly?

6 A Yes.

7 MR. KETCHMARK: Again, if I could have displayed and
8 I believe it was previously offer and admitted in the guilt
9 phase, Government's Exhibit 139.

10 And, again, if you could, Ms. Marko, highlight the
11 top portion, please, for the jury.

12 BY MR. KETCHMARK:

13 Q Does this reference Government's Exhibit 139, indicate
14 it's a letter also to JB with a date of authorship of
15 August 3 of 2005?

16 A Yes.

17 MR. KETCHMARK: Ms. Marko, the highlighted portion on
18 the second page, please.

19 BY MR. KETCHMARK:

20 Q Special Agent, again, if you could confirm I'm reading
21 that portion correctly. Starting with the second line,
22 I'm sorry, end of the first line. Listen here, homie, you
23 can never show me how to pull an M. If Gary had listened
24 to me, nobody would have known shit. I'm a specialist.
25 I'll put it like this. Joe from Jim's Liquor in 1980 had

1 me handle some big boy shit. Yeah, homie, I'm good.

2 Is that read correctly, Special Agent?

3 A Yes.

4 MR. KETCHMARK: And, again, Ms. Marko, page 3, the
5 bottom.

6 BY MR. KETCHMARK:

7 Q Tell me if I'm reading this correctly, Special Agent. On
8 that R trip, that's me and you. No one knows shit. That
9 bitch had my girl's spot kicked into. I recently found
10 that out. Yeah, bro, I feel you, underlined. No more
11 games. Game over. Yeah, we should be shot for what we
12 done in 2002 but nobody has the balls. Someone popped
13 you. I guess I got lucky. They seen little Stevie pull
14 that cannon and they had no rap at all. My favorite line
15 I heard a lot.

16 Was that read correctly, Special Agent?

17 A Yes.

18 Q Continuing from at the end, my favorite line I heard a
19 lot, continuing now, was, quote, I got kids, quote, and
20 don't kill me, quote. Smiley face. Well, I'll tell you
2 what, I can't stand it when somebody says you got to shoot
2 me. No problem. I don't know you. Feel me? Stupid
2 people. Trying to be tough. Pussy. This is a Ruger
2 Black Hawk, .45 with long Colt hollow points. Do you
2 think I'm playing with you? Smiley face. Feel me? On

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1 stamp, I only got about twelve of them left. I laid back.
2 The CO should have listened to me. I told him not to
3 touch me. This white boy won't have that hands-on shit.
4 Feel me? I'm low on paper, too. I'm about to write your
5 girl. I got you. Don't trip.
6 Do me a favor. This Mexican guy named
7 Fernandez, roach above, is problem. On that way, have
8 someone put a fat blade in him for me. He keeps calling
9 my girl saying my name on the phone. They thought it was
10 me. He tried to get her to come see him. She told me
11 about it. I got a 5-1/2 inch piece of fiber glass for him
12 but they moved him up out of here. He got real tough
13 behind these bars. He got the number from his little
14 brother. He runs with her bro. Have somebody handle that
15 pussy for me. Either Jeff City or some other five camp he
16 will go to. Handle that for me, exclamation.
17 Did I read that correctly?
18 A Yes.
19 MR. KETCHMARK: Again, what was previously offered
20 and admitted in the guilt phase as Government's Exhibit 141, I
21 would ask it be allowed to be published to all parties.
22 THE COURT: Permission granted.
23 MR. KETCHMARK: Ms. Marko, could you highlight the
24 top portion?
25 BY MR. KETCHMARK:

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1 Q And, Special Agent, does that on Government's Exhibit 141
2 appear to be a letter to JB with 7-11-05 as the date?

3 A Yes.

4 Q And does it say above the 7-Eleven also 7-Eleven with an
5 arrow pointing down?

6 A Yes.

7 Q And tell me if I'm reading this correctly. What's up,

8 fool? I'm in the hole. No food since I busted that

9 African nigger and, shit, they don't even let me shower.

10 So you know what I did? The same thing my big cousin

11 would do. You seen them bracelets with the WWJD, question

12 mark? You know, what would Jesus do, question mark.

13 Well, I thought WWJD, what would Justin do.

14 Is that correct?

15 A Yes.

16 MR. KETCHMARK: Ms. Marko, the portion on the second
17 page, please.

18 BY MR. KETCHMARK:

19 Q Tell me if I'm reading this correctly, starting at the end

20 of the first line. These fucking Africans are pissed. In

21 the office they have a big picture of me that says, do not

22 let me out of my room unless in full restraints. Smiley

23 face. I told the captain, I'm just a kid. How much

24 damage can I really do, question mark. He said to me with

25 a pistol and Gary Eye, a whole fucking lot. Smiley face.

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1 I told him I don't need Gary. I get grimey by myself.

2 Is that accurate?

3 A Yes.

4 MR. KETCHMARK: Then the bottom portion of that same

5 page, Ms. Marko.

6 BY MR. KETCHMARK:

7 Q Again, Special Agent, tell me if I'm reading this

8 correctly. Starting at the middle of the first line, the

9 Lieutenant just came by and told me to take my picture off

10 the wall. I told him to bring his old ass in here and

11 take it off for me. Stupid mother fucker told them to pop

12 my door. Then he asked my name. I said Sandstrom. Don't

13 pop 8, don't pop 8. Smiley face. Scary ass old bitch on

14 some real shit. I would have flatlined his old ass. A

15 couple guards are cool as fuck. Pop my door. Come in for

16 a second to bull shit. Toss me a sack lunch and burn out.

17 Others are scared to death of me and won't pop my door at

18 all. They have other guards bring me out. I told this

19 guard I'm going to kill him. He won't come near me.

20 Did I read that correct?

2 A That's correct.

2 MR. KETCHMARK: Ms. Marko, same letter, page 7.

2 Could you blow up that particular portion?

2 BY MR. KETCHMARK:

2 Q Again, Special Agent, tell me if I'm reading this

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1 correctly. Starting at the top line over to the right. I
2 want to kill that guard that --but I don't want my ass
3 beat again. For real. They hurt me pretty bad. No bull
4 shit. I don't want to go through all that again. Feel
5 me? Question mark. I'll catch his puss ass on the bricks
6 and lend him about one half clip of hydra shock. Feel me?
7 I told him I'm going to kill him when all this went down.
8 That's why they did me like they did. They don't let us
9 get out a radio in the hole.

10 Did I read that correct?

11 A That's correct.

12 MR. KETCHMARK: And for the witness and counsel only,
13 please, Government's Exhibit 143.

14 BY MR. KETCHMARK:

15 Q Special Agent Janke, do you recognize this as a letter
16 that also would have been taken from the correctional
17 facility pursuant to that subpoena?

18 A Yes.

19 Q Does this also appear to be a letter written to JB, or
20 Justin Buchanan, from this defendant, Steven Sandstrom?

2 A It does.

2 MR. KETCHMARK: Your Honor, I move the admission of
2 Government's Exhibit 143?

2 THE COURT: 143 is admitted over defendant's
2 objection. It may be published.

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1 MR. KETCHMARK: Thank you, Your Honor.

2 Ms. Marko, if you could highlight the top portion of
3 the first page.

4 BY MR. KETCHMARK:

5 Q And, again, for the jury does this read as follows. Here

6 I ho again at the top and it says JB with a date of
7 July 1, 2005?

8 A Yes.

9 Q And does it read as follows. What's up, fool? Same shit

10 here. I'm in 5A ad seg. I don't have acceptable

11 behavior. Smiley face, underlined. Fuck you. Blow me

12 and have a nice day. Feel me? Question mark. I ain't

13 spit in anybody's face but I about swung on the sergeant.

14 He told me I was beat on my hours out. I snapped. Yeah,

15 I do get a lot of my smart ass comments from you. And my

16 attitude isn't far off either. You said what is good?

17 I'll tell you what's good. Jeep Cherokees, hemis, meth

18 and this dick. Smiley face.

19 Is that accurate?

20 A Yes.

21 MR. KETCHMARK: Then again, Ms. Marko, going to the
22 fourth page.

23 BY MR. KETCHMARK:

24 Q Special Agent, does this read as follows with the signing

25 at the top being, your little cousin, High-speed, NES5.

1 And does the following portion read as follows? These
2 niggers want funk. We got to put them in the trunk.
3 Wonder why the trunk of their mother's Lincoln be
4 stinking. Bitch nigger should have been thinking. Think
5 because we're white, we're soft? No, sir, not us. No
6 more Mr. Nice Guy, with the arrow then pointing down.
7 Last night this CO got tough. I said pussy, pop
8 my door and come in here alone. Sergeant Gordon and his
9 other guards told him he better watch out. I said, pussy,
10 I got federal murder charges coming up. I'll mother
11 fucking kill you. Yell it in his face. He backed off
12 fast.
13 Is that correct?
14 A That's correct.
15 MR. KETCHMARK: Now, for the witness and counsel
16 only, Government's Exhibit 166.
17 BY MR. KETCHMARK:
18 Q Special Agent, do you see what is before you on
19 Government's Exhibit 166?
20 A Yes.
2 Q And what is represented in Government's Exhibit 166?
2 A It's a letter written by Steven Sandstrom to Jonathan
2 Chirino dated August 26 of 2005.
2 Q And for the benefit of the jury can you tell them where
2 this letter would have been obtained from?

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1 A This letter was obtained from Kristina Chirino, from her
2 attorney Ron Hall.

3 MR. KETCHMARK: Your Honor, at this time I move the
4 admission of Government's Exhibit 166.

5 THE COURT: 166 is admitted and may be published.

6 MR. KETCHMARK: And, Ms. Marko, if you could, please,
7 highlight the top portion for the jury for context.

8 BY MR. KETCHMARK:

9 Q Again, does this say at the top, Government's Exhibit 166,
10 and Jonathan with the date of August 26 of 2005?

11 A Yes.

12 Q And, again, remind the jury who is the Jonathan that is
13 reflected in this letter?

14 A Jonathan Chirino, the brother of Kristina Chirino.

15 MR. KETCHMARK: If you could, please, go the bottom
16 portion, Ms. Marko.

17 BY MR. KETCHMARK:

18 Q Special Agent, tell me if I'm reading this correctly and
19 the first line, it's best you hear everything alone, too,
20 exclamation. Then starting with, when I was young, a lot
21 of older people tried to tell me to stop my shit and leave
22 these cars alone. I didn't listen because I thought I
23 knew it all. Don't be hard-headed like I was. You see
24 how a little fun and games turned into a murder with me
25 and Gary.

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1 And then it continues on from there. Is that

2 accurate?

3 A Yes.

4 Q And, again, with respect to the other letters that the
5 jury heard with respect to the threats and correspondence
6 back and forth, were these letters also included with
7 those letters, by and large, but the jury had not had an
8 opportunity to see these portions of the letters?

9 A That is correct.

10 MR. KETCHMARK: That's all I have at this time.

11 THE COURT: Mr. Rogers?

12 CROSS-EXAMINATION

13 BY MR. ROGERS:

14 Q Special Agent Janke, you were with Special Agent Gothard,
15 case agent on this entire investigation, is that correct?

16 A That is correct.

17 Q And in June of 2005 did you become aware of a letter that
18 Mr. Sandstrom had sent to the Kansas City, Missouri Police
19 Department offering to cooperate in the investigation of
20 the homicide?

2 A Yes.

2 Q And so that's, no question that that happened. That he
2 sent the letter offering to cooperate?

2 A He sent a letter to, whom it may concern, asking, well, I
2 don't remember the exact words of the letter but it was

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received in our office.

Q Okay. Forwarded to you by the Kansas City Police Department?

A Or sent directly to us, I'm not sure.

Q Okay.

A But, yes, a letter.

Q All right. Now, let's go back to some of the letters you testified about this morning, particularly the letters to Mr. Buchanan. In Government's Exhibit 124, is that the one about backing off six guys at the mall?

A I would need to see the letter. 124?

Q I'm kind of the same way. Yeah. That's the one.

A Yes, sir.

Q Did you ever or anybody else to your knowledge check to see if there was such an incident reported where a Durango was stolen at gun point from six people?

A No, sir.

Q Okay. And then let me move on to Government's Exhibit 137. That's the one where he talks about putting a .357 in Vincent Deleon's mouth, right?

A There is a letter about that. I'm not sure if it's 137.

Q The number doesn't matter.

Don't worry about it, Ms. Marko.

We'll talk about the letter about the .357?

A Yes, sir.

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Q Now, you have several debriefings as they call them with Mr. Deleon, is that right?

A An interview over two days, yes.

Q And asked him anything you wanted to about the case and his lawyer was there to give him advice. And he was there to fully cooperate so he could get whatever kind of deal he said he got?

A That would be incorrect.

Q His lawyer wasn't there?

A His lawyer was there. He was not trying to get any type of cooperation deal at that time because he had nothing pending on May 13th and May 16th when we interviewed him at that time.

Q Okay. But he came back later and got a deal, right?

A Could you repeat that?

Q He came back later and got a deal when he needed one?

A I think that's a mischaracterization of the facts.

Q Didn't he testify that he was charged with a federal crime of felon in possession or something like that and then made a cooperation agreement for concurrent time? Is that what he said?

A That was an extended period of time after his interviews in May of '05. But, yes, he was charged with being a felon in possession of a handgun, yes.

Q And if you had wanted to interview him after that in

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connection with his new deal, for lack of a better term, agreement, then you could have asked that he come in and talk to you and he would have done so, right, or you would have gone to him, I guess, because he was in custody?

A We would have gone through his attorney but.

Q And so did you ever ask him, hey, did Steven Sandstrom ever stick a .357 in your mouth?

A No, we did not.

Q Okay. And it's not from lack of opportunity. You could have asked him that if you wanted to?

A I guess, yes.

Q If you thought this was a serious enough allegation to check out?

A We were focused on the main investigation when we met with Mr. Deleon in May of '05 and regarding the death of William McCay. That's what our focus was at that time.

Q But after you got these letters, there's nothing that would have kept you from going back to check out whether or not that's true or whether it's just a guy in jail blowing smoke, bragging, talking tough, is that correct?

A That's correct, Mr. Rogers. We could have asked him that.

Q Now, with regard to the letter to Justin Buchanan about the incident with the guards. Do you know what I'm talking about?

A There were more than one.

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Q About the time when he complains about the guards and talks about getting beat up by the guards?

A Yes, sir.

Q Did you check that out?

A No, we did not do any interviews at the detention facility.

Q And you didn't find out then he had, in fact, been severely beaten by a bunch of guards and taken to the hospital?

A We were aware from his correspondence that there was some type of altercation, yes.

Q But you didn't check out the nature of it or who caused it or what?

A Not that I recall.

Q Okay. And with regard to the letter that talked about Kristina Chirino's spot being kicked in by Regennia Rios. Right? Remember that letter?

A Not specifically that way. I may need to look at that letter.

Q R had my girl's spot kicked in. Isn't that what it says?

A I thought you said that Regennia Rios kicked in Kristina Chirino's house.

Q Had somebody kicked in?

A Something along those lines.

Q Did you, and this was in your possession at a time when

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you guys, you, the government, everybody around this table here, were preparing to take this case to trial and preparing to seek the death penalty against Mr. Sandstrom, right?

A Yes, sir.

Q And Kristina Chirino was a government witness who you talked to and dealt with?

A Yes, sir.

Q You, the group?

A Yes.

Q And Regennia Rios certainly is a government witness who you, the group, talked to and dealt with on several occasions?

A She's a government witness, yes.

Q Did you ever ask them about whether this happened?

A Well, I believe we had police reports that showed that Steven Sandstrom was arrested at Kristina Chirino's house that did indicate that the police were at the Chirino residence on Van Brunt so that was corroborated through the PD reports.

Q You think in this letter he's talking about his arrest?

A I think he's talking about having his girl's house kicked in.

Q And you don't think he's talking about the some later burglary of his girl's house by people working for

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Regennia?

A No. I think in conjunction with some of the other letters and phone calls it was clear that he thinks Regennia called the police to let them know that he was there and the murder weapon was there. And they searched the basement for the murder weapon. I think that's what he's indicated.

Q You think what he's talking about there is nothing, basically his arrest at Kristina's house when he hides the gun?

A Without reviewing the letter more in depth, that's my basis.

Q And no question he was arrested. We all know that, right?

A Yes, sir.

Q Now, there's also I think in that same letter something about Joe from Jim's Liquors?

A Yes.

Q Did you ever check out that and see if there was any basis for that or was that just more tough talk?

A Yes, we did do some investigation into some other possible homicides. We did find out who Joe was from Jim's Liquor and Mike A, as in that letter. We did not interview those two individuals.

Q Did go to Jim's Liquors and see if there was a guy Joe who worked there?

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A I think we verified that through other people but did not interview Joe.

Q No, as far as you could tell, no factual basis for that?

A We have no evidence.

Q Okay. Now, is it fair to say that of all the letters that purport to show that Mr. Sandstrom is dangerous, the only person that ends up getting injured that you can verify is Mr. Sandstrom, himself?

A All I can say is that Mr. Sandstrom was in an altercation. What provoked or led to that, I do not have a basis to

testify to that.

Q You didn't investigate that?

A No, sir.

Q And you didn't find out that he had, in fact, been taken to the hospital for head trauma?

A Through his correspondence we knew that he had staples but we did not look further into that.

Q And by the way, was one of these guards involved in that deal, this same Mr. Okafer, the Nigerian guy we have talked about before?

A I have no idea, sir.

Q Now, let's talk about the letter to Jonathan, which is Exhibit 166. And I think we need to look at the whole letter. Have you read the whole thing?

A At some point, yes.

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Q Let me give it to you so you can look at it again because it's easier than trying to do it on the screen?

A I agree.

Q Take your time to read that.

A Okay.

Q Would it be fair to characterize that letter as a whole as one of say, don't do like I did?

A That's a fair assessment. He's telling Jonathan not to - all the different times that he's been in jail and he's telling him not to do it.

Q And Jonathan is his girlfriend's little brother, is that right?

A At that time, yes.

Q He's, basically, saying, look, Jonathan, I've screwed up in my life. Don't be like me. Is that fair to say?

A That's a fair assessment, yes.

Q And the part that you read from the big screen during direct examination was actually something to the effect of look, all I was doing was riding around with Gary, just fun and games. Then it ended up being a murder. Correct?

A He says, you see how a little fun and games turned into a murder with me and Gary. After he's telling him about not stealing cars.

Q Right. And so are you asserting that that somehow shows lack of remorse?

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A He's talking about the death of William McCay was fun and games that him and Gary were playing so.

Q He's talking about he and Gary were having fun and games stealing a car and it ended in the death of Mr. McCay. It turned into a murder?

A He says, you see how a little fun and games turned into a murder with me and Gary. I wouldn't characterize it.

Q Let's put it in context. Where are we?

When I was young a lot of older people tried to tell me to stop my shit and to leave these cars alone. I didn't listen. Because I thought I knew it all. Don't be hard-headed like I was. You see how a little fun and games turned into a murder with me and Gary.

Right?

A That's what it reads, yes.

Q And then it goes on to say, if you and one of your friends wreck a car and one of them dies, they can charge you for manslaughter. You can just be in the car, not driving either.

Right?

A That's what it reads, sir.

Q So it's basically saying, don't steal cars, right?

A Before and after that sentence, I think the jury will have to make a determination on how they characterize the fun and games.

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1 Q Sure. But he's talking before and after, don't be like
2 me, don't go stealing cars. Gary and I were out having
3 fun and games and it turned into a murder, words to that
4 effect, right? And so then if you steal a car and you
5 wreck it and somebody dies, you're charged with
6 manslaughter which I'm not vouching for the legal accuracy
7 of the advice, but it's, basically, you can get in trouble
8 stealing cars. Look where stealing cars got me. Got me a
9 murder case with Gary?

10 A The letter speaks for itself.

11 Q Yes, it does.

12 Thank you. I believe that's all, Your Honor.

13 THE COURT: Redirect examination?

14 REDIRECT EXAMINATION

15 MR. KETCHMARK: Just briefly.

16 BY MR. KETCHMARK:

17 Q Special Agent Janke, with respect to the attempts to try
18 to find out and verify information, it is accurate that
19 steps were taken by you and Special Agent Gothard, is that
20 correct?

2 A Yes.

2 Q And would you characterize those as being very thorough?

2 A For what we had to work with, I would characterize that.

2 Q But would you characterize those as being exhaustive?

2 A No.

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Q There's obviously several references to stuff that happened several years ago. He referred repeatedly to the time period of 2002?

A Correct.

Q Are you familiar with what the term shank refers to?

A Yes.

Q What is a shank?

A It's an object that can be made out of an assortment of items in a prison used to stab.

Q So 5-1/2 inch fiber glass shank is what?

A 5-1/2 inch piece of fiber glass carved into some sort of stabbing utensil.

Q About these questions about anybody else getting injured.

In the one letter where there is a reference to a gentleman by the name of Fernando, Fernandez or roach, are you familiar with whether that person actually exists?

A Yes.

Q Was that person in Jackson County at the time?

A He was.

Q And, lastly, the reference to this notion of Mr. Sandstrom writing and wanting to cooperate with law enforcement. Do you remember Mr. Rogers' questions about that?

A Yes.

Q And he gave you the time frame of June of 2005, is that correct?

1 A That's correct.

2 Q Would it be accurate to state that the time frame
3 encompassed in the letters and the other threats that
4 Mr. Sandstrom was making in the investigation, overlapped,
5 both proceeding and following, that same offer of
6 cooperation?

7 A I think that would be accurate and especially right after
8 that a letter was written.

9 Q That's all I have.

10 THE COURT: Recross?

11 RECROSS-EXAMINATION

12 BY MR. ROGERS:

13 Q You're not telling us this Fernandez guy was injured, are
14 you?

15 A No, I'm not.

16 Q So I thought you told us earlier, as far as you know, the
17 only person who ever got injured is Mr. Sandstrom,
18 himself, that's still accurate?

19 A Yes.

20 Q Thank you.

2 THE COURT: You may step down, Special Agent Janke.

2 MR. KETCHMARK: That would conclude the government's
2 presentation, Your Honor.

2 (Witness excused.)

2 THE COURT: Let's go ahead and take a break. Ten or

1 15 minutes. We'll call you back when we're ready. While
2 you're back there, be giving some thought to this idea. It is
3 possible that the evidence in this phase of the case will be
4 completed by mid-afternoon. If that happens, I will ask you at
5 some point whether you want to stay past 5:00 to deliberate.
6 Think about that option.
7 Secondly, in the event you are unable to reach a
8 verdict today, there is the possibility that we could come back
9 tomorrow and allow you to deliberate tomorrow. So think about
10 that possibility.
11 The other option, of course, is to come back on
12 Monday. So talk those things over among yourselves.
13 Don't discuss the case itself. Keep an open mind.
14 We'll see you back here in 15 minutes.
15 (Recess)
16 (The following proceedings were had OUT OF THE
17 PRESENCE AND HEARING OF THE JURY:)
18 THE COURT: Ready, folks?
19 MR. ROGERS: Your Honor, while we're waiting, at this
20 time Mr. Sandstrom would move for a directed verdict at the
2 close of the government's evidence on the issue of the
2 statutory aggravating factor of substantial planning and
2 premeditation.
2 As the Court is well aware when we filed our pretrial
2 motions, the Court ruled that you would make that decision

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1 based upon the evidence which had been adduced. Now, that they
2 have adduced all of the evidence in aggravation they care to, I
3 don't think there's sufficient evidence that a reasonable jury
4 could find beyond a reasonable doubt that Mr. Sandstrom engaged
5 in substantial planning and premeditation to cause the death of
6 William McCay, especially in light of the verdict acquitting
7 him of Counts 1 and 3.

8 MR. KETCHMARK: 1 and 2.

9 MR. ROGERS: I'm sorry. 1 and 2. The argument that
10 the government made with regard to Mr. Eye had to do with
11 planning that had to do in large measure, planning which
12 preceded the Spruce alleyway shooting. And Mr. Sandstrom has
13 been acquitted of that. So, therefore, I think they're limited
14 to the proof of what happened between the Spruce alleyway and
15 9th and Brighton. And I think the evidence of Regennia Rios is
16 uncontroverted with regard to the lack of planning on the part
17 of Mr. Sandstrom.

18 THE COURT: There is sufficient evidence in the
19 record to submit that issue to the jury and I will do so.
20 Overruled.

21 Let's bring the jury in.

22 (The following proceedings were had IN THE PRESENCE
23 AND HEARING OF THE JURY:)

24 THE COURT: Please be seated.

25 Mr. Rogers.

1 MR. ROGERS: Your Honor, defense calls Mike

2 Sandstrom.

3 MIKE SANDSTROM, DEFENDANT SANDSTROM'S WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MR. ROGERS:

6 Q Would you, please, state your name for the record and

7 spell it for the court reporter?

8 A Michael J. Sandstrom, S-A-N-D-S-T-R-O-M.

9 Q Common spelling for Michael?

10 A M-I-C-H-A-E-L.

11 Q Mr. Sandstrom, how old are you?

12 A 49 years old.

13 Q Where do you live right now?

14 A 1106 Ewing Avenue.

15 Q Is that in Kansas City, Missouri?

16 A Kansas City, Missouri.

17 Q And if you could, lean a little closer to the microphone

18 or move it a little closer to you so we can all hear you.

19 What is your relationship with Steven Sandstrom?

20 A I'm his father.

2 Q Mr. Sandstrom, are you addicted to any type of drugs?

2 A Yes, sir.

2 Q What are you addicted to?

2 A Cocaine.

2 Q In what form do you use cocaine?

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A I smoke it.

Q And is that some times called crack cocaine?

A Yes, sir, it is.

Q How long have you been addicted to cocaine?

A Probably about 20 years.

Q How old was Steven when you first started smoking cocaine?

A Probably a year, 1 or 2 years old.

Q So that would have been the mid 1980s?

A Probably about '86 I really got into it.

Q Okay. At that time were you smoking crack?

A Well, it was, it wasn't called crack then. It was called free basing.

Q And the way free basing works, you take powder cocaine and heat it up with a solvent and smoke the fumes that came off of it?

A Something like that, yes, sir.

Q And sometimes the solvent would explode and burn people?

A I think that was alcohol. When they used alcohol or something like that.

Q And with crack cocaine, you don't have to go through that stage of heating up the solvent, right?

A No, sir.

Q Now, how often, since you first became heavily into it or addicted to cocaine, how often do you use it?

A On a daily basis.

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Q Have there been times over the last 20, 22 years when you have not used cocaine?

A Yes, sir.

Q When were those times?

A In about 1990, '91, '92, something like that, I quit.

Q And why did you quit?

A I don't know. I don't know. I just did. I had the power to do it. But I've been doing it so long now, that just kind of becomes a way of life it seems.

Q Have you also been incarcerated from time to time during

that period?

A Yes, sir.

Q While incarcerated have you used cocaine on a daily basis?

A No, sir, not when I was incarcerated. I didn't get high at all.

Q I'm sorry?

A I didn't get high at all when I was incarcerated.

Q You never used cocaine when incarcerated?

A No, sir.

Q Now, when you're not incarcerated and when you were using cocaine except for those couple of years you quit, how much would you spend a day on cocaine?

A It depends. You know, it varied. Anywhere from 20 to 200 dollars, maybe sometimes \$500.

Q Depends on how much you had?

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A Yes, sir.

Q When you first started using cocaine, were you employed?

A I had a business at that time.

Q Okay. And what business did you have?

A Triple A Appliance Company.

Q What happened to that business?

A I got in a motor vehicle accident and I couldn't run it then I sold it.

Q What did you do with the proceeds from selling the business?

A I bought a farm and moved to the country and for awhile when I started staying clean.

Q That's the '90 to '91 period?

A About '88. Then I started staying clean for awhile. Then I fell off again.

Q Okay. And was Steve still a small child at that time?

A Yes, sir.

Q At that time when you fell off again, meaning you went back to using it?

A Yes, sir.

Q Is there, did you make a conscience decision to do that or is it just something that you did?

A Well, I don't think I, you know, I sat around thinking about it. I just did it.

Q Okay. And what happened to the farm?

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A When I sold my business, I was young at the time. I was 26, 28. And when I sold the farm, when I sold my business I had no idea there was what is called a capital gains tax. And when I sold the business I owed \$15,000 in capital gains. So I wasn't notified about that or nobody told me about it. Like I said, I was young, you know. And probably about 15, 18 months after I sold the business the IRS put a lien on my farm. They wanted their money within 90 days or they were going to foreclose on the farm so I sold the farm.

Q Sold the farm to pay the IRS?

A Paid the 15,000.

Q Did you still have some money left over from that?

A Yes, sir.

Q What did you do with it?

A I came to Kansas City and at that time I believe we moved in with my mother and father-in-law and Steven and his sister and mother and I bought a few cars.

Q Your mother and father-in-law, you mean your mother and stepfather?

A No, my -

Q Mother-in-law and father-in-law?

A Yeah.

Q That would be Robert Trigg?

A Barbara Trigg and Richard Trigg.

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Q You bought cars?

A I bought three or four cars. And my wife's brother was a body man and he was just going out of the garage, himself. We were going to fix them up and sell them and buy more, buy more. It didn't turn out that way.

Q How did it turn out?

A Fixed the cars up and sold them but used the proceeds for drugs.

Q So, basically, you took the money from your business and bought the farm but then you hadn't paid the capital gains tax, the farm was in jeopardy so you sold it. Took that money to go into the used car business, basically?

A Yes, sir.

Q And took the proceeds of that business and spent them on drugs?

A Yes, sir.

Q During that time would you use, were you using crack cocaine, free base time? By the time you had the short lived car business was the, was crack cocaine around by then? You didn't have to free base any more.

A Right.

Q Okay.

A Yes, sir.

Q And during that time would you smoke crack in the home?

A Yes, sir.

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Q And did you try to not do it in front of the kids?

A Yes, sir.

Q Do you know whether the kids saw you doing it or not?

A I don't believe the kids ever did see me. At that time any way.

Q Later on, perhaps?

A Yes, sir.

Q And would they, obviously, see you when you were high and under the influence?

A Yeah, I'm sure they did. They knew something was wrong.

Q Would you ever talk to the kids if you were high and they were making some kind of disturbance or something and bothering you?

A No. No. I've got good tolerance with kids.

Q Have you ever, what I'm asking is, have you ever told the kids, quit doing that. You'll ruin my high?

A When they got older, I did.

Q Okay.

A Because they used to intentionally, yeah, they knew me and my wife were getting high, myself any way, they would do things to, you know, kind of tick us off or whatever.

Q Then you would say, hey, don't do that, you're ruining my high?

A Yeah. Sure.

Q So you did not keep your drug abuse a secret from the

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children?

A After, I can't remember exactly when they found out that-

Q Okay. Let me ask you, after your car business was down the tubes, how would you get money for drugs?

A By any way we could.

Q Including stealing?

A Lie, cheat and steal, yeah.

Q So you have stolen to get money for drugs?

A Sure.

Q Have you forged checks to get money for drugs?

A Oh, yes, sir.

Q Have you committed burglaries to get money for drugs?

A No, sir, never did.

Q Never did a burglary?

A No.

Q Have you stolen cars to get money for drugs?

A No.

Q Have you stolen cars to use?

A Yes.

Q Have you asked Steven to steal for you to help support the family and support your drug habit?

A He was with us at times, yes, sir.

Q And did you, in fact, steal or teach Steve how to steal cars?

A No, sir.

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1 Q Who did?

2 A I don't know.

3 Q You deny that you did?

4 A Yes, sir.

5 Q And -

6 A I taught him how to drive an automobile.

7 Q You taught him how to drive?

8 A He was driving a 4-speed Cavalier when he was like 12 or

9 13 years old.

10 Q Okay.

11 A He could drive semi trucks.

12 Q You taught him how to drive well before the age where it

13 was legal or not?

14 A Yes sir.

15 Q Would he some times show up with cars for you to use?

16 A Well, I mean I never sent him out to get a car or anything

17 like that. But if he had a car, we used it, yes, sir.

18 Q I want to show you a photograph which has been marked as

19 Sandstrom Exhibit 5.

20 Do you recognize that photograph?

21 A Yes, sir.

22 Q Is that a photograph of you in a younger day?

23 A Yes, sir.

24 MR. ROGERS: Your Honor I would offer Sandstrom

25 Exhibit 5, please?

1 MR. GREEN: No objection, Your Honor.

2 THE COURT: 5 is admitted.

3 MR. ROGERS: Permission to publish, Your Honor?

4 THE COURT: You may.

5 BY MR. ROGERS:

6 Q Now, where are you in that picture, sir?

7 A That's my grandmother's house.

8 Q What is your grandmother's name?

9 A Virginia Reglbrugge, R-E-G-L-B-R-U-G-G-E.

10 Q Were you living with her at the time?

11 A No, sir.

12 Q Just visiting?

13 A Yes, sir.

14 Q How old would Steven have been when this picture was
15 taken?

16 A I'd have to say Steve might not have even been born then.

17 If he was, he was awfully young.

18 Q Let's go back, how old were you when Steve was born?

19 A Say I'm 49. He's 23. Or will be so. Was I 22 or 23,
20 something like that.

2 Q I'm coming up with 26 when I do the math in my head.

2 A 26. Okay.

2 Q How old were you when you and Bonnie first took up?

2 A I think I was 17.

2 Q And how old was Bonnie?

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A I think she was 13 or 15 or so.

Q And did you live together for several years before you got married?

A Yes, sir.

Q And, in fact, you lived together and were not yet married at the time Steve was born?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And do you have any other children?

A Yes, sir.

Q Who are they?

A Stephanie, his sister, and John.

Q How old is Stephanie compared to Steve?

A Stephanie is 21 and John is 16.

Q So Stephanie would be like a year younger, year and a half maybe than Steve?

A Yes.

Q And John is five years younger than Stephanie?

A Yes, sir.

Q Now, you indicated before that you have been incarcerated in the past, is that correct?

A Yes, sir.

Q How many times have you been incarcerated?

A Are you talking just little traffic tickets and stuff like

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that or jail time, like prison?

Q Let's first of all talk about prison time. How many times have you been to prison?

A I went to prison in '98 for forgery. And in 2006 or 7, I think I went for tampering, went twice but the first time I had to go back because I violated.

Q So you were sentenced. You served some time. You were paroled. Then you violated your parole and went back?

A Yes.

Q Total of three different times?

A Three different times.

Q Commitments. What all have you been convicted of in terms of crime? You mentioned forgery. You mentioned tampering?

A Shoplifting. Endangerment of a child.

Q What was that about?

A Shoplifting?

Q The endangerment of a child was shoplifting because you had one of your kids with you, helping you shoplift?

A Well, yes, sir.

Q In that regard I want to call your attention to November 20th of 1997 and ask you if you happened to go to the Wal-Mart store by I-70 and Noland Road in Independence, Missouri?

A Yes, sir.

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Q And who did you go there with you?

A Steven, Harold.

Q Steven and who?

A Harold Ashby.

Q Harold Ashby. Who is Harold Ashby?

A Well, he was, his dad was my brother's best friend. His dad died and he just kind of came to live with us.

Q How old was Harold?

A How old is he now or?

Q How old was he then?

A I think he's 32 now. So 22.

Q So he's an adult?

A Yes, sir.

Q And who else?

A Albert Rush.

Q How old is Mr. Rush?

A He probably would have been about 63, something like that.

Q An older adult?

A Yes, sir.

Q And anybody else? Just the four of you?

A Stephanie.

Q Okay. And how old would Stephanie have been?

A In '97?

Q Yes.

A Ten, ten or eleven, maybe.

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Q And Steve would have been twelve?

A Yes, sir.

Q What happened there at the Wal-Mart?

A We went in there to shop for some things.

Q Now, when you say we, did everybody go in?

A Yes.

Q Did you stay together as a group of four or did you split up?

A Kind of split up a little bit.

Q Okay.

A Everybody kind of had on their mind what they wanted to get.

Q Was it a matter of planning to shop for things and pick them out and pay for them or was it a matter of planning to get things and take them without paying?

A To take them without paying for them.

Q Okay. And was Steve pushing the shopping cart?

A Yes, sir.

Q And did he have some fairly inexpensive merchandise in the shopping cart? Some Chiefs monogrammed towels, Chiefs stocking cap, things like that?

A I don't remember that exactly. But I do remember there was a couple of, there was two table lamps and a big boom box stereo was in there.

Q Okay. Well, let's go back to when Steve was pushing this

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cart, did you then go to the electronics department and pick out the boom box stereo?

A Yes.

Q And you brought it back and put it in Steve's cart?

A In the cart.

Q What happened?

A We proceeded to push the cart out.

Q And what happened after you were pushing the cart out?

A We got out the door and almost to the car and here come six or eight guys from Wal-Mart running out the door after us.

Q Did they, in fact, catch Steve?

A Yes, sir.

Q And he didn't fight with them or?

A Oh, yes, he fought with them.

Q Okay. And then did, what did you do?

A I -

Q You what?

A I said I drove off.

Q You drove off. Without Steve?

A Steve.

Q Did you have Harold and?

A No.

Q Other people?

A I had Stephanie.

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Q You had Stephanie with you?

A Yes.

Q Did she stay in the car or had she been inside?

A She had been inside, all of us were.

Q And she got to the car and you left Steve holding the bag after you took him there to help you steal.

A Yes.

Q And you weren't getting the boom box stereo to play music on at home, were you?

A Oh, no. I had people to buy stuff.

Q They would buy stuff and you would use the money to buy drugs, is that right?

A Yes, sir.

Q That's not the only time you took your children to steal for you to support your drug habit and your wife's drug habit, isn't that right?

A That's correct.

Q Let me show you what's been marked as Sandstrom Exhibit No. 6. Is that a photograph of you, again, sir?

A Yes, sir.

Q And do you know where this photograph was taken?

A Cameron, Missouri.

Q Cameron, Missouri? Is that the -

A Western Missouri Correctional Center.

Q Western Missouri Correctional Center in Cameron?

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1 A Yes, sir.

2 Q And there are, we've heard about a place called Crossroads
3 in Cameron?

4 A Right next door.

5 Q Right next door?

6 A Yes, sir.

7 Q And Crossroads is a high security place.

8 A It's like a lock down, I think.

9 Q And Western Missouri is a medium security place?

10 A Yes, sir.

11 MR. ROGERS: Your Honor, I move the admission of
12 Exhibit 6.

13 MR. GREEN: No objection.

14 THE COURT: 6 is admitted and may be displayed.

15 BY MR. ROGERS:

16 Q Does that show you in prison?

17 A Yes, sir.

18 Q That's the way you looked there?

19 A Yes, sir.

20 Q How old or when were you at Crossroads, or excuse me,
2 Western Missouri?

2 A I think I got there in December of '98 and left in May of
2 '99.

2 Q Then let me show you what is marked as Defendant's Exhibit
2 7. Do you see that, sir?

1 A Yes, sir.

2 Q And does that show you and some other individuals as well?

3 A That shows me, Roger Stafford and Roy Green.

4 Q Roger Stafford and Roy Green?

5 A Yes, sir.

6 Q And where was that photograph taken?

7 A Western Missouri Correctional Center.

8 MR. ROGERS: Your Honor, I move the admission of

9 Exhibit 7.

10 MR. GREEN: No objection.

11 THE COURT: 7 is admitted and may be shown.

12 BY MR. ROGERS:

13 Q Which of the people is Roger Stafford?

14 A The man on the left with the long hair.

15 Q That would be the white guy?

16 A Pardon me?

17 Q The white guy?

18 A Yes, sir.

19 Q And Mr. Green is the black man?

20 A Yes, sir.

2 Q Were you friends with both of those people?

2 A Oh, yes, sir.

2 Q In prison. Were you friends with them on the streets as

2 well?

2 A No. I think I met Roy Green in Fulton, Missouri. And

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then we came to Cameron together. And me and him lifted weights all the time. Then I met Roger Stafford after I got to Cameron.

Q And you said Fulton, Missouri, and that at the time was the only -

A Diagnostic Center.

Q Reception and Diagnostic Center for the Department of Corrections?

A Yes, sir.

Q So everybody who got sentenced to the Department of Corrections went to Fulton then were assigned out to some place?

A Yes. Everybody did.

Q Now, they have others?

A Yes, sir.

Q Was there any racial animosity when you were at Western Missouri Correctional Center? Were there troubles between black inmates and white inmates?

A Yes, sir.

Q But you were not part of that?

A Oh, no. I didn't get involved in that.

Q Let me ask you this. When you were on the streets before and after you were incarcerated, did you have African-American friends?

A Sure.

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Q Were there African-American people living in your neighborhood?

A Not many, but, yes, sir.

Q Were there African-Americans who actually lived in your home with your family?

A Yes, sir.

Q Who would that be?

A Melvin Carter lived with us. We all called him Tank. His name is Robinson.

Q Kenneth Robinson?

A Kenneth Robinson, yes, sir.

Q He lived with your family as well?

A Yes.

Q Was race or racism ever an issue in your family?

A When I was a kid, it was. You know, you wasn't suppose to associate. But I grew up. I learned there's good and bad in everything.

Q So?

A But as far as my teaching my family racism or anything, no, no.

Q Would Steve, when he was a kid, would he have other kids over to the house some times?

A Yes, sir.

Q Would some of them be different races?

A Oh, yes, sir. Two twin brothers used to come over all the

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1 time, La Quinn and La Quann. They would come on Friday

2 night and stay until Sunday.

3 Q Let me show you what has been marked as Sandstrom Exhibit

4 8. Can you see that?

5 A Yes, sir.

6 Q And who's in that picture?

7 A That's me and the guy in the red his name is Charles

8 Tucker and the other is Gary but I can't quite remember

9 his last name.

10 Q Mr. Tucker is the one with the T-shirt on?

11 A Yes, sir.

12 MR. ROGERS: Your Honor, I move admission of Exhibit

13 8.

14 MR. GREEN: No objection.

15 THE COURT: 8 is admitted and may be displayed.

16 BY MR. ROGERS:

17 Q Where is that picture taken?

18 A Western Missouri Correctional Center.

19 Q And were these particular friends of yours? Why were you

20 taking pictures with them?

2 A I met Mr. Tucker, the man on the right in the T-shirt, I

2 met him in the Clay County Jail while I was awaiting

2 sentencing and we just happened to end up at the same

2 place. Kind of a familiar face. To where you got to go

2 to jail, it's kind of a lonely place, I guess, so you just

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1 kind of take up with somebody that you know.

2 Q What's the other guy's name?

3 A Gary is his name but I can't think of his last name. He's

4 from, I believe, Columbia, Missouri. And -

5 Q Just another person you knew in jail?

6 A Yes. I met him in Cameron.

7 Q Finally, show you what's been marked as Sandstrom Exhibit

8 No. 9. What is that a picture of?

9 A Fredrick Mack.

10 Q Fredrick?

11 A Fredrick Mack, M-A-C-K.

12 Q How do you know Mr. Mack?

13 A I can't remember how I met him but I have bought drugs

14 from this man before.

15 Q While you were on the streets?

16 A Yes, sir. And Mr. Mack had come to my house and ate

17 dinner with our family, brought food to our house. I

18 mean, it wasn't just a drug thing. I mean, we just became

19 friends.

20 MR. ROGERS: Your Honor, I move admission of Exhibit

2 9.

2 MR. GREEN: No objection.

2 THE COURT: 9 is admitted and may be displayed.

2 BY MR. ROGERS:

2 Q And Mr. Mack is, obviously, an African-American?

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A Yes, sir.

Q And -

A With a white woman. He has a white woman.

Q He has a white wife or girl friend or something?

A Yes, sir.

Q Okay. You already had a drug buying relationship with Mr. Mack before you went to Cameron?

A Yes, sir. Because when I went to Cameron, he was no longer. He's now an ordained minister, if I'm not

mistaken. He's turned his life around.

Q Were you at Cameron when this picture was taken?

A No, sir.

Q Okay. How did you come to have this picture?

A He sent it to us.

Q Okay. And he was at Cameron?

A I believe that is Cameron, sir. It looks like the same wall by the gym.

Q Yes, it does.

And so he sent you a picture from prison.

That's how -

A Yes, sir.

Q --friendly you were with him?

A Right and letters and stuff.

Q And would he have been at your home when Steven was there?

A Oh, yes, sir.

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Q So it was not just a drug relationship. It was friendship as well?

A Yes, sir. I mean, it's probably hard for other people to understand. It's like you're a real estate agent and I know you. I buy real estate from you.

Q You were friends with Mr. Mack before you became his crack cocaine customer?

A Yes, sir.

Q I'm going to switch gears a little bit. Do you love your son, Steven?

A Oh, yes.

Q If he were to be sentenced to death and executed for the murder of Mr. McCay, how would you feel?

A Well, I would feel like this here, I haven't been here through any of the testimony but I know some of the people who testified and, you know, me being on drugs, you lie, cheat and steal. Well, they were all on drugs. I know who most of them were, some of them any way, several of them were and lie, cheat and steal.

Q Well, my question is not about the evidence but my question is about how you would personally be impacted if your son, Steven, were put to death?

A Devastated.

Q Devastated?

A Yes, sir, I would want to die if not retaliate. You know,

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1 something.

2 Q I believe those are all the questions I have. Thank you.

3 THE COURT: Mr. Green?

4 CROSS-EXAMINATION

5 BY MR. GREEN:

6 Q Just a couple questions, Mr. Sandstrom. Your daughter,

7 Stephanie?

8 A Yes, sir.

9 Q She's what, about 21, is that right?

10 A Yes, sir.

11 Q And she was also raised in the same home as Steven

12 Sandstrom, correct?

13 A Yes, sir.

14 Q And she's now raising three kids, correct?

15 A Yes, sir.

16 Q And she's raising those kids on her own, correct?

17 A Well, she's got a boyfriend, I mean.

18 Q But I mean she's taken complete responsibility for the

19 three kids, correct?

20 A Yes, sir.

2 Q And you testified about Mr. Mack, who is African-American,
2 correct?

2 A Yes.

2 Q And Mr. Carter and then we also heard about Mr. Robinson,
2 correct?

1 A Yes.

2 Q You were friends with those individuals, correct?

3 A Yes, sir.

4 Q You also purchased drugs from them, correct?

5 A Yes, sir. Well, not from Mr. Robinson, I didn't.

6 Q But from Mr. Carter and Mr. Mack, correct?

7 A Yes.

8 MR. GREEN: I have nothing further, Your Honor.

9 THE COURT: Redirect examination?

10 MR. ROGERS: Yes.

11 REDIRECT EXAMINATION

12 BY MR. ROGERS:

13 Q Your daughter Stephanie has three children, is that

14 correct?

15 A Yes, sir.

16 Q Three different dads?

17 A Yes.

18 Q Are they currently under the jurisdiction of the Family

19 Court?

20 A Yes, sir.

2 Q And is she also taking an active role in the life of your

2 son, John?

2 A Stephanie?

2 Q Yeah.

2 A She was for some time but now he's living with my mother.

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Q But before he lived with your mother, he lived with Stephanie?

A Yes, sir.

Q How did he come to live with Stephanie?

A He moved out. He couldn't take it.

Q Did Stephanie come to you and your wife and say, if you don't let John move in with me, I'm turning you guys into the cops?

A Well, not --it wasn't that big of a deal, I mean. You know we had a lot of traffic, different people coming through the house, you know, and -

Q And that would be related to your drug dealing and criminal activity to support your -

A Criminal activity, I'm too old to do any more time. But do drugs, you know, and birds of a feather flock together and people come around. They do the same thing I do. I'm not going to run them off.

Q And who ever has got drugs and wants to come over and share it, you're certainly willing to share?

A Pardon me now?

Q If somebody has some drugs they want to bring to your house, you're happy to help smoke the crack?

A Well, sure.

Q And if you have some drugs and somebody wants to come smoke them, you would sell them some so you could buy

1 more?

2 A If I get a pop off it, yeah.

3 MR. ROGERS: No further questions.

4 MR. GREEN: No.

5 THE COURT: May this witness be excused?

6 MR. ROGERS: Yes.

7 THE COURT: Mr. Sandstrom, you're excused.

8 (Witness excused.)

9 MR. ROGERS: Your Honor, the defense calls Bonnie

10 Sandstrom.

11 BONNIE SANDSTROM, DEFENDANT SANDSTROM'S WITNESS,
SWORN

12 DIRECT EXAMINATION

13 BY MR. ROGERS:

14 Q Would you, please, state your name for the record, please?

15 A Bonnie Sandstrom.

16 Q And how do you spell your first name?

17 A B-O-N-N-I-E.

18 Q And, Mrs. Sandstrom, what is your relationship with Steven

19 Sandstrom?

20 A I'm his mother.

2 Q And if you sort of lean into the microphone we can hear

2 you better. Okay? So far you're doing okay.

2 Are you addicted to the use of any drugs?

2 A Yes.

2 Q What drugs?

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A Crack cocaine.

Q How long have you been using crack cocaine or using cocaine in any form?

A Off and on for the last 20 years.

Q When is the last time you used it?

A Yesterday.

Q Do you plan to use it again today?

A No, actually, I don't.

Q Why not?

A Because I feel drug activity has caused a lot of the problems with our family. Everything has been so dysfunctional. That's why my family is destroyed.

Q Have you tried to quit before?

A I have quit before for four years.

Q Have you gone back to it eventually?

A Yes, I did.

Q Okay. Tell me how old were you when you first met Mike Sandstrom?

A 12 going on 13.

Q And how did you meet Mike?

A Down at the Pizza Hut Restaurant, I found a wallet. It had a driver's license in it.

Q You said at a Pizza Hut Restaurant?

A Uh-huh.

Q Where was the Pizza Hut?

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A Independence Avenue there in northeast Kansas City.

Q What were you doing there?

A Actually I was ditching my lunch hour from school.

Q So you skipped school to go to Pizza Hut, found this wallet with a name in it?

A Yeah, a driver's license.

Q What did you do with it?

A I returned it to the address that was stated on the ID.

Q Was that close by the Pizza Hut?

A Yes, within -

Q Who was there?

A Not even a mile radius. Excuse me?

Q Who was there when you went over to the address on the ID?

A My mother-in-law, which is Frances Tresenriter, and Michael Sandstrom, my husband.

Q How old was Mike at the time?

A How old was he?

Q Yes.

A 17.

Q But you get over there and hand back the wallet, what happened? Did it lead into a relationship between the two of you?

A Well, he was in the back working on the car. It was pouring down rain and he gave me and my friend a ride back to a park that was close to the high school where I went.

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Yes, I started seeing him up around the school, him driving by and I ended up dating him.

Q When did you and he move in together?

A Well, actually, I stayed with his mother a couple times when I had problems with my stepfather. He'd be upset and more or less throw me out, Mike's mother would take me in. I was a young girl still in school 14, 15. Then I eventually got out on my own when I was 16.

Q And that's when you and Mike were actually living together

in your own home?

A An apartment. I was working at a Sears and Roebuck on Truman Road. He was working for a Gentlemen Appliance Store.

Q Now, before you were 16, were you and Mike involved in a sexual relationship?

A Yes, we were.

Q And did you conceive a child?

A I got pregnant when I was 15.

Q Okay. What happened?

A My mother and stepfather made me have an abortion.

Q Did you do that?

A Yes, I did. I didn't have a choice.

Q Then after the abortion is when you moved in, you and Mike moved into your own apartment?

A Yes, not long after that.

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Q And how old were you when Steven was born?

A 22.

Q Had you started using cocaine by then?

A No.

Q Had you been using marijuana before that?

A I smoked marijuana. That's the only drug I ever did as a teenager. I didn't even know nothing about crack cocaine until I was like 26, 25, something like that.

Q And how old were you when Steve was born?

A I was 22 when Steven was born.

Q And a couple years after Steven was born, were you aware that Mike was using cocaine, free basing?

A I didn't know he even was using cocaine until I was pregnant with Stephanie.

Q Okay. That was like a year or wasn't a year?

A They're 19 months apart.

Q 19 months apart. So you became pregnant with Stephanie ten months after Steven was born?

A Yes.

Q It was during that time you knew Mike was free basing?

A Actually, I didn't really know until a couple months before I had Stephanie.

Q Okay.

A It was later in my pregnancy because I caught him and a friend up in there and pretty much threw him out of my

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apartment. He was keeping me up and down all night long.

Q So you threw him out but he came back the next day?

A Yes. It was our business and our apartment upstairs so, yeah.

Q Then after Stephanie was born is when you, yourself, started using cocaine?

A Yes, I did.

Q And were there times when you used cocaine on a daily basis?

A Back when she was born? Is that what you're saying?

Q In general over the last 20 years have there been times when you used cocaine on a daily basis?

A Yes.

Q In fact, up until the present you, basically, have been using cocaine on a daily basis, haven't you?

A Yes.

Q And if you don't get high today, that will be the first time in how long that you haven't got high? First day?

A Well, I've went for two or three days straight and not smoked.

Q How long ago was that?

A Oh, probably about three weeks ago.

Q Because you didn't have any?

A No, that wasn't it. I just stressed myself out. All this here is just, it's like, it's not like not using and not

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being able to cope. That's not it. I think it eases my mind. So much stress on me. So much going on. And that's not an escape goat. That's the truth. It's keeping my mind content, I guess, is what it is.

Q Let me ask you this during the years that you have used cocaine, have there been times when you didn't have a regular job?

A Can you repeat that now?

Q Are you now, do you now have a regular job?

A No.

Q How long has it been since you had a regular job?

A A couple years.

Q And over this last couple years without a regular job, you've used cocaine frequently?

A Uh-huh. Yes.

Q And almost every day but there have been some periods where you didn't use it, is that right?

A Yes.

Q And how would you pay for the cocaine during that time?

A If it wasn't people getting it, we was scoring it for them, I would shoplift.

Q And when you say scoring it for them, meaning that you would buy a bigger quantity of cocaine with the money they gave you and you would give them some of it and keep some of it for your own use?

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A Make my own profit, yes.

Q Profit. Does Mike have a regular job now?

A No. Actually the house we live in, we've been there almost four years. We take care of his rental property for him. We don't pay rent. We live in our house rent free. We keep the maintenance up on all of the rental properties. Somebody gets kicked out or evicted, I'm the one that cleans up the mess and gets it prepared to rent and keep the lawn cut and stuff.

Q You get free rent for that?

A Free rent.

Q But you have to come up with money for food and clothes and cocaine through other illegal means. Is that fair?

A I have several people I do clean houses for, too, that they pay me cash for working for them.

Q In fact, you used to clean house for Willis Jones?

A Yes.

Q But that doesn't cover the expenses of living and also doing cocaine, does it?

A No. By all means, far from it.

Q And when your children were younger, when Steven was a grade school kid living with you, you were doing cocaine on a pretty regular basis, too, weren't you?

A Yes.

Q So was Mike?

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1 A Yes.

2 Q Correct?

3 A Yes.

4 Q And would you some times take Steven and Stephanie with

5 you to do crimes to get money?

6 A I would take my children with me to the stores, yes.

7 Q And you say to the stores, you're not going to buy things,

8 you're going to steal things?

9 A Actually, I would buy something, not every time but I had

10 intentions to purchase a few things but while I was doing

11 that I was shoplifting.

12 MR. GIBSON: Your Honor --May we approach, Your

13 Honor?

14 THE COURT: Yes.

15 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

16 PROCEEDINGS WERE HAD:)

17 MR. GIBSON: The objection is to the form of the

18 question. This isn't cross-examination. Mr. Rogers has been

19 leading the witness the entire examination. I gave him a lot

20 of leeway but the testimony should be coming from

2 Ms. Sandstrom, not Mr. Rogers.

2 THE COURT: Well, it is leading. I assume Charlie is

2 just trying to move us through it. But don't lead, Charlie.

2 MR. ROGERS: Okay. I'll try not to and if I can't

2 then I'll approach again and we'll talk about it.

1 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

2 BY MR. ROGERS:

3 Q So tell us how that would work. You're going to the store
4 with your children?

5 A How it would work? What are you meaning by that? How I
6 would go about doing my shopping or my shoplifting?

7 Q Yes, please.

8 A I had a big purse or load up a shopping cart. Then
9 Wal-Mart didn't have the alarm system. I'd load up a cart
10 and push it out the door.

11 Q And if you were going to Wal-Mart, that's what you would
12 do?

13 A Yes.

14 Q What would be the situation if you were actually going to
15 buy something as well as steal things?

16 A If I had somebody else with me, I would have them purchase
17 whatever I was going to get. I would give them the money
18 and I would go on out the door with my cart and my kids.

19 Q What would be the point of paying for some things and not
20 for the others?

2 A Stuff that I bought was stuff that I needed. The other
2 stuff was to sell for drugs or, you know, things that I
2 could use in my house or get something for my kids.

2 Q And would you ever, let me ask you this. What would you
2 do with things that you shoplifted or stole that you

1 wanted to use to get drugs for?

2 A I would either trade it to the dope man or I sold it for

3 money to get drugs. Is that what you mean?

4 Q Did you know people who would give you money for things?

5 A Oh, yeah.

6 Q And were there people who would give you drugs for things?

7 A Yes.

8 Q And then did you ever benefit from any of your children

9 stealing things?

10 A Did I benefit from it?

11 Q Right.

12 A No, actually, I didn't.

13 Q They never gave you something they had stolen to change

14 into money?

15 A Not that I recall.

16 Q Let me show you what's been marked as Sandstrom Exhibit 1.

17 Just the witness, please.

18 Do you recognize that picture, ma'am?

19 A I sure do.

20 Q Who is that?

21 A It's Steven, probably about 3 months old.

22 MR. ROGERS: Move admission of Sandstrom Exhibit 1.

23 THE COURT: Defendant's Exhibit 1 is admitted and may

24 be displayed.

25 BY MR. ROGERS:

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1 Q I notice he's surrounded by a lot of stuffed teddy bears
2 and kewpie dolls, toys and things, right?

3 A (Nods head yes.)

4 Q Do you know where you got all those things for him?

5 A That was all stuff they give us when he was a baby.

6 That's when we had our own appliance store. We had our
7 own business.

8 Q Had your own business and you could afford these, right?

9 A Yes.

10 Q And this is before you started using crack cocaine?

11 A Yes.

12 Q I'll now show you what has been marked as Exhibit 2.

13 Can you see that?

14 A Yes.

15 Q Who is that?

16 A Steven.

17 Q And how old is he?

18 A Gosh, I can't even remember.

19 MR. ROGERS: Your Honor, I move admission of Exhibit
20 2.

2 THE COURT: 2 is admitted and may be displayed.

2 BY MR. ROGERS:

2 Q And he's sitting in kind of a play seat called, is that a

2 Teeter Babe? Is that the name of that?

2 A It was like a little walker style but then they didn't

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1 have the wheels on them.

2 Q So this is even before he was able to walk at least?

3 A Yes.

4 Q Probably younger than one-year-old?

5 A Oh, yeah, he was just several months old there.

6 Q Once again this would be before you started using the
7 cocaine?

8 A Yes.

9 MR. ROGERS: Again, just the witness please.

10 BY MR. ROGERS:

11 Q Show you what has been marked as Exhibit -

12 For the record the last one was 17, I think.

13 THE COURT: Thank you.

14 MR. ROGERS: I had it out of order. This is 2. Says
15 2 right on it.

16 BY MR. ROGERS:

17 Q Is that Steven again?

18 A Yes, it is. He's at Mike's grandmother's house, down the
19 street from where Mike's mother lived. Probably about 4.
20 I think like 4 years old there.

21 MR. ROGERS: Move the admission of Exhibit 2.

22 THE COURT: 2 is admitted and may be displayed.

23 BY MR. ROGERS:

24 Q And so this is at Mike's grandmother's house?

25 A Yes.

1 Q That's on Drury, is that right?

2 A Actually, it was on St. John, right off Drury, the east
3 side of Drury.

4 Q Okay. And this is a very short distance away from Mike's
5 mother's house?

6 A Yes.

7 Q And that house is on Drury?

8 A Yes.

9 Q Were you living with Mike's grandmother at the time?

10 A No.

11 Q Just visiting?

12 A Yes.

13 Q I'll show you what has been marked as Exhibit 3.

14 Do you see that?

15 A Steven.

16 Q Is that a school picture?

17 A Yes.

18 MR. ROGERS: Your Honor, move admission of Exhibit 3.

19 THE COURT: Exhibit 3 is admitted and may be
20 displayed.

2 BY MR. ROGERS:

2 Q Do you know how old Steve is in that picture?

2 A I was trying to see. Probably like 11, 12, maybe. I

2 don't think he was even 12 then.

2 Q Still a pretty young kid and still in school at that

1 point?

2 A Yes.

3 MR. ROGERS: For the witness, Your Honor.

4 BY MR. ROGERS:

5 Q Show you what has been marked as Exhibit 4. Who is in
6 that picture?

7 A That's Steven with Allia, my niece. Mike's little brother
8 Robbie, his little girl.

9 Q Allia is the daughter of your brother Robbie?

10 A My brother-in-law.

11 Q Brother-in-law?

12 A Mike's brother.

13 Q Okay. So Mike's little brother Robbie. So that's Steven
14 and Allia. Can you tell how old Steven is there?

15 A I'm trying to remember. I was in Chillicothe prison when
16 that picture was taken. So.

17 Q We'll get there.

18 Your Honor, move the admission.

19 A Maybe 14. I can't remember because I didn't --Mike's
20 mother took the picture.

2 THE COURT: 4 is admitted and may be displayed.

2 BY MR. ROGERS:

2 Q Do you know where they are, where this picture is taken?

2 A I believe it was at Marty and Mary's down on St. John and
2 Oakley. It was a tavern but they served tacos. Had tacos

1 and stuff night for the family. That's what it looked

2 like. The entry part of it.

3 Q Now, what is marked as Exhibit 16? Once again, is that

4 Steven?

5 A That's a school picture.

6 Q That's a school picture. It, does that look like the last

7 time he was going to school enough to get the picture

8 taken?

9 A Actually, I believe it was.

10 MR. ROGERS: Your Honor, move admission of Exhibit

11 16.

12 THE COURT: 16 is admitted and may be published.

13 BY MR. ROGERS:

14 Q How old or what grade was Steven in when he quit going to

15 school?

16 A I think he was in the 7th grade.

17 Q So he went through the 6th as far as you could tell?

18 A I believe he did, yes. When he was 12 years old, I was

19 sent off to Chillicothe and I would come home he was 16.

20 He was in McCune. I had to get him removed from there.

21 They released him to me. Because I was gone for almost 4

22 years, well over 3 years.

23 Q All right. And we'll skip forward then and ask you about

24 that. Why were you in Chillicothe?

25 A Shoplifting.

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Q Anything else?

A Charge, well, when I got charged for my shoplifting, I had charges pending out of Jackson County. They said for a sales case which -

Q Sales of controlled substance?

A Yes. I scored some drugs for somebody and the person they were with was an undercover.

Q In other words, somebody came to you looking for drugs and they were actually doing it on behalf of -

A They was an informant. A guy I knew for 25 years set me up.

Q What kind of drugs are we talking about?

A Crack cocaine.

Q You were using crack at the time?

A Yes.

Q Was this one of these deals where you were planning to buy more than you were going to hand over?

A Actually, they were going to give me something for scoring for them.

Q Okay. So you would have a profit margin of something?

A Yes.

Q And were you convicted of anything else besides shoplifting and sales of controlled substance?

A No. Clay County sentenced me for attempt to steal is what I was sent for 3 years. And told me I had charges pending

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out of Jackson County. I got to Vandalia. 30 days, they filed my writ and I was brought back to Jackson County. Sat there for a month. Then convicted of drug charges. Then turned around and sent back to the prison. They ran them concurrent so my sales case overrode my shoplift.

Q What was your sentence on the sales case?

A I had two charges. One was dismissed. Second one I got the least, 5 years.

Q So you got 5 years concurrent with the 3?

A I did 3 flat.

Q Have you ever been convicted of anything other than those two offenses?

A Shoplifting.

Q Been convicted of forgery?

A It was, it was not. It was passing bad checks.

Q Passing bad checks?

A Yeah.

Q Okay. And how long were you incarcerated? You said 3 years?

A Yeah. Clay County. From the time I left Clay County to two prisons to the Honor Center.

Q You say two prisons. You first went to Vandalia?

A Yeah and I transferred to Chillicothe.

Q Vandalia also known as the Women's Eastern Reception and Diagnostic Center, is that correct?

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A At Vandalia, Missouri.

Q And so that's where, at least at that time, all women who are going into the prison, Missouri Department of Corrections prison system would first go to Vandalia, then be sent some place else?

A If you want to be transferred to closer, you know, to your residential, you have to be within a so many mile radius to be transferred to Chillicothe. Since I could see my children, they couldn't bring them to me at Vandalia. I was eligible to get to Chillicothe which is only an hour and a half drive from Kansas City for my family to bring my kids.

Q And Vandalia would be 2-1/2 or 3 hours?

A Yeah. They couldn't have gotten down there.

Q What years were you locked up in Chillicothe?

A Let me backtrack. September of, I'm trying to recall my dates here. September of '98 I was sent to Vandalia. February of '99 I was sent to Chillicothe. And then, I believe 2000 I was sent to the Honor Center from Chillicothe.

Q And the Honor Center is a kind of pre-release place here in Kansas City?

A KCCRC on Mulberry in the west bottoms. I was released for 120-day work release.

Q So you did your last four months at the Honor Center?

1 A Yeah. And I came out on 18 months paper.

2 Q And by 18 months paper you mean you were on parole and
3 under supervision for 18 months?

4 A To June of 2003 I was completed.

5 Q Let me show you what's been marked as Sandstrom Exhibit

6 No. 10. Do you recognize that picture?

7 A That is Stephanie, Steven and me at Chillicothe.

8 Q And I know it has a date on it.

9 A Yes.

10 Q Is that when that picture was taken?

11 A Yes. Every time I had a visit I would put the date on my
12 pictures.

13 MR. ROGERS: Move the admission of Exhibit 10, Your
14 Honor.

15 THE COURT: 10 is admitted and may be displayed.

16 BY MR. ROGERS:

17 Q So on the left is your daughter Stephanie?

18 A Yes.

19 Q And on the right is your son, Steven?

20 A Yes.

21 Q And do you know how old he is in that picture or how old
22 he was in '99? Let me put it this way, he was born in
23 '85?

24 A Yeah.

25 Q In '99, by August he would have just turned?

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A 14. Well, he was born on the --15.

Q Just turned 14, right?

A No. Actually he would be going on 15, right? No. Okay.

I'm sorry. Yes. Going on 14. I was trying to look.

August 26 is his birthday. That's why it threw me off.

Q Not quite 14?

A Yeah. August 26 he would have been 14.

Q Now, let me show you Exhibit 11.

A Same. All three of my children.

Q Is that, again, at Chillicothe?

A Yes. That was a special visit. It's color patch visit, patch visit in Chillicothe. We have our own like a mobile home. It's inside of a certain grounds. It's all fenced in. And there is a lady, Miss Scott. She goes to the church and meets with the people and they bring our children in, up to us, up there in a van. And we get the day with our children. And we get to cook whatever we want to in this trailer with her as our supervisor up there. And we spend the day with our children.

Q How many of those visits did you have during your incarceration at Chillicothe?

A Probably about 6 or 7 because you have to sign up in advance for them. And there's so many ladies that are on a waiting list for it.

Q So you don't get to do it every time it happens?

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1 A Well, you're on like a waiting list. It depends on like

2 who comes first.

3 Q Okay. All right.

4 I move the admission of Exhibit 11.

5 THE COURT: 11 is admitted and may be displayed.

6 BY MR. ROGERS:

7 Q And, again, has the date of October 21, '99?

8 A Yes.

9 Q So that's, Steven would have already turned 14?

10 A Yes.

11 Q And Stephanie would have been how old?

12 A Stephanie is 13.

13 Q Then how old is John?

14 A Four years younger than, my mind is so scattered right now

15 over all of this.

16 Q So he would be like seven or eight?

17 A He's 8 years old there.

18 Q Now, let me ask you this. While you were locked up, did

19 you do any drugs?

20 A Excuse me?

21 Q Did you do any drugs while you were locked up?

22 A No, sir.

23 Q There are drugs some times available if people have money

24 in prison, right?

25 A I seen them at Vandalia but not at Chillicothe.

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1 Q And is it fair to say that you have lost weight since you
2 got out of prison?

3 A Yes.

4 Q Did that have to do with the daily or almost daily use of
5 drugs?

6 A Yes.

7 Q Let me now show you what's been marked as Exhibit 12. Can
8 you tell me who is in that picture besides yourself?

9 A That's a good friend of mine at Vandalia or, excuse me, at
10 Chillicothe.

11 Q What's her name?

12 A Patricia Smith. She was from St. Louis.

13 Q She was a friend of yours at Chillicothe?

14 A She was my roommate.

15 MR. ROGERS: Your Honor, I move the admission of
16 Exhibit 12.

17 THE COURT: 12 is admitted and may be displayed.

18 BY MR. ROGERS:

19 Q Now, fair to say they have a room with a mural on the wall
20 where you can have your picture taken?

21 A It's like a banner up in the school house is where they
22 took the pictures.

23 Q So it's a back drop they have?

24 A Yeah.

25 Q You don't actually have rocks and mountains and eagles

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flying around there?

A No. She picked that background to match my outfit I had on then.

Q And you were able for these pictures to wear your own clothes?

A Yeah. We could purchase our own clothes through magazines up there.

Q In the other pictures you're wearing your official gray prison uniform, correct?

A Yes.

Q Did you have other African-American friends in prison?

A Several of them.

Q Have other white friends in prison?

A Yes.

Q Before you went to prison did you have African-American friends?

A Yes, I did.

Q Who are some of those?

A I have, well, we didn't get to speak with her, Lady Kelly, Melvin Carter, Freddy Mack. Then the kid's friends that all came around. Several ladies I worked with, you know.

Q And we mentioned Willis Jones before?

A Yes.

Q Would you consider him a friend?

A Oh, yeah, by all means.

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1 Q Would Steven have African-American friends over as a kid
2 growing up?

3 A More of his friends were black American kids, 80 percent
4 of the kids he ran with were. He had more black friends
5 than he did white ones.

6 Q Thank you.

7 A They even stayed at the house with us. We even had them
8 moving in with us because they had nowhere to go.

9 Q Let me move on then to Exhibit 13. Who all is in that
10 picture?

11 A My husband, all three of my children. That was my first
12 food visit. We, once you get on the Honor Dorm at the
13 prison, I was on work release, supervised at a nursing
14 home. I was eligible for a food visit and they all came
15 up and brought me what choice of food that I asked them to
16 bring me.

17 MR. ROGERS: Your Honor, I move the admission of
18 Exhibit 13.

19 THE COURT: 13 is admitted and may be published.

20 BY MR. ROGERS:

21 Q So a food visit means that you're not feeding them, they
22 bring food to share with you?

23 A Yeah. We can all sit and eat. It's just like a special
24 visit is what it is. But you have to be 6 months or more
25 free, violation free of any write-ups. You have to be on

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1 the Honor Dorm. You've got to be no violations or nothing
2 in the prison in order to get a food visit.

3 Q And that's in January of 2000 so it would be Steven is
4 still 14, right?

5 A Yeah.

6 Q Is that right?

7 A Yes.

8 Q Okay. So and the other kids were proportionately just a
9 few months older than in the last picture we saw of them?

10 A Yes.

11 Q Can you see Mike's eyes in that picture?

12 A Not really. He looks squinty-eyed.

13 Q You say his eyes look like they're squinty, is that right?

14 A Yeah.

15 Q Do you know why?

16 A No. To me it looks like the way he's smiling sort of real
17 tight, his eyes.

18 Q Now, we turn to Exhibit 14. Who is in that picture?

19 A Me and Michael.

20 MR. ROGERS: Move for admission of Exhibit 14.

21 THE COURT: 14 is admitted and may be published.

22 BY MR. ROGERS:

23 Q And that's, again, taken at Chillicothe?

24 A Yes.

25 Q And Mike is visiting you that day?

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1 A Yes. He came by himself that day.

2 Q Came by himself. Didn't bring the kids?

3 A No, he was by his self.

4 Q And once, again, do you think his eyes look unusual?

5 A I assume he probably had been using before he got there or
6 prior. I never knew when he was, I mean.

7 Q Come to the prison to visit you, he might be using on the
8 way up?

9 A He could have possibly, yeah.

10 Q And, finally, well, not finally for this group, show you
11 what's been marked as Exhibit 15. Does that show both
12 your husband Mike and you, along with all three of your
13 children?

14 A Yes. They came that Mother's Day to visit me all day.

15 Q So that was Mother's Day of 2000?

16 A Yes.

17 Q And the last Mother's Day you were locked up?

18 A From there I went to the Honor Center so I had one more
19 Mother's Day I was incarcerated, yes.

20 Q But you were at the Honor Center then?

21 A Yeah. I was here in Kansas City.

22 MR. ROGERS: Move for admission of Exhibit 15,
23 please.

24 THE COURT: 15 is admitted and may be displayed.

25 BY MR. ROGERS:

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Q So at the time this picture was taken Steven was not yet 15?

A No.

Q Is that right?

A He was still 14.

Q Now, I want to show you Exhibit 19. Do you know where that picture was taken?

A That's when I finally got all my kids home together after I came home from the Honor Center at my parents in Gladstone, Missouri.

Q This is at your parents' house?

A Yeah. The house they used to live in, yes.

Q And what are their names?

A Excuse me?

Q Your parents' names?

A Paul and Barbara Trigg.

Q And who was Richard by the way?

A Richard?

Q Is your mother's --was your mother married to a man named Richard?

A No. My stepfather is Paul Richard Trigg. My real father is Robert Ferguson.

Q Let me, so did Mike some times call Paul, Richard?

A No. His nickname is Dick. That's what all us kids called him.

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1 Q But his real name is Paul, his given name?

2 A Yes.

3 Q And who is in Exhibit 19?

4 A That's me with the three children. That is when I first
5 got, wasn't home too long, got Stevie released from McCune
6 Boys Home and Stephanie released from Clay County Group
7 Home. I had to come home from prison, get out of the
8 Honor Center, show I was stable and get my kids back.
9 They were taken while I was incarcerated from, Stevie had
10 been in trouble while I was locked up and Stephanie had
11 taken away from my mother and father's to come into
12 northeast and didn't go back to their house and she ended
13 up getting in trouble while I was incarcerated. They both
14 got in trouble and got incarcerated. When I got home I
15 fought to get them back.

16 MR. ROGERS: I move the admission of Exhibit 19.

17 THE COURT: 19 is admitted and may be published.

18 BY MR. ROGERS:

19 Q Who is the little kid sitting on the floor there?

20 A That's, I believe that's my baby nephew, my little brother
21 Vincent's little boy Bradley. It looks like any way.

22 Q And where had John been staying when you were
23 incarcerated?

24 A With my mother-in-law Frances.

25 Q And you said I think Stephanie had been staying at your

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parents' house but was, had run away from there?

A Yes. When I went to prison, Mike stayed with his mother with the boys and my mother and father took my daughter. She was living up north with them doing real good. She would come off and on on weekends to visit her dad and brothers. Well, one weekend she came and she didn't want to go back home so she got in trouble.

Q Under the jurisdiction of the Juvenile Court up in Clay County?

A No. Actually there was no court order for nothing. It was just I let her stay, I had my mother and father take care of her. So.

Q The question was when she wouldn't go back with them, what happened?

A My father called on her, her probation officer.

Q So she had a probation officer?

A Yeah, because she got caught at school with some pills. And they were niacin or vitamins or something. They were trying to say they were something else. So I really don't know. I wasn't out here to find out the truth of what really happened. I don't know.

Q But she was somehow under supervision?

A Yeah.

Q Since she didn't go back, that got her in trouble with the people up there?

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A Yes. My stepfather called her probation officer. She refused to come back up there and go back home.

Q Now, did you, as a family, before you went to prison move around quite a bit, stay at one place or another place?

A Before I went to prison?

Q Yes.

A We was staying with his mother then.

Q And before you stayed with his mother, you didn't have a place of your own?

A Yeah. We owned our own home.

Q What happened to that?

A We had to sell it to pay off some restitution on stuff I owed.

Q You had stolen, you owed restitution?

A No. This was on those checks, the passing the bad check. They had made an agreement if we paid so much on one then the other county would drop the charges. In order not to go to prison off of one, they worked out a deal where I didn't have to go to prison on that but we ended up selling our home to pay all the stuff off, so I wouldn't go to prison on it. Later on, several years down the road I ended up going to prison on something.

Q After you got out, where did you live?

A When I got out of prison?

Q Right. When you were reunited?

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A I was released from the Honor Center. I was paroled to my parents in Gladstone.

Q How long did you stay there?

A Just several months because I had money from my work release that I saved and my father helped me with the difference to buy my own mobile home in Belton, Missouri.

Q Were you living with Mike in Belton?

A No.

Q Why not?

A Because I didn't go back to him.

Q After you got out of prison?

A Yes. I was clean. I wanted to stay clean.

Q Had he ever quit using?

A No.

Q What happened that got you back with Mike?

A What do you mean what happened?

Q Obviously -

A What made me go back to him?

Q Yes.

A I think a lot of it was my children. I didn't know how they were going to accept him because I was with another man.

Q So you left Mike and you were living with somebody else?

A No. I had my own place with my kids. The man I met was staying with me. And my daughter, it really worked on

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Stephanie a lot. She wanted her dad with us.

Q And how long were you living apart from Mike in that trailer in Belton?

A I don't remember. Several months. I don't recall how many months.

Q Then where did you go after that?

A Well, I moved my mobile home from Belton up to 40 Highway here in Kansas City.

Q Same trailer, different piece of land?

A Yeah.

Q What, was that a trailer park that had a name?

A It was right there on 40 Highway, Bunker Hill.

Q Okay. And how long did you live there?

A I'm trying to remember dates. Probably a little over a year or so.

Q Did Mike live there with you?

A Yes.

Q So after you left Belton, Mike moved in with you in the trailer, is that right?

A Mike ended up moving to Belton down there with me.

Q He ended up?

A Later on moving with me.

Q Were there ever any instances of violence between you and Mike that were witnessed by Steve?

A Several times.

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Q Tell us about those.

A Well, the air show, the day I came to get my van, that Mike had taken the kids to the air show. Mike had been drinking. And he wanted me to bring him home to Belton with us. I told him, no, he's been drinking. And I'm not taking it because he was being a total jerk. And he flat let me know that if I did not take him home with me with the kids that we was going to bust my windshield out. Well, needless to say when he broke the windshield,

getting ready to break the windshield out or I believe he had already broke it out, Steven got out to defend me and they got into a fight.

Q Okay.

A And another time was over breaking the window on my van, he and Stevie had a repercussion over it.

Q So this is when Steve is still a kid but older and sort of taking up for you against his dad?

A Yes.

Q Any other instances that Steve did not take part in but witnessed between the two of you?

A No. Actually Steven or John was always there to defend me.

Q So John has kind of taken on that role?

A John has always been defensive to me, all my children are actually. Because when he was doing drugs, it, I don't

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know, it was just multiple personalities. One minute he's one person. Next minute I don't know who he is.

Actually, a psychopath.

Q You told us that after you got out of prison and through the Honor Center, you were on parole, is that right?

A Yes.

Q While you were on parole did you use illegal drugs?

A After nine months out of being out of the Honor Center, I started using.

Q What did you start using?

A Crack cocaine.

Q Why?

A Hanging around Mike.

Q Is it -

A Chose to pick up again. I was over there several times on my visits. I had work and rec together where I didn't have to come in until 4 hours after I got off work for that evening. I would go over there to see my friends and John Michael. They'd be all up there smoking, getting high. It didn't phase me all that time. It didn't phase me. After being out of the Honor Center nine months, I picked it back up. And, God, it was the worst mistake I made. Again, I let my children down. It's hard.

Q There was a time, was there a time when you and your children and your husband Mike were staying with your

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mother-in-law Frances Tresenriter?

A Couple times.

Q Do you recall anything happening between Mike and your daughter Stephanie while you were staying there?

A Yeah, they got into it.

Q Tell us about what happened.

A They got into it and more or less pretty much fist fighting. He picked up a baby bottle and launched it up to the top of the stairs. Same time she leaned and the bottle hit her in the mouth and blood went flying. And the police were called and he went to jail.

Q Was Steve there at that time?

A I don't think he was.

Q Okay.

A John Michael was there.

Q Got so violent that it actually resulted in injuries to Stephanie and the police being called?

A Yeah. That and being throwed out by Mike's mother.

Q Where did you go?

A Actually there was a lady across the street, an elderly lady, that had emphysema really bad. I went over there, taking care of her. She let me stay there for awhile.

Q Where did Mike go?

A Where did Mike go?

Q Yeah.

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1 A To jail where he belonged at that time.

2 MR. ROGERS: Those are all the questions I have, Your
3 Honor.

4 THE COURT: Cross-examination, Mr. Gibson?

5 CROSS-EXAMINATION

6 BY MR. GIBSON:

7 Q Good afternoon, ma'am.

8 Ma'am, is it your recollection that after you

9 were released around the time Stevie was 16, he was

10 already at McCune Boys Home, is that correct?

11 A Yes.

12 Q And he's pretty much been institutionalized in one form or
13 another since then?

14 A From the time he was 12 on.

15 Q From 12 up until now, off and on?

16 A From the time he was 12 until now for auto theft. He was
17 in and out of trouble for stolen cars.

18 Q Stolen cars. And he was doing drugs, is that right, too?

19 A Well, I knew when he was younger he was smoking marijuana
20 but later in life I found out he was doing crystal meth.

21 Q But your own record includes shoplifting, right?

22 A Yes.

23 Q And passing bad checks I think you said?

24 A That was my own bad check. The ones that I passed. Then
25 a lady had got caught up writing checks and I was with her

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so that's why that charge was on me on that.

Q And, obviously, drug offenses, right?

A Yes.

Q Was that possession or selling or both?

A I scored some for somebody. No drugs were confiscated from me. Just I went and got some for somebody and handed it to the other person. I was the middle man. Got caught.

Q Never carried a gun, right?

A No.

Q You don't own a gun, right, you, personally?

A No, sir. I'm a felon. I wouldn't dare. I don't want to be around them.

Q You've never been arrested for assault, right?

A No.

Q Never killed anybody, right?

A No, sir.

Q Never shot at anybody?

A No, sir.

Q And you told us that Stephanie got in a little trouble as well, is that right?

A Yes.

Q Okay. And Stephanie never carried a gun, is that right?

A No.

Q Stephanie never owned a gun as far as you know?

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A No.

Q Never saw Stephanie with a gun?

A No.

Q Now, when Stevie got arrested for this case, the one involving the murder of William McCay?

A Yeah.

Q You would write to him from time to time from prison, correct? Or write to him while he was being held, correct?

A Yes.

Q You would get letters from him?

A Yes. I kept in contact with my son all the time.

Q All the time. Did you go visit him?

A No, I couldn't get down there. I didn't have no way to Osceola. In Jackson County I had some traffic violation warrants so they wouldn't let me in down there on that for city.

Q Well, you didn't go down to test that out, did you?

A To test it?

Q You knew you had the warrants, right?

A Yeah. So I didn't go down there.

Q Because you knew you would have to show your identification and they would take you into custody?

A You go in there, they're going to keep you.

Q Because you have the warrants, correct?

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A Yeah.

Q Now, while you and Stevie were writing back and forth around September of '05, you were interested in finding where Regennia Rios was staying, isn't that right?

A I was interested in where she was staying?

Q Yeah.

A No. I was asking if anybody knew where she was at.

Q You asked if anybody knew where she was at, right?

A Yeah. There was just a lady at the corner that we know, who was visiting her brother, dated Regennia's dad.

Q In fact, you wrote Stevie to see if he knew where her father lived, right?

A Yeah.

Q Specifically asking him if he knew the address because you wanted to talk to Regennia, correct?

A Well, yeah, I would have spoke to her. I had no problem with Regennia. I opened my door and took that little girl in many times. I was mainly, for the lady at the corner, her brother and them were all asking about Regennia's dad because of the illness. They said he was sick. I was wanting to speak to Regennia about it.

Q About her father?

A That and about Stevie because it just didn't seem true about this. It still does not seem true.

Q You asked Stevie to send you Regennia's statements, right?

1 A Yes.

2 Q And you wanted to have those in hand when you went to talk
3 to Regennia, correct?

4 A No.

5 Q You didn't want to see what she had said?

6 A I read the statements and all from what we got sent to us.

7 But I wasn't going to hold no papers up and question her
8 on that. I was concerning what mainly happened, that was
9 my main concern, what happened.

10 Q When you wrote to Stevie to say you wanted to talk to her,
11 I really would. Then you put in parentheses, bad. What
12 did you mean by that?

13 A Actually, I don't even recall writing that. Putting in
14 parentheses, bad. I never had a problem with that little
15 girl. I just couldn't understand why all this was going
16 on, all these statements said about Stevie. I wanted to
17 ask her what happened.

18 MR. GIBSON: May I approach with Government's Exhibit
19 334?

20 BY MR. GIBSON:

2 Q Is that your handwriting, ma'am?

2 A Yes, it's my handwriting.

2 Q Is this one of the letters you wrote to Michael, correct?

2 A Steven, yes.

2 Q And see that paragraph there?

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A Uh-huh.

Q Now, you tell me if I'm reading this correctly. So, any ways I wonder where Regennia is staying. Maybe at Carolyn's house. No one has seen her or heard from her at all. Where does her dad live? I'd like to talk to her.

I really would, parentheses, bad.

Did I read that correctly?

A Yes.

Q That's what you wrote?

A Yeah.

Q Going over to the next page. To see exactly what was up and see what was really said to the people. When you get the statements, send them to mom, please.

A Yeah.

Q Is that right?

A Yes.

Q That's what you wrote?

A I was trying to find out what happened, what was going on. Because that little girl lived with us many, many times and I wanted to know what was going on. And the lady, like I said, the lady on the corner, Peggy, they was wanting to see about her dad. That's why I asked where her dad lived.

Q Now, I just want to make sure I understand something that you were telling us earlier. You never directed your

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children to go out and steal and bring you back either money or items to sell, right?

A No.

Q Never happened. Never did anything like that, right?

A No.

Q And when you were pregnant with Stevie, you hadn't even experimented with cocaine at that point yet, is that right?

A Right.

Q Now, you also wrote Stevie to talk about or to communicate with him about the day he was arrested in April on Ewing Street? Do you remember that?

A The day he was arrested, I was not there.

Q Right. Right. I understand. And you wrote him about that because he wrote you about his arrest and you wrote him back?

A Yeah, I always write him back.

Q And you told him if you had been home, you would have convinced Officer Mahoney to go look somewhere else because you would have protected him. You would have shielded him?

A Yes.

Q That's what you would have done?

A To me, any mother, it's hard to hand your kid over to the police. All this time I never knew what they were trying

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to talk to him for. I never knew nothing about this murder until after everything was and he was picked up. Everybody knew, to protect my feelings. I thought he was running from violating his parole, not going back to Court, the parole they were going to run together with his parole.

Q Nobody told you nothing?

A I didn't know nothing about this killing.

Q Do you recall Steven being taken into custody March 17th

of 2005 at Kristina Chirino's house?

A Yeah.

Q In fact, he was held for 20 hours at that point, right?

A Yeah. But I wasn't told all this time prior to this, nobody never told me what happened. Everybody knew but me.

Q So Stevie is taken in on a 20-hour hold March 17th of '05. When he gets out, you never say, hey, Stevie, what was that about?

A Yeah. But we thought it was an incident with Thomas, I can't think of his name, because Mahoney said, tell Stevie he needs to turn himself in. I said, for what? He said they need to talk to him. There was a shooting at 13th and Ewing and we thought maybe that was it, for questioning. Because the kid lived down the street that Steve used to hang with. I can't think of Thomas' last

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1 name.

2 Q You thought that Stevie had information about a shooting
3 at 13th and Ewing?

4 A I thought the police wanted to talk him. I said, he
5 didn't even live in Kansas City then. He's been in
6 Warrensburg, Missouri, with my nieces and cousins. He
7 said, no, we want to speak to him. So I was in the dark.
8 I had no idea what the hell was going on.

9 THE COURT: Stop. Step up.

10 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
11 PROCEEDINGS WERE HAD:)

12 MR. ROGERS: I think we're a little far afield,
13 Judge. I think the risk of confusing is outweighing whatever
14 probative value. I realize is probably not responsive to
15 Mr. Gibson's question.

16 THE COURT: It is not responsive. Let's stop and
17 start again so we can get focused.

18 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

19 BY MR. GIBSON:

20 Q So let me just make sure I understand. Between March 17th
21 when he's held on his 20-hours until he's taken into
22 custody again in April, you never had a discussion with
23 him about why he had been taken into custody at the
24 Chirino house on the 17th. Is that what you're telling
25 us?

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A I wasn't told what it was. Yes, that's correct.

Q Ma'am, do you recall being home on March 9th of 2005?

A Yeah, I was home.

Q Michael was home, too, your husband?

A Yeah. Me and Michael were both there.

Q You remember Stevie driving to the house in the Intrepid, correct?

A No. Stevie was not in that Intrepid in front of my house.

Gary pulled up and let Regennia out in front of my house.

Regennia came in my house and Gary was in the car. Said he was waiting on Stevie.

Q How about the Jeep? Did you see the Jeep in front of your house on March 9th?

A Couple doors down at the corner. Vincent Deleon was in a Jeep.

Q And Stevie would be in stolen cars all the time, right?

A Yeah.

Q And you knew that, right?

A Yeah. And I didn't like it at all. But what was I going to do about it?

Q Because that was Stevie. Right? Stevie was deciding to be in the car?

MR. ROGERS: Objection, Your Honor. May we approach?

THE COURT: Yes.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

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1 PROCEEDINGS WERE HAD:)

2 MR. ROGERS: Beyond the scope of direct examination.

3 It's also not relevant to any mitigating factor.

4 THE COURT: The car stealing is.

5 MR. ROGERS: In the case in chief, certainly limited

6 their evidence on the car stealing.

7 THE COURT: --pretty liberal on letting everyone

8 examine on beyond what was done.

9 MR. ROGERS: I don't think this is relevant to any

10 statutory or non-statutory aggravator.

11 THE COURT: I don't see it, Eric. Tell me what the

12 relevance is.

13 MR. GIBSON: Your Honor, they're suggesting that

14 Stevie had no alternative but to grow up as a delinquent based

15 on the house he was in. She was just explaining it was

16 Stevie's choice to be in the stolen cars. Not something that

17 she forced him to do or that her husband forced him to do or

18 anything along those lines.

19 THE COURT: Certainly you're entitled to ask

20 questions that say Steven made choices throughout his life.

2 Let's focus on that. Keep it on topic.

2 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

2 BY MR. GIBSON:

2 Q So Steven parked, you knew Steven didn't own a car,

2 correct?

1 A Correct.

2 Q Okay. He didn't have a job, right? So he didn't have
3 money to pay for a car. You never knew him to buy a car?

4 A Right.

5 Q So if you saw him in a car, you knew it was a stolen car.

6 Is that fair to say?

7 A Yes.

8 Q You never told him to go out and steal a car, right?

9 A No.

10 Q And your husband never told him to go out and steal a car,
11 right?

12 A No.

13 MR. GIBSON: I don't have anything else. Thank you.

14 THE COURT: Redirect examination?

15 REDIRECT EXAMINATION

16 BY MR. ROGERS:

17 Q You expected Steve to furnish you with transportation to
18 go do stuff some times, didn't you?

19 A No, I didn't expect him to do that.

20 Q On the morning of March 9, 2005, you wanted to go buy a
2 present for Stephanie for her birthday, didn't you?

2 A Yes.

2 Q And you wanted Steve to take you, didn't you?

2 A I asked if they came back, could I get a ride, yes.

2 Q So you were looking for a ride from Steve to go get

1 something for Stephanie, right?

2 A Yes.

3 Q That's not the only time you asked Steve for a ride

4 somewhere?

5 A No. Actually I didn't want to be in no stolen car.

6 Q That's not the only time you asked Steve for a ride,

7 right?

8 A Yeah, I asked him before. But I mean, I really didn't

9 want to be in no stolen vehicle. I didn't influence him

10 or entice him to go steal nothing by all means.

11 Q You were willing to take advantage of the fact there was a

12 car available to take you somewhere you wanted to go?

13 A No.

14 Q Or to the store to buy a present for your daughter or dope

15 house to buy some dope?

16 A Yeah.

17 THE COURT: Recross-examination.

18 MR. GIBSON: Nothing further, Your Honor.

19 THE COURT: May she be excused?

20 MR. ROGERS: Yes.

2 THE COURT: Ms. Sandstrom is excused.

2 (Witness excused.)

2 THE COURT: And let's break for lunch. With your

2 cooperation I'd like to shorten up the lunch hour. I'll ask

2 that you be ready to return to the courtroom in 30 minutes.

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1 We'll try to resume at 12:45. And if we're a few minutes late,

2 that will be okay. Let's make that our target.

3 Don't discuss the case. Keep an open mind. We'll be

4 in recess.

5 (The following proceedings were had OUT OF THE

6 PRESENCE AND HEARING OF THE JURY:)

7 THE COURT: Before we break, I'd like to go ahead and

8 make a record on whether Mr. Sandstrom will be testifying at

9 all. Have you discussed that, Mr. Rogers, with your client?

10 MR. ROGERS: Not today.

11 THE COURT: Mr. Sandstrom, you have heard this now

12 several times. You have the right to testify. No one can

13 force you to testify. If you choose to testify you'll be

14 cross-examined by the United States. I assume that you have

15 discussed it with your attorneys. And I will ask you now

16 whether you choose to testify in this case or not.

17 DEFENDANT SANDSTROM: No, I don't want to.

18 THE COURT: We'll be in recess until 12:45.

19 (Noon recess)

20 (The following proceedings were had IN THE PRESENCE

21 AND HEARING OF THE JURY:)

22 THE COURT: Please be seated.

23 Mr. Rogers?

24 MR. ROGERS: Your Honor, defense calls Stephanie

25 Sandstrom.

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1 THE COURT: Ms. Sandstrom, you remain under oath. It
2 won't be administered again. Please take the witness chair.

3 STEPHANIE SANDSTROM, RECALLED

4 DIRECT EXAMINATION

5 BY MR. ROGERS:

6 Q Tell us your name, again, please?

7 A Stephanie Sandstrom.

8 Q Ms. Sandstrom, you testified for the government earlier in
9 this trial, is that correct?

10 A Yes.

11 Q I'm not going to ask you about guns and stuff like that.

12 What I'm going to ask you about is the family in which you
13 grew up. Okay?

14 A Okay.

15 Q What was your birthdate?

16 A March 9th of 1987.

17 Q So you're about a year and a half younger than Steve?

18 A Yes.

19 Q Tell me, if you will, about your childhood in terms of
20 where you lived?

2 A It wasn't real stable. I just remember moving a lot.

2 Q Lean a little closer to the mike.

2 A I just remember moving a lot.

2 Q When you were little?

2 A Yes.

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Q And did you usually live with both your parents?

A Yes.

Q And your brother, Steve?

A Yes.

Q And that included your little brother, John, when he was born as well?

A Yes.

Q Were there times when you didn't?

A Yes.

Q What would those times be?

A When my parents were incarcerated.

Q Where would you live when your parents were incarcerated?

A With grandparents.

Q Were they incarcerated at the same time, your mother and father or first one then the other?

A It was different. There were times my mom was in and out of jail through my childhood. And I believe it was in '98 my mom and dad were both sentenced to go to prison.

Q And where did you live when your parents were both in prison?

A With my mother's mom and dad.

Q And their names?

A Barbara and Paul Trigg.

Q Okay. Where do they live?

A Now, they live at 108th and North Grand. It was, I

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believe, on 66th Terrace. I don't remember the address.

Q Is it like in Gladstone?

A Yes, it was in Gladstone, Missouri.

Q How long did you live with them in Gladstone?

A About three, almost three years.

Q What happened to take you away from there?

A I was placed in a group home and my mom got me back after she got out of prison.

Q Now, at the time that you lived with them, did you continue to live with the Triggs after your dad was released from prison, while your mom was still in prison?

A I went to school for awhile. I wanted to go live with my dad.

Q Okay. Then what did you do?

A Didn't go to school. Just remember running the streets and getting high.

Q Is that how you ended up in the group home?

A I was arrested for riding in a stolen car and I was placed with my grandparents.

Q Then you got back, somehow you ended up in a group home after being placed with your grandparents?

A Yes.

Q How did that happen?

A I didn't come home from school and was smoking pot with some friends.

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Q How old were you at the time?

A Twelve or 13.

Q And you were already smoking pot?

A Yes.

Q When did you first start smoking pot?

A About 11 or 12.

Q And do you know how old Steve was when he first started smoking pot?

A Probably 10 or 11.

Q And would you smoke around your parents?

A Yes.

Q Did they have anything to say about it?

A They would rather us smoke in front of them than behind their back.

Q That was for both you and Steve?

A Yes.

Q Tell me about your parents. Did they ever do anything around you in terms of drug use?

A Yes. I remember them smoking crack in front of us.

Q How old were you when that happened that you remember?

A I think 14.

Q Okay. That would be after your mom got back out of jail?

A She was clean 14 months after she was released.

Q Then she took up smoking again?

A Yes.

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Q And did it in front of you and Steve and John?

A Yes.

Q How would they get money to buy crack?

A They were pretty much the middle man. They would score for somebody else and get it, I guess, whatever was left over they would use that. Then shoplift.

Q Shoplifting was one?

A Yes.

Q Have you ever been with either of your parents when they were shoplifting?

A Yes.

Q Tell us about some of those instances?

A I remember like maybe 5 years old, my mom pushing carts out of Wal-Mart full of merchandise.

Q And you were there with her?

A Yes.

Q Riding in the cart?

A Yes.

Q And did they ever ask or encourage you or either of your brothers to help in stealing?

A Yes. I remember me and Steven pushing carts full of merchandise out of Wal-Mart.

Q For whom?

A My parents.

Q Both of them?

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A Yes.

Q And did that happen more than once?

A Yes.

Q Were you ever, were you or either of your brothers ever encouraged to steal cars?

A Yes.

Q How would that work?

A Just stating that they needed a car to go shopping. They needed a ride somewhere.

Q And did they know that? Did they ask you to give them a ride or was it Steve or was it John?

A It was more Steven.

Q Okay. And so when they would tell him they needed a car, they needed a ride, did they know that he didn't own a car?

A Yes.

Q And did they assume that he would therefore have to go steal a car?

A Yes.

Q Did that happen fairly often?

A Yes.

Q Do you know who taught Steve how to steal cars?

A I don't remember.

Q Okay. And you've been involved with the law, have you not?

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A Yes. I'm currently on probation for tampering with a motor vehicle.

Q What is tampering with a motor vehicle?

A Stealing a car.

Q Were you the driver or passenger?

A I was the driver.

Q And when did that happen?

A About the same time as all this went on, 2005.

Q Back in 2005?

A Yes.

Q And what was your sentence for that?

A I have four and a half years probation, an SIS probation, if I walk it. If not, I get a class C felony.

Q When you say SIS, that means suspended imposition of sentence?

A Yes.

Q Is this in the state court in Missouri?

A Yes.

Q So under state law that's not technically a conviction on your record if you successfully complete the probation?

A Yes.

Q How old were you when you were, when you committed that offense for which you were convicted?

A I believe I was 18.

Q Okay. And before that, have you been convicted of a crime

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as an adult?

A No.

Q Been in trouble as a juvenile?

A Yes.

Q Tell us about that.

A Just joyriding. And I was with a girl that busted a window out of somebody's house. And I remember riding with Steven in a stolen car, going to rob a house to help pay the bills.

Q Help what?

A Pay the bills.

Q And that was, you say rob a house, you mean commit a burglary?

A Yes.

Q And where did that happen? Where was the house?

A It was in Plattsburg, Missouri.

Q And you say help pay the bills. What was going on there?

A My parents were using and they were behind on the bills.

Q So you were going to steal, burglarize for the family expenses?

A Yes.

Q And had your parents sent you there to do that or told you, go do something to pay the bills?

A Yes.

Q What did they tell you exactly?

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A I don't remember exactly. I just remember them asking if we could do something to help pay the bills, something like that.

Q And had that happened before as well?

A Yes.

Q Have you, you talked about smoking pot when you were 12 or 13. Have you had any other drug abuse problems?

A Yes.

Q Tell us about that?

A I was about 16 when I started smoking methamphetamine.

Q How long did you continue to smoke methamphetamine?

A About three years.

Q Back during March of 2005, were you smoking methamphetamine on a fairly regular basis?

A Yes.

Q How long has it been since you smoked any meth?

A Since about 2006.

Q And what happened in 2006 to put an end to your meth smoking career?

A I went to treatment.

Q Have to lean in?

A I went to treatment.

Q What kind of treatment?

A Substance abuse.

Q Was that in-patient, out-patient?

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A Out-patient.

Q And how long were you in out-patient substance abuse treatment?

A I believe seven months and I graduated.

Q And what do you have to do to graduate?

A Go three days a week, sit in classes, parenting classes, codependency, different classes about treatment and life.

Q Did they also monitor to make sure you weren't using when you weren't there?

A Yes.

Q How did they do that?

A Random urine drops.

Q Random urine drops?

A Yes.

Q Did you have any dirty urines while in treatment?

A No.

Q Is that kind of unusual?

A Yes.

Q Lot of people have some dirties then they finally get it together and go ahead and graduate?

A Yes.

Q But you didn't have any from the day you started?

A No.

Q And what made you choose to go to treatment?

A I believe because I was pregnant and I was on pretrial.

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Q On pretrial, tell us what that is?

A I don't remember exactly what it is. I just remember I had to go in front of the grand jury to get released off of it.

Q So you were under supervision of some agency of the Federal Court?

A Yes.

Q In connection with this case and your testimony in this case and therefore you figured treatment was the thing to do, right?

A Yes.

Q Are they the ones that set you up with a treatment opportunity?

A Yes.

Q I believe you testified earlier in the trial that you appeared before the grand jury after they had charged you as a material witness or something like that, is that right?

A Yes.

Q So this is part of that thing?

A Yes.

Q Okay. Since you got out of treatment, have you done anything regarding your little brother John?

A Can you rephrase that question?

Q Since you got out of your treatment, have you done

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anything about your little brother John?

A I had him in my custody.

Q Why was that?

A Because my parents had no utilities.

Q And why didn't they have any utilities?

A Because they couldn't pay their bills.

Q And did you have to tell them anything to get them to let you have custody of your little brother?

A I don't remember.

Q Okay. Were they eager for you to have custody of your little brother John?

A Not really.

Q So how did you persuade them?

A Not for sure.

Q How long did you have your little brother?

A Off and on for about a year.

Q And is he now, where is he living now?

A He resides with my grandmother.

Q Which grandmother?

A Frances.

Q Tresenriter?

A Yes.

Q And since you obtained custody of your little brother after you completed treatment, has he ever come back to live with your parents?

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A I think for a couple months.

Q You have children of your own?

A Three.

Q And how old are they?

A 5, 2 and almost 4 months.

Q And almost?

A 4 months.

Q Okay. And are they involved with the Family Court.

A Yes.

Q What is that all about?

A Because I was using during my pregnancy.

Q And so that was before you went through treatment?

A Yes.

Q And does the Family Court still maintain a child protection case involving your children?

A Yes.

Q Are they living with you?

A Yes.

Q But you have to --what do you have to do?

A I have to go in front of Commissioner Merrigan once a month. I have to call the Drug Court line every morning and it tells us if my color is on there to drop.

Q Tell me about colors and dropping.

A Everybody has a different color. If your color is called you have to give your name and from 11 and 2 or 2 to 4 to

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drop.

Q To drop, that means leave a urine sample to be tested?

A Yes.

Q So this color code system is kind of a way of being randomly selected for urine testing so that they, so that you know if you use some meth or some other illegal drug, you'll get caught sooner or later?

A Yes.

Q Commissioner Merrigan is the Family Court Drug Court Commissioner, is that correct?

A Yes.

Q Okay. You already said this but you testified on behalf of the government against your brother, is that right?

A Yes.

Q If, and you know your brother has now been found guilty, right?

A Yes.

Q If your brother were sentenced to death and executed, based at least on part of your testimony, how would you feel?

A It would kill me.

Q What is your oldest daughter's name?

A Hailey.

Q Spell it for the court reporter.

A H-A-I-L-E-Y.

1 Q And how old is she now?

2 A She's five years old.

3 Q How old was she when Steve was arrested?

4 A I believe she was 2-1/2.

5 Q In 2005. Does she know Steve?

6 A Yes.

7 Q How are they?

8 A Tight.

9 Q Has she talked about Steve since he's been locked up?

10 A Yes. She asks me about him every day.

11 Q You have a notion of how your daughter Hailey would feel

12 if her Uncle Steve were sentenced to die and be executed?

13 A I haven't told her yet. I don't know how to break it to

14 her.

15 Q Do you think it would have some impact on her?

16 A Yes.

17 Q What do you think the impact would be?

18 A I'm not for sure.

19 Q Thank you.

20 No further questions.

2 MR. KETCHMARK: I have no questions for her, Your
2 Honor.

2 THE COURT: Thank you. You may step down.

2 (Witness excused.)

2 MR. ROGERS: Your Honor, the defense calls John

1 Sandstrom.

2 JOHN SANDSTROM, DEFENDANT SANDSTROM'S WITNESS,
SWORN

3 DIRECT EXAMINATION

4 BY MR. ROGERS:

5 Q Would you, please, tell us your name?

6 A John Michael Sandstrom.

7 Q Could you lean a little bit forward and talk into the
8 microphone?

9 A John Michael Sandstrom.

10 Q And, Mr. Sandstrom, how old are you?

11 A 16.

12 Q Are you the brother of Steve Sandstrom and Stephanie?

13 A Yes, sir.

14 Q And where do you live now?

15 A My grandmother.

16 Q Which one?

17 A Frances Tresenriter.

18 Q And how long have you lived with your grandmother,

19 Frances?

20 A Two or three months.

21 Q You're going to have to lean in, again, or keep your voice
22 up.

23 A About two or three months.

24 Q Okay. Where did you live before that?

25 A My sister.

1 Q Stephanie?

2 A Yes.

3 Q That's only sister you have?

4 A Yes, sir.

5 Q And how long did you live with Stephanie?

6 A 5 or 6 months.

7 Q Where did you live before that?

8 A Mom and dad.

9 THE COURT: Mr. Sandstrom, we're having trouble

10 hearing you so I'm going to ask you to keep your voice up.

11 Please project past Mr. Rogers so everyone can hear you.

12 BY MR. ROGERS:

13 Q Like I say, there's a microphone. The closer you get, the

14 louder you sound. Okay?

15 A All right.

16 Q Why did you go from your parents' house to your sister

17 Stephanie?

18 A She asked me to come stay out there with her because I

19 started working with her boyfriend's father.

20 Q What kind of job was that?

2 A Painting and remodeling, everything like that.

2 Q So that would have been last summer some time?

2 A Yeah. Yes, sir.

2 Q Are you currently in school?

2 A No, sir.

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Q How far did you go in school?

A To about the 7th or 8th.

Q What have you done since 7th grade?

A Nothing.

Q Have you been in trouble with the juvenile system?

A Yes.

Q What kind of stuff?

A Joyriding and driving another car, stolen car.

Q So you've been involved in stolen cars with the juvenile system?

A Yes, sir.

Q And was that after your brother's case, brother Steve was locked up?

A Yes, sir.

Q And who taught you how to steal cars?

A Nobody. It was already stolen.

Q Okay. So somebody else stole the car. You were driving it or riding in it?

A It was in a neighbor's backyard.

Q That's not that uncommon of a deal in your neighborhood?

A Not really.

Q As a kid growing up in the Sandstrom household, the household of your parents, would you observe them smoking crack?

A Yes, sir.

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Q Was that unusual that you would actually see them smoke?

A No.

Q How often do you think that happened?

A Every day.

Q They smoke every day. Did you see it every day?

A Not every day I see them, no.

Q Were you involved in drug abuse yourself?

A No, sir.

Q Ever?

A Never.

Q Ever try anything?

A Nothing.

Q What do you think is different about you and Steve and Stephanie?

A I don't know. I watched them make their choices. I just thought, I just never did.

Q And when you went to live with Stephanie, had she already been through treatment?

A I think she was still in treatment when I was staying with her.

Q Were you ever taken by your parents along with them when they went to steal stuff?

A Yes, sir.

Q How often would that happen?

A Just a couple of times.

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1 Q Okay. And were you ever asked by them to help pay the
2 bills in some way?

3 A No, sir.

4 Q So that didn't happen to you?

5 A No.

6 Q Do you love your brother Steve?

7 A Yes, sir.

8 Q If he were sentenced to death and were to be executed, how
9 would you feel about that?

10 A Devastated.

11 MR. ROGERS: Those are all the questions I have.

12 MR. KETCHMARK: I have no questions, Your Honor.

13 THE COURT: Thank you, Mr. Sandstrom. You may step
14 down.

15 (Witness excused.)

16 MR. ROGERS: Frances Tresenriter, Your Honor.

17 FRANCES TRESENITTER, DEFENDANT SANDSTROM'S WITNESS,
SWORN

18 DIRECT EXAMINATION

19 BY MR. GROMOWSKY:

20 Q Good afternoon, ma'am. Will you, please, state your full
2 name for the record?

2 A Frances Louise Tresenriter.

2 Q I'm going to ask you to lean forward as best you can into
2 the microphone, closer to your mouth. And can you spell
2 your last name for the record?

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A T-R-E-S-E-N-R-I-T-E-R.

Q Ma'am, what is your relationship with Steven Sandstrom?

A Steven is my grandson.

Q We're going to back up and get it into a little bit of family history here. I wanted that out front so the jury knows who's talking to them. You were married to a gentleman named John Sandstrom, is that correct?

A Yes.

Q How many children did you have with Mr. Sandstrom?

A Three.

Q What were their names, please?

A Michael, Terry and Jerry, but not in that order. Jerry, Terry and Michael, in that order.

Q And Michael is the father of Steven, is that correct?

A Yes, sir.

Q And he's already testified here today, is that true?

A Yes.

Q Will you, please, tell me a little bit about John Sandstrom?

A He was a construction worker that was not around the house that much. He was usually working out of town or he wasn't that close to the family but he did reside in the home, at 111 North Drury.

Q That's in the northeast?

A Yes.

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Q When he came home, expected you to do his laundry for him?

A Yes.

Q What was his relationship with his sons?

A He was very cold. He wasn't a real warm father that did things with them like taking them places and spending quality time with them.

Q Did he like to have a lot of clutter around the house?

A Not necessarily.

Q Did he like to have a lot of noise from the children around the house?

A No. As a matter of fact he didn't want the children to have noise makers in any of their toys so he would remove them.

Q Are you familiar with a bridge belt?

A Yes.

Q What does that mean?

A That was the way he wanted to discipline the children. He wanted to hit a child with a bridge belt if they didn't do the right thing.

Q And bridge belt is a belt that is used in his construction trade, is that correct?

A Yes.

Q It's a heavy belt. Is that true?

A Yes.

Q When he would beat his children, including Mike, did he

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leave marks?

A Yes.

Q Did Mr. Sandstrom, your husband, have any drug or alcohol problems?

A He drank but I wouldn't say, I wouldn't say he was an alcoholic. But he was a drinker with his crew.

Q And he drank frequently, is that true?

A Yes.

Q He drank in front of his children as well?

A He has, yes.

Q Are you still married to John Sandstrom?

A No, sir.

Q Why aren't you?

A I was divorced and he is now deceased.

Q What was the cause of the divorce?

A I got tired, like any woman, wanting bills paid and a family lifestyle.

Q And he was not a good provider for you, was he?

A No, sir, he was not.

Q When you were divorced, did he continue to maintain a relationship with his children?

A Occasional, occasional. That's all.

Q Would he help you with the bills?

A No.

Q Did he have a couple different cars that he had to drive

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around in?

A Yes.

Q Did he provide you with any transportation?

A No, sir.

Q And, in fact, he did like to flaunt those vehicles in front of his sons, didn't he?

A Yes, sir, he did.

Q I think when you talked to us before you indicated that your husband was a perfectionist and expected everyone to be like that?

A Yes.

Q Would you give us an example what that might be like?

A He wanted them to be like him. That everything that he wanted had to be just so. And he had, he had a fancy lifestyle, more or less. He liked nice cars and good things and wanted the kids to have that, I guess, as they grew up.

Q When you say that he wanted his children to be like him. If they weren't like him, is that when the bridge belt came out?

A I think if they did anything that he didn't like or thought they needed to be disciplined for.

Q The fact that he was so stern with your three boys, that's one of the reasons you got divorced, isn't it?

A Yes, sir.

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Q After you got divorced from John, did you get re-married?

A Yes.

Q Who did you marry then?

A William Tresenriter.

Q Mr. Tresenriter was an influence on your sons' life?

A He was a very good step-father. And he addressed the children as his children, not step-children.

Q Despite his being a good man, he was also flawed, is that true?

A He what?

Q He was an alcoholic, isn't that true?

A Yes, he was.

Q He drank in front of the boys?

A Yes.

Q Now, with regard to either John or William, they didn't use drugs in front of the boys, did they?

A No.

Q But they did, in fact, drink heavily in front of them?

A Now, who are we talking about?

Q Well, William, for example?

A He did drink in front of them but he didn't use drugs.

Q Yes, ma'am. That's what I mean. And it's my understanding he kept a bar in the house as well?

A Yes.

Q With regard to your sons and actually when you were

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married to William, you had a fourth son, is that true?

A Yes.

Q What is his name?

A Robert Tresenriter.

Q With regard to your kids and their addictions, let's talk about Jerry first. Did he have any drinking or drug problems?

A No.

Q Just social drinker?

A Yes, social.

Q And to your understanding he also used marijuana as well for a time, is that true?

A I guess so. I never did see any of them take any drugs but I hear that they have.

Q And Jerry included, but just marijuana?

A Yes. Long time ago.

Q With regard to Terry, did he have any drug or alcohol problems?

A Yes. Terry had alcohol problems.

Q How severe were his alcohol problems?

A Very severe. Terry is deceased. He's no longer with us.

Q How old was he when he died?

A 47.

Q How did he die?

A With kidney failure.

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Q That was related to his alcoholism, is that true?

A I think so.

Q With regard to Robert, has he had drug or alcohol problems?

A Drug problems.

Q And has he gotten in trouble for those drug problems?

A Yes.

Q What kind of trouble has he been in?

A I'm not sure. I don't really know how he got in trouble with them but he has been in jail for them.

Q And he's also been through court ordered treatment programs, is that true?

A Yes, sir, he has. He was in a Salvation Army program and completed that at one time.

Q Still continues to struggle with his addiction, is that true?

A Yes.

Q With regard to Mike, what kind of problems has he had with alcohol, drugs and alcohol?

A He's had drug problems.

Q What kind of drug problems?

A I think it's cocaine.

Q Have you ever known him to use marijuana?

A No.

Q Have you known him to use methamphetamine?

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A I don't know what type of drug he uses. I only know he's had a drug problem.

Q With regard to Jerry, Terry, and Robbie, especially, they've all had roles in Stevie's life, too, is that true?

A Yes.

Q They're the uncle and he's the nephew?

A Yes.

Q He's lived with Robbie when Robbie was living with you?

A In my home, yes.

Q He witnessed first hand with his uncles and dad, their drug and alcohol use, is that correct?

A Yes.

Q These were the, essentially in his life, these were the male figures, the mentors, is that true?

A Yes.

Q Additionally, with Mike and all his brothers, they've had anger issues. True?

A Yes.

Q What kind of anger problems do they have?

A Well, I haven't seen a lot of it but what I have experienced, it's been they would speak out, holler at him or holler at someone when they would get upset. I really can't describe their actions.

Q They've actually physically fought with each other, too, haven't they?

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A Yes, they have.

Q And Bonnie, have you witnessed her have any sort of temper issues or anger problems?

A Well, she also has a drug problem but I don't see that much of her.

Q You don't see that much of her now, is that correct?

A Yes, that's correct.

Q Why don't you see her now?

A Well, she and I are in different locations. She isn't in my home and I don't see that much of her.

Q Have you had issues with her before?

A I just would like for them not to do drugs. I feel like they need to, I just feel they need to have a better life. I think they're good people with bad habits.

Q You think Mike and Bonnie are good people?

A They are good people with bad habits.

Q Has Bonnie ever stolen from you?

A Yes.

Q And wouldn't you agree that someone who steals from their own family is not a good person?

A Well, yes, in that terminology, yes.

Q You know she shoplifts. Is that true?

A Yes, I do know that.

Q You know from, at least from Stevie's juvenile record that both Mike and Bonnie took him along stealing. Is that

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true?

A Yes. Yes.

Q And at Christmas time did the kids get gifts?

A Yes.

Q What happened to those gifts?

A I think some times those gifts were taken back.

Q Taken back by whom?

A By the parents to the stores.

Q So Mike and Bonnie give them the gifts then took them back and traded them back in. Is that true?

A Yes.

Q They did that to support their drug habit?

A Yes.

Q When Mike was a child, was he on medication for thyroid condition?

A Yes, sir, he was.

Q What effect did that medicine have on him?

A It slowed down the thyroid. He was on Tapazole.

Q Did it make him hyper?

A He was, well, I can't remember the exact effect. But it did help him.

Q I think when we talked to you before about that you indicated that the drug in your opinion also caused him to be violent and fight with other kids in the neighborhood. Is that true?

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A Once in awhile he would be different.

Q Aside from these anger issues, well, before I move on from anger. We've already heard testimony that Mike would attack Bonnie. Did you ever witness any of that?

A Well, I know he has an explosive temper.

Q Have you ever witnessed him fight with his daughter Stephanie?

A Some times.

Q You actually, I think it was, it occurred in your house, I don't know if you were present. But were you present when he threw a baby's milk bottle and hit Stephanie in the mouth?

A No. But I heard about it.

Q It was just after that you kicked them out of your house?

A Yes, I sure did.

Q Mike have any other mental health issues that you're aware of?

A Not that I'm aware of.

Q Is he moody?

A Yes.

Q Do you attribute that to mental health issues or drug problems?

MR. GIBSON: Objection.

THE COURT: Step up, please.

(COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

1 PROCEEDINGS WERE HAD:)

2 MR. GIBSON: I assume he's not asking her for a

3 clinical opinion. That's a diagnosis.

4 THE COURT: I think it was maybe carelessly phrased.

5 If you want to ask her if he had a drug problem, you may do

6 that.

7 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

8 BY MR. GROMOWSKY:

9 Q Ma'am, you're not a psychologist or psychiatrist?

10 A No, sir.

11 Q So to the extent that you have an opinion about your son,

12 it's just based on your own experience and observation

13 with him, is that true?

14 A True.

15 Q Now, when I talk about mental health issues, depression,

16 anger, things like that, you're not giving a diagnosis of

17 him, are you?

18 A No.

19 Q So if he gets moody, is that true?

20 A Yes.

2 Q And have you observed any other characteristics that would

2 either be attributed to mental health or drug issues?

2 A No.

2 Q Are you aware at one point that when he was broken up with

2 Bonnie that he tried to kill himself?

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A No.

Q When Mike was a child did he ever have any other health issues besides the thyroid problem you already talked about?

A Nothing that I can remember.

Q Was he a bed wetter?

A Yes.

Q And until when was he still wetting the bed?

A I would say he was almost a teenager.

Q Are you aware whether or not Steven had the same issues?

A Yes, he did.

Q And he was a bed wetter?

A Yes.

Q How long was he a bed wetter?

A Well, I really don't know how long. But when he was with me he was a bed wetter. And we got a nasal spray to control that.

Q How old was he at the time?

A I'm guessing, I'm going to say 11, 12, but I'm not sure of the age.

Q And when he was staying with you, you're the one who sought treatment for him?

A Yes.

Q To your knowledge he was having these problems before he came to live with you?

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A Yes.

Q But they weren't addressed by his own parents, is that true?

A That's true.

Q You mentioned that Bonnie is a drug user as well, is that correct?

A Yes.

Q Do you know what her drugs of choice are?

A I'm not sure.

Q When she was first dating your son, how old was your son?

A I'm not sure of that age.

Q I think he testified he would have been around 17, is that correct?

A That's possible, yes.

Q She said she thought she was probably 14 or 15, is that correct?

A But I heard that she was older than her age when she came around. She gave me a different age than what it really was.

Q How old did she say she was?

A I think she said she was 14.

Q Were you aware they were using at least marijuana when she first became pregnant with Steven?

A No. No.

Q With regard to a comparison, for example, of when Steven

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was living with you and when he was living with his parents, what kind of structure was he seeing in your house versus their house?

A Steven was a very good boy at my house.

Q I'm sorry. Speak up, please.

A Yes. He was a good boy at my house. Very clean, very neat, very organized.

Q And you made sure of that, is that correct?

A Yes, I did.

Q As any parental figure, in your case a grandparental figure, you tried to give him structure. Is that true?

A Yes.

Q You had rules in the house?

A Yes.

Q How does that compare to what he was living with the rest of his life or the majority of his life when he was with his parents?

A They are very clean in their home but I think, I think they lived a different lifestyle, naturally, than what mine was.

Q But can you explain that further? I mean, if you have just to compare it to what you provided for him?

A Well, I don't have drugs around me. I don't do drugs. And I don't want those people around me. I didn't want them around Steven or any of the other children. Did I

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answer your question?

Q That's fine. Now, let's talk about this. When he was staying with you, did he go to school?

A Yes.

Q When he stayed with his parents, did he go to school?

A I'm not sure.

Q You're aware that he never completed school?

A Right.

Q In fact, he never completed elementary school?

A I think that's right. I do remember on cold mornings when it was snowing or below zero or very cold, I would get Steven in my car and we would go to a bus stop, which was just probably three blocks from our house. And I would sit in the car with him while he waited for his bus. So he would be safe and so he wouldn't be out in the cold.

Q To your knowledge did his parents ever provide that kind of -

A It would vary. I think it would vary. I think the mood probably had a lot to do with that, too.

Q The mood?

A The mood.

Q What does that mean?

A Possibly the state of mind they were in. If they were in an argument or, I don't know how to describe that. I really don't know how.

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Q With regard to Stevie, what kind of a person is he as far as, is he a leader or follower, that type of thing?

A He's, he was just one of the kids in the family and one of the kids in the neighborhood that was, he got along with people.

Q But as far as when they were out, you know, galavanting around with other kids in the neighborhood, was he the follower or was he the one out in front playing Peter Pan?

A Some times he would play like he was the big guy or the leader or something. Or some times he would tell me he had done something at home and I'd say, now, did you really do that? Well, he really didn't. He was just telling me that.

Q He liked to make himself out to be something he wasn't?

A He liked to make himself big. He liked to talk big.

Q With regard to the neighborhood that he grew up in both when he was with his parents and staying with you or even with Grandmother Barbara, when he did that, what kind of neighborhood is that?

A It isn't a good neighborhood anymore. I've lived on North Drury since 1953 and it has totally changed. Now, it's time for me to move and I should have moved a long time ago. If I had moved Steven and our family out of that neighborhood, maybe we wouldn't be sitting here today.

Q Why do you say that?

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A It's a lot of crime. A lot of drugs. A lot of dysfunction there.

Q And as a person who lives in the neighborhood, you saw that?

A Yes.

Q And as a person who lived in the neighborhood, Stevie saw that as well, is that correct?

A Yes, he did.

Q Now, we've had you back and forth in here a couple times trying to get you ready to testify, is that correct, as far as coming to court?

A I've been, I have never been on the stand before.

Q I understand. But what I'm saying is, we invited you to come down here to testify on Stevie's behalf, is that true?

A Yes.

Q Because of procedural issues and other things we had you down here Tuesday?

A Yes.

Q And sent you away?

A Yes.

Q Had you back down here yesterday and sent you away?

A Yes.

Q Came back today?

MR. GIBSON: Objection.

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1 THE COURT: If that's an objection for relevance then

2 it's sustained.

3 BY MR. GROMOWSKY:

4 Q When we had you down here before, were Mike and Bonnie

5 suppose to be here?

6 A Yes.

7 Q That was on Tuesday morning?

8 A Yes.

9 Q And you, as other family members who have testified, did

10 show up when we asked you to on Tuesday morning, is that

11 correct?

12 A Yes.

13 Q Were Mike and Bonnie here?

14 A No, sir.

15 Q They knew to be here at 8:00 this morning as well, is that

16 true?

17 A Yes.

18 Q When you got in contact with them this morning, were they

19 out of bed and ready to go?

20 A No, sir.

2 Q What time was that?

2 A It was probably 20 minutes till 8 when I arrived at their

2 home.

2 Q And they knew that their son is on trial for his life, is

2 that correct?

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A Yes.

Q And they failed to show up on Tuesday when they were required to be here, is that correct?

A That's correct.

Q And then even though they were down here yesterday and we specifically told them to be ready to go this morning, they were not. Is that true?

A That's right.

Q Do you have an understanding of why they weren't ready to go this morning?

A I don't know.

Q But in any event, you and John Michael had to go over there, roust them and get them moving to get down here?

A Yes, sir.

Q If Stevie were to receive a punishment of the death penalty and then be executed, what effect would that have on you?

A Oh, my. I can't imagine. I just can't imagine.

Q As best you can try to describe it for the jury, how you would feel?

A I don't think I would want to go on. I love Stevie very much, as I know most grandparents love their grandchildren.

Q You, obviously, have had John Michael, his brother, living with you?

1 A Yes, sir.

2 Q What effect would it have on him?

3 A I don't think John would want to go on.

4 MR. GROMOWSKY: One moment please, Your Honor.

5 Ma'am, I have no further questions at this time.

6 Thank you.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. GIBSON:

11 Q Good afternoon.

12 A Hello.

13 Q Steven's dad was raised by you, correct?

14 A Yes, sir.

15 Q And in your home you gave Steven's father structure, is

16 that correct?

17 A Yes, I did.

18 Q And made sure he went to school, correct?

19 A Well, I tried.

20 Q You tried. Did the best you could, right?

2 A Did the best I could.

2 Q Okay. And your son has never killed anyone, correct?

2 A No, sir.

2 Q And despite the fact that you did the best you could, your

2 son made some bad choices about drugs and some other

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things. Is that fair to say?

A Yes, sir.

Q In fact, you told us earlier, before Mr. Gromowsky corrected you, that you thought your son and his wife were good people but they had made bad choices. Is that correct?

A I did.

Q But there were choices they made to do drugs, to get arrested, to get convicted of those?

A Which is very wrong.

Q Right. Exactly, ma'am.

A Very wrong.

Q And Stevie had a place in your home when ever he needed one, right?

A That's right, sir.

Q And the same structure that you gave his father, you were willing to give to Stevie, correct?

A That's right, sir.

Q But Stevie made different choices as well, right?

A I didn't have a lot of problems with Steven.

Q I understand, ma'am, but he also didn't decide to stay with you, correct?

A I guess that's true.

Q And, I'm sorry, ma'am. How long have you been in your neighborhood?

1 A Since 1953. I have lived on the same block.

2 Q On the same block and you've never been in trouble a day
3 in your life, correct?

4 A No, sir.

5 Q Thank you, ma'am.

6 THE COURT: Redirect examination?

7 MR. GROMOWSKY: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GROMOWSKY:

10 Q Ma'am, I'm in agreement with Mr. Gibson, you made a home
11 for Mike and his brothers, didn't you?

12 A Yes, I did, sir.

13 Q You provided them a foundation as best you knew how?

14 A Yes.

15 Q Despite your best efforts, dealing directly with your own
16 sons, they turned out to be not what you hoped, is that
17 true?

18 A That's true.

19 Q They used drugs?

20 A Yes.

2 Q They used alcohol?

2 A Yes.

2 Q At least Mike we know steals?

2 A Yes.

2 Q At least Mike we know taught his own son to steal?

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A Yes.

Q Those were his choices, is that correct?

A Yes.

Q So despite your best efforts, his choices were not always good choices either, is that right?

A That's right.

Q And with regard to now the 23 years, 22, 23 years of his own life, most of that time for Stevie was spent with Mike and Bonnie, is that true?

A I would say or in facilities.

Q In facilities. But when he was with you for a brief period, you provided foundation for him, is that correct?

A Yes, sir, I did.

Q He behaved well for you?

A Yes.

Q But a boy wants to be with his parents, is that true?

A I'm sure.

Q So to the extent there was a choice to live any where, if his parents are out of prison, he's living with them, is that correct?

A Yes, sir.

Q You mentioned earlier the foundation you provided for Mike was not the foundation that Mike provided for his own son. Is that true?

A That's correct.

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1 Q So what ever skills and abilities you gave to Mike to make
2 choices, those same skills and abilities were not passed
3 on to his own son, is that true?

4 A That's true.

5 Q Thank you.

6 THE COURT: Recross-examination?

7 MR. GIBSON: Nothing, Your Honor.

8 THE COURT: May she be excused?

9 MR. GROMOWSKY: Yes.

10 MR. GIBSON: Yes.

11 THE COURT: The witness is excused.

12 (Witness excused.)

13 MR. GROMOWSKY: Your Honor, we'll call Barbara Trigg.

14 BARBARA TRIGG, DEFENDANT SANDSTROM'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. GROMOWSKY:

17 Q Ma'am, I'm going to ask you to go ahead and scoot forward
18 in your chair a little bit and move that microphone around
19 right in front of you.

20 Yes, ma'am. And I know from talking to you in
2 the past, you're very soft spoken. I'm going to ask you
2 to do the best you can to keep your voice up as loud as
2 you can so the jurors and attorneys and judge can hear
2 you. Okay?

2 A Okay.

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Q Ma'am, will you please state your full name for the record?

A Barbara Trigg. Barbara Ann Trigg.

Q Spell your last name, please?

A T-R-I-G-G.

Q What relationship are you to Steven Sandstrom?

A Grandmother.

Q That would be the maternal grandmother?

A Yes.

Q You're Bonnie's mom?

A Yes.

Q We're going to go into a little bit of family history here with you. You were originally married to someone named Bob Ferguson, is that correct?

A Yes.

Q Did you have any children with Mr. Ferguson?

A Yes, I did.

Q How many children?

A Three.

Q What were the names, please?

A Betty, Bonnie and Bobby.

Q Were you married to Mr. Ferguson for very long?

A The kids was about 5 and 6 when we got divorced.

Q Why did you get a divorce?

A He found an older woman.

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Q Ran off with another woman?

A Yes.

Q Did you remarry at any point?

A Yes.

Q To whom did you marry?

A Paul Trigg.

Q And he's the gentleman you're married to to this day?

A Yes.

Q Married him in 1969, is that true?

A Yeah, I think that's right.

Q Mr. Trigg was in the household then as Bonnie was being raised?

A Yes.

Q Where did you meet Mr. Trigg?

A In a bar.

Q Mr. Trigg was a drinker?

A Yes.

Q Heavy drinker for a long time, wasn't he?

A Yes.

Q This is while he was helping to raise Bonnie, is that correct?

A Pardon me?

Q This is while he was helping to raise Bonnie?

A Yes.

Q And just so the record is clear, again, I think the jury

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already knows but Bonnie is who to Steve?

A Stevie.

Q Yes. Who is Bonnie?

A My daughter.

Q Okay. But who is she to Steven Sandstrom?

A His sister.

Q Is Bonnie his mom?

A I'm sorry. I'm nervous. I can't think.

Q I understand. It's tough for all of us.

A Bonnie is his mother, to Stevie. I've never been in court before in my life.

Q In addition to drinking heavily when he was raising Bonnie, did Paul have any other tendencies that weren't the best influence on his children?

A He tried to make them all go to school and everything.

Q I understand. But was he violent in the house?

A Oh, me and him used to fight.

Q It was physical fights, is that correct?

A Yeah, we did.

Q And your children witnessed this. Is that true?

A Yes.

Q At some point he actually beat you fairly badly, is that correct?

A He had before.

Q At least one of these occasions was he arrested?

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A Yes.

Q And who called the police on him?

A I think the children. I'm not sure. I don't even remember.

Q And at that point he was kicked out of the house, is that true?

A Yeah. I left.

Q When was that?

A I don't remember. It was when they were young.

Q Did you seek a divorce?

A Yeah, we did.

Q And did you actually divorce him?

A We got a divorce then we re-married. After that we started getting along good.

Q How long after the divorce did you get re-married and bring this man back in the house?

A I think 2, 2 to 3 years maybe.

Q Was Mr. Trigg, how did he --you said that he wanted them to go to school, kids to go to school. Was he strict with the kids?

A Yeah. We made them go to school. Yeah.

Q But was he strict with the children?

A In making them mind, yeah, but he didn't beat them or hit them or nothing.

Q Let me ask you this. Was he a perfectionist in the house?

1 A He was the boss.

2 Q He wanted everything his way, is that correct?

3 A Yeah.

4 Q That includes cleaning the house, is that true?

5 A Well, I cleaned the house. They helped.

6 Q Did you work?

7 A I worked after they all left.

8 Q It was my understanding that when he came home from work,

9 he expected things to be just so. Is that true?

10 A Pretty much.

11 Q And if it wasn't just so, if everything wasn't clean and

12 if the food wasn't on the table for him, how did he

13 respond?

14 A Oh, the food was always on the table.

15 Q And why was that?

16 A Because when he come home, he was hungry and I had it

17 ready for him.

18 Q What happened if it wasn't ready?

19 A Nothing really.

20 Q Isn't this when he was abusive with you?

2 MR. GIBSON: Objection.

2 THE COURT: Objection to leading is sustained.

2 THE WITNESS: No. That was one time we had friends

2 and I cooked something and it burned. That was years ago.

2 BY MR. GROMOWSKY:

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Q Ma'am, did you complete school?

A No.

Q How far did you get in school?

A 9th grade.

Q Why did you drop out of school?

A Why did I drop out?

Q Yes, ma'am.

A I got married.

Q In addition, to getting married did you have any educational problems?

A Yes.

Q What were the problems you had?

A Reading.

Q And what problems did you have with reading?

A I still can't read good.

Q Bonnie did not complete school either, is that true?

A No, she didn't.

Q During the 1970s did you try to kill yourself?

A Yeah.

Q How did you do that?

A I took medicine, sleeping pills.

Q And your children were aware of this? Your children were aware you tried to kill yourself?

A Yeah. They were gone but Bobby was home.

Q And who is Bobby?

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A My older son.

Q Are Mike and Bonnie allowed in your house now?

A No.

Q Why?

A My husband won't let them in because of the drugs.

Q Because of the drugs?

A Yes.

Q Any other problems that you've had with Mike and Bonnie in the past?

A More or less drugs.

Q Have they stolen from you?

A Checks before.

Q They stole checks?

A Yes.

Q Did they write those checks?

A Yes, she did.

Q You're aware that Bonnie is a shoplifter. Is that true?

A Yeah, she went to jail for it. Yes. Prison.

Q And you know from watching him develop and watching his juvenile records, Stevie at least was taken along for a lot of these shoplifting adventures, wasn't he?

A I think so.

Q Were Bonnie, Mike and Bonnie frequently homeless?

A Quite a bit.

Q She had mentioned earlier that she had purchased a trailer

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at one point. Is she the one who bought the trailer?

A My husband bought it for them.

Q Did he ever get paid back?

A No. That's why he don't want nothing to do with them no more.

Q What ever happened to that trailer?

A I think it got tore up. They --people robbed it when they were in prison and jail.

Q When they got out of jail, was there a time they rented a moving van?

A Yes.

Q What did they do with that moving van?

A Well, they lived in it for awhile until they caught it.

Q When --you say they caught it?

A The moving company caught it. They made them get out and took it.

Q And the police were involved in that as well, isn't that true?

A I'm sure they were.

Q Besides you not letting Mike and Bonnie in the house, how does Betty feel about Mike and Bonnie?

A She thinks they're pretty bad.

Q In fact, she hasn't even let them know where she lives now?

A No, she hasn't.

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Q And Betty, Justin Buchanan testified here in this trial.
Who is Betty to Justin?

A Betty is his mother.

Q So?

A Justin's mother.

Q That's fine. So Betty is Stevie's aunt?

A Yes.

Q And Justin is Stevie's cousin, is that correct?

A Yes.

Q And Betty, when the kids were all younger and running
around together, Betty was an influence in Stevie and
Stephanie's life, isn't that true?

A No, she wasn't.

Q She wasn't around at all?

A She was around them. Yeah, she was around them. Sorry.

Q And her husband was around them as well, is that correct?

A Yes.

Q Why did Betty leave her husband?

A Because he abused her all the time.

Q He abused her and was he a drinker as well?

A Yes, he was. Still is, as far as I know.

Q And these kids, Justin, his brother John Michael, Stevie
and Stephanie all witnessed that as well, is that true?

A Yes.

Q When Mike and Bonnie started running around together as

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teen-agers, did you approve of the relationship?

A I didn't know nothing about him until later I found out they both were doing drugs. I didn't approve of it, no.

Q When they got married did you go to the wedding?

A No.

Q You knew the wedding was going to take place but you just didn't go.

A I heard but I didn't go.

Q When Bonnie was running around with Mike, even in her early teen-age years, was she doing any drugs?

A Yes, she was.

Q Did you try to stop her from doing drugs?

A We tried but didn't do no good.

Q What did you do?

A We more or less talked to her and tried to keep them away from each other so they wouldn't be on them.

Q Did you try to get her into a treatment program?

A When she was older we did.

Q Did that work out?

A No.

Q Instead of going to treatment what did she do?

A What did I do?

Q What did she do?

A She just run around, snuck around and got drugs.

Q She went back with Mike, is that correct?

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A Yes.

Q As far as you know, Bonnie has never been able to stop using drugs, has she?

A No, she hasn't. She looks bad right now. Real bad.

Q She went to prison and didn't stop using, is that correct?

A You mean when she come home?

Q Yes, ma'am.

A No, she got back on it again.

Q She had three babies and continued to use drugs? Is that

true?

A As far as I know she has.

Q You knew she was using drugs before each of the pregnancies at least, is that true?

A I'm sure.

Q And did you actually ever see her use drugs while she was pregnant with any?

A Did I see her? No. Never. She never did nothing in front of me. We wouldn't allow it in our house.

Q But behavior she exhibited both before and after -

A Well, you could see her, you know, around, how she acted real hyper.

Q And that was while she was pregnant as well, is that true?

A I'm sure.

Q Last time Stevie got out of jail before getting in trouble with this case, where did he go?

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A Where did Stevie go?

Q Yes, ma'am.

A You mean to prison?

Q After he got out of prison, where did he go?

A He went down to the country.

Q Where?

A Got a job.

Q Where in the country? Warrensburg?

A Right.

Q Who did he live with down there?

A He lived with his cousin.

Q Family members of yours?

A No.

Q When he was down there living with his cousins, you started to say he got a job. Is that true?

A He was working down there, doing good. Then he came back up here and got messed up again.

Q You say he came back up here for a visit, is that true?

A I don't know if he come to a funeral or what. I don't know what he came back for.

Q When he came back up, he went back to Mike and Bonnie, is that correct?

A I don't know for sure because we lived out north and I didn't get to be around him much because my husband didn't want him around.

1 Q He did not come to live with you, is that correct?

2 A When he got out of prison the last time.

3 Q When he came back from Warrensburg?

4 A No, he didn't come to live with me.

5 Q He went to his family?

6 A I don't know if it was grandmother's or where but wasn't
7 me.

8 Q When he came back to Kansas City from Warrensburg and away
9 from this job, he didn't work again, did he?

10 A No.

11 Q To your knowledge you were communicating with him down in
12 there in Warrensburg, weren't you?

13 A I was.

14 Q You talked or wrote?

15 A No, I never wrote.

16 Q Ma'am if he's sentenced to the death penalty and then
17 eventually executed, how would that make you feel?

18 A I would just about die. I just lost my mother. And
19 grandchildren is not suppose to die before their
20 grandmother.

2 MR. GROMOWSKY: One moment, please, Your Honor.

2 Ma'am, I have no further questions at this time.

2 Thank you.

2 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

1 BY MR. GIBSON:

2 Q Good afternoon, ma'am.

3 A Good afternoon.

4 Q Ma'am, Stevie was born in '85, right? 1985?

5 A Yes.

6 Q So anything that happened in the '70s, that happened

7 before he even came on the scene, right?

8 A Well, I don't know.

9 Q But do you understand my question, ma'am? Obviously,

10 anything that happened before 1985 wouldn't happen in his

11 presence or in front of him?

12 A No.

13 Q You never allowed drugs in your home, right?

14 A No, I didn't.

15 Q You wouldn't even tolerate it being done in your presence?

16 A No, we wouldn't.

17 Q And Bonnie wouldn't talk in front of you about doing drugs

18 or act as though she'd been doing drugs?

19 A If I thought she had, I would say something to her.

20 Q Because you wanted to do the best for her that you could,

21 right?

22 A Right.

23 Q But despite everything you were trying to do, she chose to

24 do the drugs any way, is that right?

25 A She always denied it.

1 Q She always denied it?

2 A Yeah.

3 Q But, basically, she's responsible for her own choices.

4 Isn't that fair to say?

5 A Yes.

6 Q Okay. Thank you, ma'am.

7 THE COURT: Redirect examination?

8 MR. GROMOWSKY: No further questions, Your Honor.

9 Thank you.

10 THE COURT: May the witness be excused?

11 All right. Ma'am, you are excused. Thank you.

12 (Witness excused.)

13 MR. ROGERS: Your Honor, defense calls Angela Mason.

14 ANGELA MASON, DEFENDANT SANDSTROM'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. ROGERS:

17 Q Would you, please, tell us your name and spell it for the
18 court reporter?

19 A Angela Mason. M-A-S-O-N.

20 Q And, Ms. Mason, what is your profession?

2 A I'm a forensic social worker and mitigation expert.

2 Q And what type of educational background do you have?

2 A I have a masters of public health and masters of social
2 work.

2 Q What university is the masters in public health from?

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A Tulane University, New Orleans.

Q And how about the masters in social work?

A Also from Tulane.

Q And I assume before you got your masters you probably had an undergraduate degree?

A I have a degree in international studies from University of Oregon and I was in the Peace Corps.

Q And where were you in the Peace Corps?

A In west Africa.

Q Is that related to your choice of what to study in graduate school?

A Yes. I wanted to be a development public health worker in Africa.

Q So that's why you went for the masters in public health?

A Yes. And social work, I came in the backdoor.

Q And what led you to social work?

A I love to help people and interested in their lives and it was a natural choice.

Q Are you licensed or certified in any way to practice your profession?

A I'm licensed in Louisiana and in California.

Q And what kind of licensure?

A Licensed clinical social work.

Q And you belong to any professional organizations?

A I belong to National Alternative Sentencing and Mitigation

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Experts which is, I'm on the board, actually, of that organization. I belong to the National Association of Social Workers.

Q And have you had occasion to teach or present papers to professional meetings?

A I have.

Q How does one go about doing --Let me ask you this. Did you do what is called a mitigation investigation in relation to Steven Sandstrom?

A Yes, I did.

Q How do you go about doing that?

A You interview family members and friends and other collateral witnesses to learn someone's social life history and gather documents and records. Just try to piece together a person's life story.

Q And who did you talk to with regard to Mr. Sandstrom?

A I talked to his parents, his brother and sister, grandparents, aunt, cousins, some of his former juvenile probation type workers.

Q Would that include -

A You want me to name them?

Q Well, I was going to ask specifically did you talk to Reuben Tindal?

A Yes, I did.

Q And did you talk to Teressa Davis?

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A Yes.

Q And did you review records from the McCune Home for Boys?

A Yes.

Q Did you also review any medical records?

A I did.

Q From where?

A Kansas, University of Kansas Medical Center. Let me check the name of it to make sure I get it right. Truman Medical Center and Children's Mercy Hospital. Some of the records weren't available but I tried to get them.

Q And did you also review the results of a neuropsychological evaluation?

A Yes.

Q Who was that done by?

A Dr. Fucetola.

Q F-U-C-E-T-O-L-A?

A Correct.

Q Did you prepare what is called a genogram.

A Yes, I did.

Q Do you have that with you or do I have that?

A You have that. But I have a copy of one if you need it.

Q Get it, please.

A Wait a second. It's a small one though.

Q That's okay. We've got an ELMO.

If I might have a minute, Your Honor?

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1 THE COURT: Yes.

2 BY MR. ROGERS:

3 Q I'm going to show you on the screen next to you what has
4 been marked as Defendant's Exhibit 20. Do you see that?

5 A Yes.

6 Q Is that, in fact, your genogram you're talking about?

7 A Yes.

8 Q Tell us what a genogram is?

9 A A genogram is a family map that is a way of depicting
10 multigenerational patterns and families over generations
11 and their relationships with each other.

12 Q So it's like a family tree but it has other information as
13 well?

14 A Yes.

15 Q I notice that some times you have squares and some times
16 you have circles. Tell us what that means?

17 A Squares are for men. The circles are for women. And if
18 they're together, they're a couple.

19 Q If they're linked by a horizontal line?

20 A Yes.

2 Q And then if there is a vertical line going down from that
2 horizontal line, what does that show?

2 A Those are their children between those two, that couple.

2 Q All right.

2 A It's a frequent tool of social workers.

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1 Q I also notice that some of the squares are red, some of
2 the circles are red as well?

3 A Yes.

4 Q What does that indicate?

5 A That indicates alcoholism or drug addiction.

6 MR. ROGERS: Your Honor, at this time I would move
7 admission of Exhibit 20.

8 MR. KETCHMARK: No objection.

9 THE COURT: 20 is admitted and may be displayed.

10 BY MR. ROGERS:

11 Q All right. I also notice there's a yellow circle. What
12 does that indicate?

13 A That indicates mental illness. Some of the red circles
14 could also be yellow but I put them mostly trying to
15 depict alcoholism and drug abuse.

16 Q Is it unusual that somebody with mental illness might also
17 have drug or alcohol problems?

18 A Alcoholism and drug abuse are considered mental illnesses.

19 Q Let me put it different. Is it unusual for somebody who
20 has other mental illnesses to also have drug or alcohol
2 problems?

2 A No. It's very common.

2 Q Okay. Drawing your attention, first of all, to the circle
2 there, the clear circle. Who is that?

2 A That is Frances Tresenriter.

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1 THE COURT: Can you zoom in on it, Mr. Rogers? I

2 think it might help us. Unless you know how -

3 THE WITNESS: That's Steven's grandmother.

4 BY MR. ROGERS:

5 Q This is much better.

6 So that's Frances Tresenriter?

7 A Yes.

8 Q The clear circle. And I notice to the left of that is a

9 red circle with an X through it?

10 A That is her deceased husband John Sandstrom.

11 Q Who would be the biological father of Michael?

12 A Yes.

13 Q Then at the other end of that line is another square with

14 an X in it?

15 A That's her second husband who is also deceased, William

16 Tresenriter.

17 Q And then from the union of Frances and John Sandstrom

18 there were, what, three children, is that correct?

19 A Yes.

20 Q On the left is a clear box of Jerry Sandstrom?

21 A Correct.

22 Q Why is it a clear box?

23 A I don't know much about Jerry.

24 Q Okay. So you don't know?

25 A I know that he may have used drugs, socially drinking, but

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I don't know much about him. I never have met him.

Q And you couldn't characterize him based on what you knew as either a drug abuser or alcoholic?

A No.

Q You prepared this, of course, before you heard Ms. Tresenriter testify today?

A Yes. At this point it should have probably been red.

Q Because she did testify he has a drug problem?

A That is what she represented.

Q And then next to that box is a red box with an X in it and that is?

A Terry Sandstrom. He passed away.

Q And the red means?

A He passed away due to alcoholism or drug abuse. He had a drug problem. Well, he had an alcohol problem.

Q And then next to Terry is Mike Sandstrom, is that right?

A Yes.

Q We'll get back to him later. But next to Mike is Robbie Tresenriter?

A Yes.

Q And also a red box?

A Yes.

Q And why is that?

A Previous and ongoing drug addiction.

Q Let me move over then to the other side of the diagram

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which I assume is the other side of the family?

A Yes.

Q Okay?

A Maternal side.

Q You start with, or I will start with a yellow circle there. Is that Barbara Trigg, who just finished testifying?

A Yes.

Q And why is she yellow?

A Depression, history of suicidal ideation, hospitalized for trying to kill herself.

Q Okay. And that qualifies as a mental illness?

A Yes.

Q And to the left is a red box that is Bob Ferguson, is that right?

A Yes.

Q Who is he?

A He was Bonnie's father. I think he's still alive.

Q Okay. So he doesn't have an X?

A Correct.

Q But they're not still married?

A That's right. That should be depicting a line that they're divorced. But I just showed that she married Paul.

Q So could have a line breaking that?

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A Uh-huh.

Q Between?

A Barbara and Bob, that they divorced.

Q Okay. And who are their children?

A Betty Buchanan, Bonnie, and Robert Ferguson.

Q And then we show also to the right of the yellow circle is a red box is Paul Trigg?

A Yes.

Q And I notice a notation under that of domestic violence. What is that about?

A Well, he was arrested for domestic violence and he reported to me about his abuse of his wife.

Q Okay. So domestic violence characterizes the relationship between Paul and Barbara at least at one time?

A Yes.

Q Do they have also any offspring?

A They had one son Vince Trigg.

Q And I notice he's also red. Why is he red?

A Also history of substance and alcoholism. I've heard from a number of family members that he's mentally ill. I did not interview him personally.

Q So you're confident about the red. You weren't that sure about the yellow?

A Yes.

Q Okay. And I noticed, by the way, Paul Trigg is also red.

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Why is that?

A History of severe alcoholism.

Q Now, going back to Betty Buchanan, she's a clear circle?

A Yes.

Q And why is that?

A She doesn't have an alcohol or drug problem that I was aware of.

Q And it shows her marriage to a Timothy Buchanan, is that correct?

A Yes.

Q And he's red?

A He did have an alcohol problem. That should be a line that they're divorced.

Q They're now divorced?

A Yes. I understand that he's in prison, actually.

Q And they're offspring are shown as a clear box or square for Robert Buchanan?

A Again, I don't know much about Robert, so I couldn't say what his problems may be.

Q Couldn't give him a color?

A Couldn't give him a color.

Q And then there is a red box for Justin Buchanan, is that correct?

A That's right. I would have given him a yellow box as well if I could do two colors.

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Q And why would that be?

A He has a history of mental illness.

Q As well as a history of -

A Drug and alcoholism.

Q And then the other offspring is Bonnie Sandstrom?

A Yes.

Q And she's a red circle?

A Yes.

Q And why is that?

A She has a long history and current crack addict.

Q All right. Now, that gets us back to the bottom horizontal line which shows the marriage of Mike Sandstrom and Bonnie Sandstrom, is that correct?

A Yes.

Q Are their descendents listed in order from left to right?

A Yes.

Q I noticed that the first, we have a triangle. That represents the aborted offspring, is that correct?

A Yes.

Q And you knew about that from who?

A I read about it in Bonnie's medical records.

Q Bonnie tell you also about it?

A Yes.

Q And then the next red box is Steve Sandstrom?

A Yes.

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Q By the way Mike Sandstrom is also red?

A Yes.

Q And why is that?

A Also a crack addict.

Q You also indicate he's abusive and violent?

A Yes.

Q What is that based on?

A Arrest records and self reporting of family members, different instances. He could possibly also be yellow because he has some history of symptoms of depression and it's not, I don't have any other records of it. But I've heard about it from different family members.

Q No question he's a crack addict?

A No question.

Q No question that he has been abusive to Bonnie and Stephanie at the very least?

A At least.

Q And no question he's been involved in physical altercations with Steven and with John?

A Yes.

Q What is the zigzaggy line with the arrow pointing from Mike and Steven?

A That indicates abusive relationship or poor role modeling, just hostility. They have a history of that.

Q Now, next to Steven is Stephanie, is that correct?

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A Yes.

Q And she also is red?

A Yes.

Q Why?

A Because she has a history of drug use.

Q And where did you learn about that?

A From Stephanie.

Q Did you also review her treatment records, some of them?

A Yeah. She showed a letter she wrote about when she

graduated from drug treatment and her history.

Q And then you have John Sandstrom is a red square?

A Yes.

Q Why is he red?

A He indicated he tried marijuana and dabbled a little bit.

Q Was he the only one here who is red just for dabbling? Is everybody else more serious than dabbling?

A Yes.

Q But then how old is John when you talked to him?

A It was two years ago. He was 14. So it appears that he's trying not to at this point. That's good.

Q That is good.

When you looked, overall, at the family history of Steven Sandstrom, were you looking for anything in particular?

A I was looking for mitigating factors to help explain why

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he's where he is today.

Q Okay. And are you familiar with things called risk factors and protective factors?

A I am.

Q Tell us about those in general?

A Research indicates that the more risk factors a person has and the less protective factors they have, the outcome is almost a guarantee of dysfunction, criminal behavior, delinquency, that sort of thing.

Q And when you say research indicates, what do you mean by that? What kind of research?

A The Department of Justice research, for example, on juvenile delinquency.

Q Is there a pretty significant body of research in that field?

A There is an enormous body of research. The idea being the more risk factors you have, the foundation is broken through and there's no way to build yourself up because there's no support.

Q Okay. How many, well, let me ask you this. Were you able to identify some risk factors which are undoubtedly present in Steven's life?

A Yes.

Q Why don't you take us through some of those starting at the start?

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A Okay. He's like a textbook for risk factors.

Q Okay. So what is Chapter 1?

A Before he was born his mother was unstable. She has emotional problems and she had an abortion. It's fairly likely that the pregnancy she had with Steven was unplanned and unwanted.

Q Let me ask you, first of all, is there any significance to the fact that she took up in a sexual relationship with Mike Sandstrom when she was 13, 14 years old?

A Yes. She was underage and still an adolescent herself, not ready to make decisions about or even mature enough to be in a sexually active relationship.

Q And yet she was older when she finally had Steven, right?

A Yes.

Q Okay. What other risk factors did you encounter?

A She was using drugs. And her family was unsupportive of her relationship with Mike.

Q Would that be around the time of Steven's birth? After Steven's birth or?

A Before, during and after. She was poor and unstable. I don't know that she had a stable living situation. She kept running away to live with him. And they were using drugs.

Q What other risk factors were you able to identify in Steven's background?

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A Lack of emotional support. Generally, you need bonding and strong attachment with a mother. And if there's not a good stability, the mother is using drugs, you're going to have a poor attunement or connection in the beginning.

Q Okay. That doesn't mean they don't love each other?

A No. Just means that the mother is not able herself to take care of herself and not able to have an emotional bond, nurturing or support connection with her baby.

Q Okay.

A Talking about risk factors now that are between conception and 6 or early risk factors.

Q Okay. And do they have -

A Those are considered probably the most significant or important to explain a criminal or delinquent outcome later on.

Q By the time the kid is 6, has that kid developed the ability to make reasoned choices?

A No.

Q Okay. It seems obvious to me but I thought I would ask.

A No. I think by the time they're 15 nor are they able to make reasoned choices.

Q Is there a special term given to these kind of early childhood risk factors?

A They could be categorized as family risk factors, individual, school, community. It's a combination of all

of those.

Q Okay. And did you find any other early childhood risk factors with regard to Steven that we haven't talked about?

A Family management problems, family conflict, unable to resolve anger and conflict reasonably. So there is a lot of stress and tension.

Q Would that be between the adults in the household or everybody?

A It would be between everyone. It's poor anger management. And they lived in a poor neighborhood that had the highest incidents of crime and drugs and they were moving around a lot. Economically not stable.

Q Any other early childhood kind of risk factors?

A Well, both parents were using drugs and involved in criminal behavior.

Q Did you learn anything about the parents involving the children in criminal behavior or did that come later on in life after age 6?

A Steven's siblings told me they were involved in shoplifting and car thieving with their parents. I don't know what was happening before age 6.

Q And so, have we now talked about all of the risk factors present in Steven's life that we know of before age 6?

A I'm sure I forgot some but if I think of them, I'll

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mention them. I think the emotional, there is emotional stress and trauma in the family and in the neighborhood and that would have effected him as an early child. When he was 5 he described his first experience seeing his parents using crack and not being able to connect, being ignored. I think that neglect, of being emotionally non-available because his parents were using drugs is a huge risk factor.

Q What is an adverse childhood experience factor?

A That was a study done by Kaiser of 26,000 families. It was a very large scale study about nine factors that are found to cause poor medical outcomes, poor health and other poor outcomes for individuals that have had at least four or more of those factors.

Q You said Kaiser is that Kaiser Permanente?

A Yes. They're a health provider company and they did kind of a landmark study on this.

Q And how many of such factors did they identify?

A Nine factors.

Q And were you able to look at Steven's social history and determine how many of the factors he had?

A Yes.

Q How many?

A Nine. I rarely have had a case where the person had all nine adverse childhood experiences.

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Q What are adverse childhood experiences?

A I'm going to have to cheat because I don't remember them all. Recurrent physical abuse.

Q And how did you find that with regard to Steven?

A Father beat him, frequently, as self reported by family members.

Q Okay.

A Recurrent emotional abuse.

Q Tell us about that.

A Severe neglect, not being around to take them to school, to help them meet their supportive nurturing, emotional needs. And so a child develops an untrusting, lack of safety and security feeling when their parents aren't there to sooth them, support them and get them involved in pro-social sports and activities. Just spend time with them, give them attention and play with them.

Q What is the next one?

A Sexual abuse in the family.

Q We haven't heard anything about that today. Did you find out about sexual abuse in the family?

A Stephanie indicated attempts were made to sexually abuse her when her father was incarcerated I believe.

Q So it wasn't her father that was doing it?

A No. It was a friend of the family. But her father learned about it and I think beat the guy up.

Q And did Steven learn about this also?

A Yes.

Q And what is the next factor?

A Family alcohol and drug abuse.

Q Talked a lot about that.

A Yes.

Q The next?

A An incarcerated household member or family member.

Q And we have?

A Both the parents were incarcerated at different times.

Q And other?

A Other family members as well.

Q Steven, himself?

A Yes.

Q And Stephanie?

A Yes.

Q And John Michael?

A Yes.

Q What's the next one?

A Someone who is chronically depressed, suicidal or institutionalized, or mentally ill.

Q And we have heard about Barbara Trigg and the suicide attempt and mental illness. And you told us about some other instances of mental illness or suspected mental illness?

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A Yes.

Q And depression. You said Mike is probably chronically depressed?

A I think he has many symptoms of depression. He was tearful through the interviews and through this whole process. Emotionally unstable.

Q What is the next one? We're up to 6. What is No. 7?

A Mother being treated violently.

Q And tell us about that.

A Steven and his siblings indicated that their father, when they were high on crack, fought and beat Bonnie, especially over drugs. And Steven even said the yelling was so severe he didn't want to stay in the house. He would try to go somewhere else.

Q Did they also tell you about the incident where he broke the window of her van if she wouldn't take him home to the trailer in Belton where she was living with another guy?

A Yes.

Q What is the next risk factor?

A One or no parents.

Q What does that mean?

A That means either abandonment or they have left the home due to incarceration or they've been taken away for Children Services reasons.

Q Okay. So that they don't have to both be gone all the

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time or?

A Just the one parent household is a big risk factor.

Q It doesn't have to be one parent household your whole life, just part of it?

A Yes.

Q And what is the next one?

A Emotional or physical neglect.

Q And tell us about that?

A Steven had many visits to the hospital for many medical problems all the way through his early years. And emotionally he was starved for attention and just basic care and love and nurturing and support.

Q Now, do some of these factors sort of duplicate each other to a certain extent? In other words, the emotional or physical neglect might have something in common with recurring emotional abuse?

A They do. There's some research that says the impact of child neglect is worse than physical and all others because a child winds up feeling fearful of the world and no control, that there's going to be consistency and that people will be there for him when he comes home and he needs something, just basic food and clothing and shelter.

Q So according to the Kaiser Permanente study, what outcome would be predicted for somebody who, like Steven, had all of these adverse childhood experiences?

A Increased likelihood of social, emotional, cognitive impairments, disease, health risk, other kinds of medical problems. Social problems. Increased likelihood of early death. Exposure to four or more factors indicates higher levels of depression, suicide attempt, drug abuse, alcoholism and multiple mental problems.

Q Now, let me go back to Exhibit 20, the genogram. And other than showing what the family history is, does this have any predictive significance?

A Yeah. The genetic disposition for alcoholism and drug abuse.

Q And is a genetic disposition something you choose?

A No. You're born into a family and the situation is very likely that you'll also follow suit. That's your modeling, your first exposure.

Q Is it possible that somebody could at some point achieve the ability to choose something different than the predisposition?

A It's possible especially with a lot of treatment and a lot of community, family and friend support.

Q So with regard to your study that you did of Mr. Sandstrom?

A Yes.

Q Do you have an explanation for how he ended up driving a stolen car on March 9, 2008, giving a gun to Gary Eye, who

1 used it to kill someone?

2 MR. KETCHMARK: Your Honor, may we approach?

3 THE COURT: Yes.

4 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
5 PROCEEDINGS WERE HAD:)

6 MR. KETCHMARK: I object to the form of the question.

7 I think it's improper. If he wants to ask her about

8 background, history, mitigation information. When he's

9 starting to talk and frame it as to the specific night in

10 question, I think is improper characterization. So object to

11 the form of the question. No problem, obviously, with him

12 developing Mr. Sandstrom's background. But to try to put it in

13 characterization as relates to that particular night, I would

14 object.

15 MR. ROGERS: Well, I'll try and rephrase it. How

16 does that sound?

17 MR. KETCHMARK: Testimony about his specific mental

18 state, if she wants to talk to who he is led to.

19 THE COURT: I think maybe it's beyond her expertise

20 for her to be able to say what caused him to do what he did on

21 that day. But why don't you rephrase it and we'll strike it.

22 MR. ROGERS: May even go to a different area.

23 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

24 BY MR. ROGERS:

25 Q Let me ask it a different way. Are the risk factors we

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1 have talked about and the adverse childhood experiences we
2 have talked about mitigating in the context of a capital
3 murder case?

4 A Yes.

5 Q Why?

6 A Someone who grows up in a severely dysfunctional family
7 with these corrupted influences, the type of community
8 with drugs and criminal activity, genetic predisposition
9 for alcoholism and drug addiction, it would be nearly
10 impossible not to fall into juvenile delinquency and a
11 life of crime and possibly much worse.

12 MR. ROGERS: May I have a moment, Your Honor?

13 THE COURT: Yes.

14 MR. ROGERS: I'm glad I asked.

15 BY MR. ROGERS:

16 Q We talked about risk factors. Another term that's been
17 used is protective factors. What are those?

18 A Protective factors are possible buffering agents, if you
19 will, to counteract risk factors.

20 Q Okay. And what are the protective factors that have been
2 identified in your research?

2 A Female gender.

2 Q Obviously, Mr. Sandstrom doesn't qualify for that.

2 A Intelligence, high intelligence.

2 Q How high is high?

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A 120 IQ or above average intelligence.

Q Are you familiar with IQ testing of Mr. Sandstrom?

A Yes.

Q And is he in that range?

A No. He's in the middle range.

Q Go ahead.

A I want to make sure I don't forget any. Pro-social behavior, which would be interacting with an extra curricular activities, with high functioning peers, like playing baseball on the weekends or being involved with the Boy Scouts. Pro-social environment, a positive school experience where a person is supported by their teachers and their parents and there's not bullying going on or other peer problems.

Q Did you -

A Positive youth.

Q Okay. Did you find any of that in Mr. Sandstrom's history?

A No. Also high school performance, you know, high cognitive performance during the pre-school years would be a protective factor.

Q Did you find any evidence of that in Mr. Sandstrom's case?

A No.

Q How far did he go in school?

A I think he was repeating the 7th grade and left school

1 shortly thereafter in 8th grade.

2 Q Any other protective factors we haven't talked about?

3 A No. I think those are the most important. I'm just going

4 to make sure I didn't forget any. No.

5 Q Thank you.

6 No further questions.

7 THE COURT: Mr. Ketchmark.

8 MR. KETCHMARK: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. KETCHMARK:

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q Mr. Rogers spoke with you briefly, and just so I'm clear

14 and have an understanding, your area of expertise is as a

15 forensic social worker, is that correct?

16 A Yes.

17 Q And in particular you indicated when you were listing your

18 background and your experience that you have an expertise

19 of particularly work in the area as a mitigation

20 specialist, correct?

2 A Yes.

2 Q And by mitigation specialist, what you're basically doing,

2 I think trying to focus, as you put in your CV, working

2 with defense attorneys and investigators in federal and

2 state capital murder cases to try to portray a mitigation

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story of the defendant's lifestyle, correct?

A Yes. Their social life history.

Q But a mitigation story and mitigation by it's very term means to lessen, to minimize, to take the sting out of an act, correct?

A They don't have aggravation specialists. I work as a mitigation specialist.

Q So therefore you work primarily and exclusively with the defense?

A Only the defense would have mitigation.

Q I understand, ma'am.

I guess my point is it's not a lifestyle or background social history. It's to present a mitigation story as you put in your CV, correct?

A A social life history of the client.

Q Well, but you place in your CV that from 2000 to present that you worked to effectively portray the mitigation story of a defendant, correct? That's your term, not mine?

A Correct.

Q And along that line, Mr. Rogers talked with you about the interviews that you would have conducted in formulating your report, correct?

A Yes.

Q And the interview, I think you listed were several family

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members, in particular, when you were here this morning and you sat in court, did you not?

A No, I did not.

Q That's right. You flew in this morning. So for the jury's benefit, some of the people you indicated you spoke with were the Defendant's mom, Bonnie Sandstrom?

A Yes.

Q Father, Michael Sandstrom?

A Yes.

Q Defendant's brother, John Sandstrom, John Michael?

A Yes.

Q Stephanie Sandstrom, his sister?

A Yes.

Q Frances Tresenriter, his paternal grandmother?

A Yes.

Q Barbara Trigg, his maternal grandmother?

A Yes.

Q Among other people?

A Yes.

Q And in terms of the interview that was all then summarized by you in a report which was your impressions on information that was contained through meeting with those people, correct?

A It's a psychosocial history.

Q But you didn't provide copies to Mr. Rogers for turning

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1 over to our office detailed summaries of those interviews.

2 They weren't taperecorded interviews, were they?

3 A They were not taperecorded.

4 Q No written reports were generated other than your

5 impressions.

6 MR. ROGERS: May we approach, Your Honor?

7 THE COURT: Yes.

8 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING

9 PROCEEDINGS WERE HAD:)

10 MR. ROGERS: I think this is misleading. Some of,

11 she did provide me with things which are clearly work product

12 which I didn't turn over to their office but that doesn't mean

13 she didn't provide it to me. And I don't think it's

14 discoverable.

15 THE COURT: Where are you going?

16 MR. KETCHMARK: I'll move on. It's just some of her

17 conclusions as she puts in her remarks are remarkably different

18 that what the witness testified to this morning.

19 MR. ROGERS: You can go ahead and ask her.

20 MR. KETCHMARK: I will. I will establish the

2 foundation. We don't have the benefit of a detailed report,

2 only her report. Not the raw data that generates the report.

2 I'll rephrase.

2 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

2 BY MR. KETCHMARK:

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Q My question, Ms. Mason, is that in the report, you begin your report by saying, Steven, sad and painful life story. You go on and talk about the myriad of influences that result in him being who he is today, correct?

A Yes.

Q You also discuss at one point in an interview that you had with Frances Tresenriter, discussion about her first husband John. You at numerous points in your report characterize John as an alcoholic, correct?

A Which page are you on?

Q I'm referring to page 6, ma'am, under paternal extended family. Third paragraph down. She married John Sandstrom in March of 1953. Do you see where I'm referring to?

A Yes.

Q There is a reference in the second line that John was an alcoholic?

A Who kept a bar in the house.

Q Yes. Three more paragraphs down there's another reference to John being an alcoholic?

A Yes.

Q And those are based on, as you attribute in the report, the first interview that you did with Ms. Tresenriter, herself?

A Yes.

Q And so she would have been the one purporting to tell you

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that, correct?

A Mike Sandstrom also told me that.

Q In the second reference?

A Yes. I try to corroborate self reporting.

Q Well, I guess, my question is, ma'am, is if their testimony was different in terms of Mr. John Sandstrom not being an alcoholic, is there a reason why the representations to you might have been different than what they testified in court today?

A Whatever people are telling me, I take as the best information I can gather at that time.

Q Because you're required, are you not, to rely on, because you didn't grow up with this family, obviously, you're relying on self reporting that is being done by family members, correct?

A I rely on self reporting and records, if I can gather them.

Q Okay. Let's talk about records then because there's a couple spots in your report, Ms. Mason, where you indicate a likelihood that Bonnie Sandstrom was using drugs when pregnant. Do you know the references that I make in your report where you indicate that? To give you help, on page 8 under Steven's birth and pregnancy you talk about she was likely using cocaine?

A Yes.

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Q And I think there's another couple references but I will refer you to that one in particular. Did you examine any medical records associated with Bonnie's pregnancy and delivery of this defendant, Steven Sandstrom?

A Yes.

Q And was there anything in those medical records to suggest there was any presence of cocaine in her system at any point in time while she was pregnant with Steven?

A No. Cocaine --don't necessarily report it during pregnancy.

Q And there's no way that's going to show up if there's any testing done. Is that your testimony?

A I don't know that there was any testing done.

Q Well, but it's not reflected in the medical reports, there being any evidence of cocaine usage, is there?

A Cocaine usage is not necessarily indicated unless it's tested in the system.

Q Let me ask you this, ma'am, you put that in there in your report. Did Bonnie tell you she was using cocaine when she was pregnant with Steven?

A Bonnie told me a few things that were inaccurate so I didn't necessarily trust about her drug use.

Q That's another point, I guess, I want to bring up in terms of you generating your report. You are the one who is selecting the information you believe to be credible and

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that's how you frame your report, correct?

A Yes.

Q So we have to rely on your representation versus if Mrs. Sandstrom is telling us she had used marijuana but not cocaine, you selected to disagree with that proposition?

A I try to interview other family members to corroborate the information as best I can.

Q Again, you talked about Terry Sandstrom, one of Mike's brother, dying. And in the report you reflect that it is most likely due to alcohol or kidney and liver failure associated with alcohol use. Do you recall making that statement in your report?

A Yes.

Q Did you look at any of the reports on medical history of Terry Sandstrom to see if the liver failure or, more particularly, the kidney failure had anything to do with alcohol usage?

A I relied on the family members reporting his alcoholism.

Q You also talked about in the genogram that Mr. Rogers had prepared, that's up here on the board, excuse me, as Defendant's Exhibit No. 20, and you referenced Justin Buchanan. And I believe Mr. Buchanan is listed right here and you have him listed, obviously, as one of the children

of Betty Buchanan, correct?

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A Correct.

Q And you put him in red to indicate there was alcohol or drug addiction. The only person you chose to put in yellow is Barbara Trigg, the grandmother, correct? And my question, I understand, but my question he is in red on the genogram, correct?

A If I had a better skill at using this I would probably be able to depict two colors.

Q But my point is the color you chose in Defendant's Exhibit 20 is red, correct?

A Yes.

Q And you, obviously, used yellow to indicate Barbara Trigg because Barbara was one who testified about having attempted suicide, correct?

A Yes.

Q And my question is when you generated your report that was dated on May 12 of 2008, you characterized Justin Buchanan as crazy cousin Justin Buchanan, page 4, ma'am, correct? That's the caption you selected, correct?

A I'm looking for your spot. Just one second.

Yes. Okay. I see where you are.

Q It's the bold type there that says, crazy cousin Justin Buchanan and there's a paragraph describing who Justin Buchanan is, is that correct?

A Yes.

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Q Were you aware at the time you prepared this report on May 12th that Justin was the one of the witnesses who came in and testified about this defendant soliciting him to kill witnesses? Were you aware of that?

A I know he's involved in the case.

Q Were you aware that he came in and took the very witness stand you're sitting in now and testified about this defendant soliciting him to kill critical government witnesses in this case? Did you know that?

A I know he was involved in this case.

Q My question is, ma'am, did you know that was what his testimony was? Not that he was involved. Did you know that he testified about that shortly before you characterized him in the fashion that you did in your report?

A I mainly worked on the penalty phase and mitigation aspect of the case. I did not focus on the guilt necessarily. I knew he was involved and I knew that there had been some correspondence but I didn't focus on what was Justin's issues.

Q Well, you didn't list Barbara Trigg as crazy Grandmother Trigg, did you?

A She tried to commit suicide. I thought it spoke for itself.

Q You also didn't think to be that concerned with

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Mr. Buchanan's mental history to change his color from red to yellow, correct?

A Correct.

Q When you started talking, well, let me ask you this. You also indicated in addition to interviews that you conducted one of the other things that you relied upon was the neuropsychological evaluation done by Robert Fucetola who is a PhD, correct?

A Yes, he's a doctor.

Q And you reviewed the pre-evaluation report he prepared in connection with his evaluation of Mr. Sandstrom, correct?

A Yes.

Q And you, yourself, did not administer any type of psychological battery of tests as relates to this defendant, correct?

A Correct.

Q It was simply an evaluation and a composition of his social background but there was no Wechsler testing or IQ testing or any type of battery of tests to determine mental function, correct?

A Correct. I'm not a psychologist.

Q But in reviewing Dr. Fucetola's report, you would agree with me, in the majority if not all of the testing he did, he concluded Mr. Sandstrom was, in fact, average in terms of his functioning?

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A Yes, he found him -

Q Average?

A Yes. Under IQ.

Q Average?

A Yes.

Q Back to your genogram, Ms. Mason, in Defendant's Exhibit 20, you talked about the fact that when you were focusing on Jerry and Robert and Betty and Robert Buchanan, you didn't want to shade them a certain color because you didn't know enough about their background and experience, correct?

A Correct.

Q And just so I'm clear, the legend here, red means alcohol or drug addiction, correct?

A Could also mean drug use.

Q Did you put that on your genogram? Is that part of the legend that you, yourself, created?

A Clearly, I made a few errors.

Q But you listed it as alcohol or drug addiction, correct?

A Correct, I did.

Q You put down John Sandstrom, this defendant's younger brother, as a drug or alcohol addict, is what that represents, correct?

A I do make mistakes some times.

Q With respect to Mr. Rogers' last questions of you with

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respect to risk factors versus protective factors, do you remember that discussion that he had with you?

A Yes.

Q And my question to you is this, Ms. Mason, obviously, you said that that suggests that it is a prediction of social, emotional or cognitive impairment in the future and possibly, as you indicated, juvenile delinquency, correct?

A Can you rephrase the question, please?

Q My question is with respect to the risk factors that you indicated, it is suggestive of somebody who might have problems in the future, let me rephrase it that way. Is that a fair statement?

A What do you mean by problems in the future?

Q I think you indicated that the factors and functions in the first level of development up to age 6 are important factors for establishing the foundation of who we ultimately become. Is that an accurate statement?

A Yes.

Q And you had talked about how if there are risk factors present under the studies, it could suggest or lead to the potential for increased risk of juvenile delinquency, correct?

A Yes.

Q And things of that nature, criminal behavior, criminal conduct?

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A Yes.

Q And that could very well explain some of the car theft issues that Mr. Sandstrom has experienced and also his drug use, correct?

A Yes.

Q And does that go so far as to explain how somebody could sit here before this jury convicted of premeditated murder?

A I don't know.

Q Because you're not trying to suggest that everybody who has risk factors such as Mr. Sandstrom is going to end up sitting in the chair convicted and facing the death penalty, are you?

A I think it could lead to a very negative outcome. I think it depends on the individual.

Q And that's my point is it depends on the individual because we are all unique, correct?

A I don't think Steven Sandstrom is unique. It's beyond my area of expertise to predict whether his particular risk factors would possibly enable him to be involved in a murder.

Q Let me ask you this, Ms. Mason. His brother John grew up or has grown up by and large in the same environment, correct.

A That's not correct.

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1 Q It's not. What about his sister Stephanie?

2 A More correct.

3 MR. KETCHMARK: That's all I have, Judge.

4 THE COURT: Redirect examination?

5 REDIRECT EXAMINATION

6 BY MR. ROGERS:

7 Q Mr. Ketchmark asked you about Dr. Fucetola's report and I

8 think he asked you weren't all the findings of the testing

9 average. Is that what he asked you?

10 A Yes.

11 Q Do you have that report in front of you?

12 A I don't. I can get it though.

13 Q I'll give you mine.

14 A Thank you.

15 Q Let me call your attention to the part about what is

16 called executive functions, executive abilities, I'm

17 sorry, on page 8?

18 A Yes.

19 Q And do you know from your own training and experience what

20 executive abilities means in the context of a

2 neuropsychological evaluation?

2 A General ability to think and act appropriately, frontal

2 lobe executive functioning of the brain.

2 Q Decision making, stuff like that?

2 A Means whether or not a person has good judgment, decision

making, impulsivity, ability to control their emotional state and -

Q With regard to executive abilities, what was the finding that Dr. Fucetola found, according to his testing?

A That Mr. Sandstrom performed in the average range abilities, let's see, requiring him to explain his understanding of social norms and rules.

Q That's in terms of social comprehension, right?

A Yes.

Q He was in the average range.

A --executive abilities?

Q Right.

A He performed in the moderately impaired range on the test of conceptual ability requiring him to generate in - based on the testing, he's in the average range.

Q But it says?

A Moderately impaired in terms of his conceptualization and executive functioning which would explain why he has problems with impulse control and judgment decisioning.

Q Then turning to page 9.

Well, let me by the way, for identification for the record, let me mark that report as Defendant's Exhibit 21.

Okay. And then calling your attention to page 9 there is a caption called learning and memory, is that

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correct?

A Yes.

Q And what is the conclusion with regard to learning and memory from the testing done by Dr. Fucetola?

A That Steven's short term memory was mildly to moderately impaired, particularly visual memory.

Q There's also on page 10 a section called summary of test results and conclusions, is that correct?

A Yes.

Q And what is the first sentence of that summary?

A His findings were that the neuropsychological data indicated mild to moderate deficits in visual memory and some aspects of higher level executive functioning.

Want me to continue?

Q That's enough. Now, you didn't perform the testing?

A No.

Q And you didn't analyze the raw data?

A No.

Q And you're not --that's not your job, right?

A No.

Q Okay. You indicated in response to questioning by Mr. Ketchmark that Bonnie Sandstrom was some times inaccurate about things that she told you?

A Yes.

Q Okay. I'm going to hand you what has been marked as

1 Defendant's Exhibit 18.

2 May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. ROGERS:

5 Q Tell us what that is?

6 A It says, Steven's birth certificate.

7 Q Did you obtain a copy of his birth certificate as a part
8 of your investigation?

9 A Yes.

10 Q And what had Bonnie told you about her marital status,
11 before you got the birth certificate, at the time that
12 Steven was born?

13 A She got married during the pregnancy.

14 Q Okay?

15 A To Mike.

16 Q And then you obtained the birth certificate?

17 A Yes.

18 Q And what does that tell you about that?

19 A She wasn't married. She lists her maiden name Bonnie
20 Ferguson and there is no listing of a father's name here.

2 MR. ROGERS: Your Honor, at this time I would Exhibit
2 21. No, 18. 18. I'm sorry.

2 MR. KETCHMARK: No objection.

2 THE COURT: 18 is admitted.

2 MR. ROGERS: Permission to publish, Your Honor?

1 THE COURT: Yes.

2 BY MR. ROGERS:

3 Q So this shows father's name is blank, is that correct?

4 A Yes.

5 Q It shows the mother's name as Bonnie Sue Ferguson?

6 A Yes.

7 Q And it shows that the person who is the informant is

8 Bonnie Sue Ferguson?

9 A Yes.

10 Q Mother of Steven?

11 A Yes.

12 Q And with regard to the drug use during pregnancy, had you

13 talked to other family members as well?

14 A Yes.

15 Q Talked to Barbara Trigg, Bonnie's mother?

16 A Yes.

17 Q Did she tell you she believed Bonnie was using drugs

18 during the pregnancy?

19 A Yes.

20 Q Now, with regard to crazy cousin Justin, you indicated

2 earlier that you thought that he probably could have been

2 yellow if you had to do two colors?

2 A Yes.

2 Q And that was based on information that he had shot himself

2 in the foot in front of Mr. Sandstrom?

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A Yes.

Q Information that he at least had been said to have attempted suicide?

A Yes.

Q And information that you were not able to verify that he was -

A Schizophrenic.

Q And schizophrenic and been hospitalized in a mental institution, is that right?

A Yes.

Q But had you gathered all of that information well before he came in here to testify against Mr. Sandstrom?

A Yes.

Q Do you have any idea what his role as a witness in the case was?

A No.

Q Ma'am, going back to Exhibit 20, the genogram. I'll zoom in on John Sandstrom being in red?

A Yes.

Q We talked about that at first, didn't we?

A Yes.

Q And you indicated that he's the only person who is red on there who was based on somebody saying that he dabbled with marijuana?

A Yes.

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1 Q So it's nothing we were trying to hide from anybody, is
2 it?

3 A No.

4 Q Thank you. That's all.

5 RECROSS-EXAMINATION

6 BY MR. KETCHMARK:

7 Q One question, Ms. Mason. Being a forensic social worker
8 I'm assuming the word crazy is something that is often
9 used in your profession to describe somebody with mental
10 health issues, is it not?

11 A Usually use more clinical terms.

12 MR. KETCHMARK: That's all I've got, Judge.

13 THE COURT: Thank you, Ms. Mason.

14 May she be excused?

15 THE WITNESS: Thank you very much.

16 THE COURT: You are excused.

17 Mr. Rogers?

18 (Witness excused.)

19 MR. ROGERS: Your Honor, Mr. Sandstrom rests.

20 THE COURT: Rebuttal?

2 MR. KETCHMARK: No, Your Honor.

2 THE COURT: Let's take a break.

2 Have you folks had an opportunity to talk among
2 yourselves to see whether you want to work past 5:00 p.m?

2 A JUROR: We have discussed it somewhat, Your Honor.

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1 We thought we would talk more about it as the case progressed
2 this afternoon. So if you would like an answer after the
3 break, we can give it to you.

4 THE COURT: All right. When we return we'll give you
5 your final instructions and then you will hear the closing
6 arguments and then you will commence your deliberations. So
7 the question for you now is, do you wish to stay past 5 today?
8 If not, do you wish to come back tomorrow? Answer those two
9 questions for me, if you would, please.

10 Don't discuss the case yet or make up your mind.

11 We'll be in recess for about 15 minutes.

12 (The following proceedings were had OUT OF THE
13 PRESENCE AND HEARING OF THE JURY:)

14 THE COURT: Yes.

15 MR. KETCHMARK: I was just talking with Mr. Rogers
16 about length of time. We were thinking probably 20 or 25
17 minutes would be sufficient.

18 THE COURT: All right.

19 MR. KETCHMARK: If that's agreeable with the Court.

20 THE COURT: 25. And then tell Eva how you want it
2 broken down and when you want your warnings.

2 (Recess)

2 (The following proceedings were had IN THE PRESENCE
2 AND HEARING OF THE JURY:)

2 THE COURT: Please be seated.

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1 I don't know whether those will fit in your notebooks
2 or not. Feel free to try to squeeze them in. If not, they are
3 clipped.

4 Mr. Whitworth, did you have an opportunity to speak?

5 A JUROR: Your Honor, we, the jury, have decided that
6 we will work past the 5:00 deadline today to try to reach a
7 decision in the case.

8 THE COURT: Thank you.

9 We have just handed you the instructions which
10 pertain to this phase of the trial. I have read Instructions
11 S1 through S6. I will begin reading S7. Feel free to turn to
12 S7 and follow along with me.

13 Again, some of these will sound familiar to you.

14 Nonetheless, I am required to repeat them.

15 (Instruction S7 through S19 were read by the Court.)

16 THE COURT: Following the instructions are the four
17 special verdict forms that are now familiar to you. I will not
18 take time to read them.

19 MR. KETCHMARK: May we approach?

20 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
21 PROCEEDINGS WERE HAD:)

22 MR. KETCHMARK: I don't know if it's just in the
23 packet I got, I was looking through the verdict forms on Count
24 5. My copy stops on page 13 and there's no 14, 15 or 16. I
25 just wanted to bring that to the Court's attention if that is

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1 similar to the Court's.

2 THE COURT: Yes.

3 MR. KETCHMARK: So we need a 14, 15, 16 which is
4 where they record their verdict on the certification pages.
5 I wanted to draw it to your attention so we can get
6 it corrected.

7 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

8 THE COURT: The attorneys have just pointed out to me
9 that the special verdict form for Count 5 is missing a few
10 pages. We will include those pages in the verdict book so
11 you'll have everything you need in the verdict book.

12 All right. Mr. Gibson.

13 MR. GIBSON: Thank you, Your Honor.

14 Good afternoon.

15 This is a nation of laws. Laws based on reason and
16 logic, not sympathy or prejudice which is why we do not empower
17 the families of the defendant or the families of the victim
18 with the decision that is before you.

19 Now, you recall that you have heard, recall all that
20 you have heard in the presentation of this case. And, ladies
21 and gentlemen, remember that the presumption of innocence
22 exists no longer. Your verdict has identified Steven Sandstrom
23 as a murderer, as a killer. A man who intentionally,
24 deliberately and willfully participated in the cold blooded
25 murder of another human being who just happened to be on his

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1 way to work. Because he was black and Sandstrom and Eye and
2 Rios believed that William McCay could identify them for what
3 had taken place at 9th and Spruce.

4 That is who he is today. He is a killer. His age is
5 not in dispute. The mental state, the required mental state as
6 identified for you on the verdict forms has already been
7 determined by you. You have found him to be guilty of a
8 premeditated murder.

9 Now, let's talk about the statutory aggravating
10 factor. What he wants you to do is give him credit for a
11 discussion in which he makes the deliberate choice to get with
12 the program. To follow Eye's lead. To pursue William McCay
13 and kill him. Does he expect to be treated like an individual
14 who says, whoa, man, you're taking it too far. I'm done. I'm
15 out of here. Like Vincent Deleon? Like Jonnie Renee Chrisp?
16 That's what he's asking you to do. To give him credit for
17 discussing it, thinking about it and going along with the
18 program.

19 And Mr. Rogers doesn't want you to account for the
20 conversation that happened in the car in terms of the timing.
2 The testimony was not that it was two minutes in between shots.
2 6:00 a.m. 6:12. And the discussion that they want to wave in
2 front of you repeatedly as kind of evidence that he wasn't on
2 board, had to take place during that time frame. Before he
2 hops on board and they finish off William McCay.

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1 That is substantially more than the minimum required
2 for premeditation which can form in an instant. The thought
3 process that it takes for me to formulate the intent to kill,
4 the nerve impulse from my brain to my hand to pull the trigger,
5 definitely more than that, substantially more than that. And
6 there is no doubt about that.

7 Now, ladies and gentlemen, recall as I said in my
8 opening, recall from the evidence, this doesn't happen without
9 that defendant. This doesn't happen. His gun, his discussion
10 of his shooting at the 7-Eleven. That's what starts this whole
11 ball rolling. His dirty duece duece. His gun that took the
12 life of William McCay. His gun that he handed to Eye. And,
13 again, he somehow wants credit for not handing it to him
14 faster. Give me the strap.

15 You don't have the heart.

16 Give me the strap.

17 You don't have the heart is not the same as don't do
18 it. Let's not go down this road. It's, come on, man, I don't
19 think you've got the guts. He's egging him on.

20 It was Sandstrom driving the stolen Intrepid, both at
2 the time of McCay's murder and afterward, leading the way to
2 dispose of the evidence so that we couldn't bring it in here to
2 court. If not for Sandstrom, William McCay would be alive
2 today.

2 Vincent Deleon had sufficient time to get out of the

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1 car. Jonnie Renee Chrisp had time to get out of the car. And
2 they weren't even participating in a discussion about should
3 we? Shouldn't we? I don't know. They just needed to hear
4 what the general gist of the conversation was and they were
5 gone.

6 Recall how, recall in Mr. Roger's opening, today, how
7 he said to you, after the first shooting, as indicated by your
8 evidence he wants to talk about the not guilty regarding the
9 first shooting. And Mr. Roger's exact word were, well, no
10 harm, no foul. They could have gone home right then. No harm,
11 no foul. Multiple shots fired at an innocent man walking on
12 the way to work. No harm, no foul, Mr. Rogers says.

13 Ladies and gentlemen, you didn't find no harm, no
14 foul. Whether Sandstrom was on board at the 9th and Spruce
15 Street shooting, he was definitely on board for the one at 9th
16 and Brighton and your verdict so determined.

17 Now, the non-statutory aggravators, ladies and
18 gentlemen, you heard from William's family. You heard about
19 the loss. You heard about William being ripped from existence
20 and being ripped from his family. And that is a factor to be
2 considered. That is a factor, a circumstance about this crime,
2 about the heinousness of this offense. That the defendant
2 intentionally selected William McCay as the object of the
2 offenses in Count 3 because of the actual perceived race of
2 William McCay. You have already found that. And the evidence

1 at trial already established that.

2 Now, let's come to a particularly colorful one for
3 Steven Sandstrom, that the defendant voluntarily and
4 intentionally obstructed and impeded and attempted to obstruct
5 and impede the administration of justice during the course of
6 the investigation.

7 Sandstrom leads the way to dispose of the Intrepid.

8 You have already made findings regarding his participation in
9 the obstructive conduct afterward. But it gets worse.

10 Sandstrom brings his own sister into involvement by instructing
11 her to retrieve the murder weapon and dispose of it. His own
12 sister. We didn't bring her into this, ladies and gentlemen,
13 he did. His repeated threats to Regennia Rios. His
14 solicitation of his cousin to kill Regennia Rios and Vincent
15 Deleon and Larry Stanley. If this man had had his way, three
16 more individuals would be dead. But he didn't even stop after
17 posing that because in the absence of finding Regennia Rios,
18 and we even had mom out looking for Regennia Rios, in the
19 absence of finding her, let's make a demonstration, Justin.

20 Let's go get mom. She'll understand what that means.

2 Listen, remember to the sound of Sandstrom's voice on
2 the recorded calls. Remember how he instructed Kristina and
2 Jonathan Chirino. These were not half-hearted attempts. These
2 were repeated, concerted attempts to frustrate justice.
2 Sandstrom went above and beyond to demonstrate the

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1 lengths to which he would go to obstruct justice. In his own
2 words, if Justin Buchanan had not been caught, if Justin
3 Buchanan had not been intercepted the date for his release, the
4 entire complexity of this case would be very different. This
5 was no joke. Buchanan is still waiting for sentencing for his
6 role.

7 The risk of future dangerousness. Now, I'm
8 particularly mystified at the mitigator that appears in your
9 instruction booklet about how the defendant has shown remorse.
10 Because I haven't heard it and I suspect that you have not
11 either. Because there is not a single shred of evidence in any
12 proceeding that Steven Sandstrom indicated one bit of remorse.
13 Let's look at what he did say, however, and it is very
14 interesting to me and I suspect to you as well. That we can
15 rely on Steven and his family for the self-serving statements
16 they make regarding his mitigation story, but we cannot rely on
17 Sandstrom's own words in a private dialogue with his cousin,
18 who he trusts enough to solicit to kill witnesses. Don't
19 believe that conversation. That was meant for private ears.
20 Believe what we're telling you now that we got it coming into
2 court and we're trying to spare him.

2 Ladies and gentlemen, Government's 166, and I would
2 submit this also strikes to the heart of the mitigation
2 evidence that has been presented to you today. When I was
2 young a lot of older people tried to tell me to stop my shit

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1 and to leave these cars alone. I didn't listen. I thought I
2 knew it all. Don't be hard-headed like I was. You see how a
3 little fun and games turned into a murder with me and Gary. If
4 there was a shred of remorse in that individual's heart, would
5 the phrase fun and games appear anywhere in a description of
6 the events at 9th and Brighton? They were playing a game
7 called, nigger, nigger, nigger. And the constant references to
8 the game afterward between the two of them suggests there was
9 no remorse here at all.

10 And what else is this telling you? I made these
11 choices. This letter doesn't say my great-grandfather drank
12 alcohol, therefore I'm at 9th and Brighton doing a shooting.
13 It doesn't say that. It doesn't say, it's my grandmother's
14 fault. My father's. My uncle's fault. My sister's fault. It
15 doesn't say that. It says, I made a decision. I made a
16 decision. This isn't about Sandstrom's family. They are not
17 on trial here. They are not on trial here, as we discussed
18 before. We are all shaped by our environments. No doubt. But
19 some of the Sandstrom family had a better environment and made
20 bad choices. Although no one that you heard about made choices
21 as bad as the one that he elected to participate in.
22 Stevie's own words, Government's Exhibit 121. What
23 the fuck. Do I have to snap and kill somebody or beat the case
24 worker's ass to get their attention or what? They've got me
25 fucked up. By Friday they better call me or I'm going to show

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1 my ass. Well, I'm sure the corrections officers and the social
2 workers in the prison are looking forward to that.
3 April 29th, Government's Exhibit 124, letter of 2005.
4 I ain't having no 45, just a dirty duece duece. Smiley face.
5 But I get you all the way together with nine of them deals,
6 reference to bullets, revolver, but nice. Believe me, that
7 deal was an M weapon all the day. Quiet. And nine shots for
8 that ass and no kick at all. I backed six rugs off me at the
9 mall when I took their Durango. I was like who wants it first?
10 I got nine for you.
11 Now, ladies and gentlemen, you've seen a lot of
12 photographs today. And the defense doesn't have to prove
13 anything. Ever. They don't have to prove anything. They
14 didn't have to come forward. But if they choose to put on
15 mitigation evidence then they do carry some burden of proof.
16 And when they do choose to put on evidence then we're allowed
17 to comment on that evidence. What did they show you? Where
18 are the photographs in the home of Stevie's African-American
19 friends? Where are those? What are we shown instead? Photos
20 of Stevie's father in prison with an African-American inmate in
21 prison who he has a drug relationship with. Could it be more
22 transparent than what was presented here today?
23 Those photos you did see about a childhood, every
24 single one of us here could produce a photograph of an infant,
25 of a child, of a birthday party, and guess what? You saw

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1 exactly that. An individual among his family, happy, content.
2 And so what are we to think with that? What are we to do with
3 that? Is that some how an excuse, an explanation for what
4 happened at 9th and Brighton? Or, or is it a reflection of his
5 decisions to make different choices than Stephanie made,
6 different choices than Jonathan made. Jonathan took this
7 witness stand today said I saw the decisions they made. I'm
8 not going to make the same ones. His grandmothers, both of
9 them, took the stand and told you, we tried our best. We did
10 our best. We gave structure to our kids. But, unfortunately,
11 their kids made decisions. Decisions. That's what this is
12 about. Personal responsibility.
13 You see how a little fun and games turned into a
14 murder with me and Gary. Ladies and gentlemen, if you don't
15 think of anything else, remember that a man's life was taken.
16 And this defendant, Steven Sandstrom, committed that
17 crime on March 9, 2005. He was an adult. He was a man. He
18 made a man's choice. And this proceeding is about holding
19 Steven Sandstrom accountable for those choices.
20 No. We didn't hear a whole lot about Steven
2 Sandstrom this afternoon. We heard about this giant family
2 tree. Why can't we hear about Sandstrom? It's not his
2 grandmother's responsibility or his great-grandfather that put
2 him in that car at 9th and Brighton.
2 Ladies and gentlemen, the criminal justice system,

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1 the guilty are to be punished. And the victims made whole, if
2 possible. But we can't bring William McCay back. We can never
3 restore to the McCay family what they lost. The system,
4 however, also offers opportunities for rehabilitation, for
5 education, for vocational opportunities. And guess what? This
6 individual has been put in a circumstance to take advantage of
7 those opportunities since he was 16 by his own evidence. He's
8 been institutionalized for most of his life. But, ladies and
9 gentlemen, when is the end of the line? When do we stop moving
10 the goal post? When is enough enough? He should have had
11 every message before he got to this point. Before he got to
12 this point.

13 Ladies and gentlemen, a life sentence for Steven
14 Sandstrom is returning him to his room. The same room he's
15 occupied since he was 16, on and off. He has earned this
16 sentence, ladies and gentlemen. Give him the sentence that he
17 has earned. Thank you.

18 THE COURT: Mr. Rogers?

19 MR. ROGERS: Thank you, Your Honor.

20 May it please the Court.

21 What the fuck are you doing? Go get Gary. Their
22 witness, Regennia Rios, describing the state of shock in which
23 Steven Sandstrom was. As Gary Eye shot and killed William
24 McCay.

25 What did Steve do? He did then what he had been

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1 doing for the last two minutes. He followed orders. He pulled
2 around the corner. He stopped. Gary jumped in the car. Off
3 they went.

4 You know, you are now at a phase where the rest of
5 your job can be pretty simple. Because the first real issue
6 you have to decide here is the issue of the statutory
7 aggravating factor, substantial planning and premeditation.
8 Not just premeditation. This is not something you have already
9 found. You know, at the first part of the trial you were given
10 a bunch of instructions. And one of those instructions talked
11 about how somebody can be responsible for somebody else's
12 actions. How you can be aiding and abetting. And you sent
13 back a question to show you were thinking about that. And
14 asking about that. And the question was whether the aiding and
15 abetting instruction applied to the mental elements of malice
16 aforethought and premeditation. And the judge couldn't answer
17 your question. And you did end up finding Steven Sandstrom
18 guilty of these counts we're talking about today. But you
19 found him not guilty of the shooting at 9th and Spruce, the
20 alley shooting. Even though you found Gary Eye guilty of that
2 shooting.

2 So you haven't heard from the prosecution about, oh,
2 they were planning and scheming and deciding that they were
2 going to go around and find a black person to kill because they
2 can't attribute that to Steven Sandstrom because Steven

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1 Sandstrom has been found not guilty of that. So now, what are
2 they saying?

3 Well, they're back to their twelve minutes. You
4 remember the evidence, not what they have argued three times
5 now or four, maybe, how many, about twelve minutes. You
6 remember the actual evidence, the actual testimony. Remember
7 Regennia Rios, who was there and who described every move that
8 was made and every word that was said from the alley shooting
9 until the end of the 9th and Brighton incident when she tells
10 Steven Sandstrom, go get Gary. And wakes him up out of the
11 shock. You heard her testimony. And her testimony and she was
12 asked, straight out by Mr. Osgood, how long do you think it
13 took? From shooting at the alley until you were at 9th and
14 Brighton and she said less than two minutes.

15 Well, think about it. There's already been some
16 testimony about the distances involved. Four-tenths of a mile
17 from the alley to 9th and Brighton. But you also have to add
18 in a little bit distance to go around the block and to go up to
19 8th Street and over 8th on Van Brunt, over to Brighton, back
20 down to 9th. So say there's what, three/quarters of a mile, 30
2 miles an hour, minute and a half, right? That's 30 miles an
2 hour. That's not High-speed at the wheel. That's 30 miles an
2 hour. Minute and a half. There may be stop signs, stop
2 lights. People might stop for stop lights if they're going
2 from one shooting to another. But still you're under two

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1 minutes, just like Regennia said. This twelve minutes is a
2 concoction to try and make it seem like more than it was. And
3 if they think they proved their statutory aggravating factor
4 beyond a reasonable doubt, they wouldn't need to concoct twelve
5 minutes.

6 Let's remember what Regennia said was going on here.
7 She said at the time of the shooting Steve pulls out, going
8 west on 9th Street. Gary says, hit the block. Steve is
9 freaking out. Says to Gary, man, you're tripping. What are
10 you doing? You took it to a whole new level. You remember the
11 evidence. Go quickly around the block and there's nobody
12 there. That's when the conversation of, go find him, occurs.
13 That's when that conversation occurs. And it's not a long
14 conversation. And Steven Sandstrom looks back to Regennia,
15 wondering what to do. And, yes, he does go along with her. He
16 does what she tells him to do. Go get him. He saw our faces.
17 We could catch a case. Go get him. And Steve goes. That's
18 not the statutory aggravator. In fact, that might be enough to
19 impute Regennia's and Gary's premeditation to Steve in the
20 first part of the trial. But that sure is not enough to prove
2 beyond a reasonable doubt that he's engaging in substantial
2 planning and premeditation. And not or.
2 Planning means mentally formulating a method for
2 doing something or achieving some end. Premeditation means
2 thinking or deliberating about something and deciding whether

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1 to do it beforehand. Substantial planning and premeditation
2 means a considerable or significant amount of planning and
3 premeditation beyond the minimum required for the commission of
4 the offense.

5 Steve Sandstrom didn't plan a thing. Go get him.

6 He's seen our faces. We could catch a case. Less than 4
7 tenths of a mile to Van Brunt. Turn left. One block to 8th
8 Street. Turn right. One or two blocks, however long it is to
9 Brighton. Turn right. Less than a block. Pull over, before
10 they get to 9th Street. Not a plan by Steve. Steve is driving
11 the car. He's doing as he's told. He's still in shock
12 according to Regennia.

13 So if you go back and commence your deliberations and
14 you start as Steve Sandstrom was --was he over 18 years old at
15 the time? Yeah, he was. We stipulated to that. We have his
16 birth certificate if there is any doubt about the accuracy of
17 the stipulation. Sure, he was.

18 And then they have the mental factors as they call
19 them. And they're probably less, there's two different things
20 going on. In a sense those are less thoughtful mental factors
21 than the first stage of the trial. Because you don't have to
22 intend to kill somebody. You don't have to have malice, etc.
23 etc. But they also cannot be, they have to be personal,
24 personal factors imputed to Steven Sandstrom. I suggest you
25 don't waste a whole lot of time talking about those unless

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1 there's somebody who says, hey, it's not there and I'm never
2 going there, in which case you're done.
3 But then you get to the statutory aggravating
4 factors. And there is where you need to think about it. You
5 need to talk about it. You need to look at the evidence and
6 remember the evidence from the first part of the trial. And
7 then you take a vote and see whether you unanimously agree that
8 the government has proved beyond a reasonable doubt that Steven
9 Sandstrom acted, Steven Sandstrom committed the offenses after
10 substantial planning and premeditation to cause the death of
11 William McCay.
12 If there is not unanimous agreement on that issue,
13 what do you do? What does the law tell you to do? What does
14 justice and your oath as jurors demand that you do? Well, it
15 says if you do not unanimously make that finding in the
16 affirmative, you should so indicate on Section 3 on page 4 of
17 the special verdict forms and follow the directions at the
18 bottom of page 4. No further deliberations will be necessary.
19 Here's page 4. Do you, the jury, unanimously find
20 that the government has established beyond a reasonable doubt
2 that the defendant committed the offense of whatever count it
2 is, resulting in the death of William McCay after substantial
2 planning and premeditation as set out in Instruction S10?
2 Check yes. Check no. If you don't unanimously find it, if six
2 people say yes and six people say no, or three people say yes

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1 and nine people say no. Or eleven people say yes and one
2 person says no, you check the box no because you don't
3 unanimously find it. The foreperson signs it. You cross out
4 the other sections like it says in the instructions on the
5 bottom of the page and you go to section 7 and sign the
6 appropriate certification. The end. Go home.

7 Steven Sandstrom has been held responsible for his
8 conduct for his role in the death of William McCay. Steven
9 Sandstrom will never ever see the unfettered light of day. He
10 will live out his days and die in a United States penitentiary.
11 You've already decided that when you found him guilty of Count
12 5 because that's, as the instruction tells you, there's only
13 two possible punishments for Count 5. One is death. One is
14 life in prison. You're required to choose, I guess, between a
15 life in prison count and parole but there is no parole. There
16 is no difference. If there is no parole, life in prison is
17 life in prison. So he's never getting out. Your choice will
18 be which punishment. He has been held and will continue to be
19 held accountable and responsible. He's not getting away with
20 anything, as you all know.

2 Like I said earlier, I could sit down and shut up at
2 this stage because there's no way that all twelve of you, being
2 as thoughtful as you have been and hard working as you have
2 been, are going to agree that they proved substantial planning
2 and premeditation beyond all doubt. But I'm not going to shut

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1 up. Don't worry. I will continue to talk. It's what I do.
2 Let's talk, first of all, one more thing about
3 substantial planning and premeditation. Let me read once again
4 the definition. Planning means mentally formulating a method
5 for doing something or achieving some end. Clear that the
6 method of driving was not formulated by Steve but was told to
7 him by Regennia and Gary. Premeditation means thinking or
8 deliberating about something and deciding whether to do it
9 beforehand. It's not just a coincidence that the word
10 deliberate appears in that definition. And the word
11 deliberating describes what you people did last week in the
12 guilt or innocence part of the trial. You found Steve guilty
13 of everything except the 9th and Spruce alleyway shooting. And
14 what you did earlier this week with regard to Gary Eye when you
15 assessed punishment of life imprisonment without possibility of
16 release for all the counts for which you were to decide
17 punishment.
18 And how did you go about deliberating? You sat and
19 thought about it, talked about it. You weighed one. You
20 weighed the other. You deliberated. And it took some time.
21 Now, yes, premeditation can be formed in a short time
22 I believe. I don't believe it can be done in an instant but it
23 can be done in a short time. Deliberation seems to take a
24 different quality. And it's quality, not quantity. There's no
25 question. Two minutes is time enough to deliberate. It's time

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1 enough to substantially plan if all you're talking is time.
2 The issue is, have they proved beyond a reasonable doubt that's
3 what Steve did? And the answer is, no, they haven't. Because
4 he didn't.
5 Let's go on and talk about the other factors. Talk
6 about their non-statutory aggravating factors. No question
7 that William McCay is a unique individual who has been taken
8 from this world. Like the government says, there's nothing you
9 can do, nothing I can do, nothing anybody can do to bring him
10 back. Our hearts go out to his family. Our hearts go out his
11 brothers and our hearts go out to his mother, who has been here
12 most of the trial.
13 Second one is that the defendant intentionally
14 selected William McCay because of actual perceived race, color,
15 national origin. Once again, at this stage it cannot be
16 imputed. Last week, you could impute to Steven Sandstrom the
17 motivations of Gary Eye if Steven was going along with the
18 program of Gary. You can't do that today.
19 Listen extremely or read extremely carefully the
20 third and fourth aggravating factors. Because the third factor
2 is the defendant voluntarily and intentionally obstructed and
2 impeded and attempted to obstruct and impede the administration
2 of justice during the course of the investigation into the
2 offenses contained in the indictment.
2 Nothing in there about after the indictment has been

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1 returned and he's sitting in jail and writing stupid letters to
2 his cousin Justin, is there? Yeah, there's no question about
3 him torching the car, him and Gary together, because the train
4 guy saw two people. No question that he sent the letter to
5 Carolyn Galyean which she ended up giving to Regennia Rios.
6 But those letters to Justin, that happened in November and
7 October, October and November of 2005, do not support this
8 factor because they're after the investigation is over. And
9 they were uncovered in the course of what the government calls
10 collateral investigation into threats on witnesses. That's not
11 what this is about.

12 I also submit to you that those letters are puffery.
13 Bluster. Braggadocio. Just like his claim to have beat up six
14 guards when they're the ones who put him in the hospital. Just
15 like his claim to have taken a Durango, which is a kind of
16 sport vehicle or Dodge SUV, taken it from six people at gun
17 point at the mall. There's no such case. Just like his claim
18 to have shot at somebody at the 7-Eleven on March 8th. Didn't
19 happen. Talked to the people at 7-Eleven, didn't hear any
20 shots. Steven Sandstrom has a big mouth. And some times his
2 big mouth is expressed through his big pen. But that doesn't
2 mean it happened. And it's certainly not a reason to kill him.
2 Fourth, future dangerousness based upon the
2 probability that he would commit criminal acts of violence that
2 would constitute a continuing threat to others as evidenced by

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1 his lack of remorse for the offenses committed in this case.
2 Well, where is there evidence of that? You heard the
3 testimony of Kristina Chirino. You heard Kristina Chirino say
4 that after this killing, when he wasn't in jail, when he wasn't
5 bragging to his crazy cousin or anybody else, he got upset.
6 She could tell something was bothering him. When he called her
7 from the jail, he cried. When she visited him in the jail and
8 they talked about the offense, he cried. That's evidence of
9 remorse.
10 But better evidence of remorse is the government's
11 own exhibit that they claim shows lack of remorse. Because
12 what's he doing in this whole letter? And you need to get this
13 whole letter and read it. His whole letter to Jonathan
14 Chirino, Kristina's little brother. He's saying, look, I
15 screwed up. I stole cars. People told me quit stealing cars.
16 I was too hard-headed to listen. Don't you be like me. Don't
17 be too hard-headed to listen. You know, fun and games, and
18 he's not talking about some made up game by Vincent DeLeon
19 about nigger, nigger, nigger. Nothing like that in there. Fun
20 and games, stealing cars, led me and Gary to a murder. He's
2 talking about, I was out doing my thing, stealing cars, riding
2 around with Gary. And now, here I am in jail. That shows
2 remorse. It shows that he's learned.
2 Look at all of the mitigating factors, if you get
2 there. Very first mitigating factor is the ultimate, the

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1 heaviest, most weighed, Gary Eye and Regennia Rios are equally
2 culpable or more culpable in the crime and will not be punished
3 by death. You decided that Gary Eye will not be punished by
4 death. There is no question he's more culpable. Regennia Rios
5 admitted on the witness stand that she's more culpable and she
6 will not be punished by death. It would be totally unjust and
7 unfair to kill Steven Sandstrom when they gave her a pass.
8 Steven Sandstrom does not have a prior history of
9 violent or assaultive behavior. Well, you heard the evidence.
10 They bring his sister to testify against him. And
11 she was a witness and there's no question that she was an
12 important and essential witness. But think what it would do to
13 her. I mean, this is a screwed up family. There is no doubt
14 about it. This family puts the dis in dysfunction. But think
15 what more it would do to Stephanie, the person who as a result
16 of this case, has done something to try and turn her life
17 around. If based on her testimony and that of the cousin,
18 Justin, her brother is executed? That's a powerful mitigator.
19 The rest of his family.
20 You know, Jonathan was 13 back in March of 2005. He
21 was on the cusp. Already started riding in stolen cars.
22 Getting in trouble. Kind of at the stage that Steve was at
23 when he was 13. Maybe the one good thing that has come out of
24 this entire thing, and I don't suggest that it's worth the life
25 of William McCay or anybody else, but the one good thing might

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1 be that Jonathan has not gone the way of drug abuse, crime that
2 they were raised in.

3 All of the mitigating factors are here. They're
4 strong. They're powerful. This is not a case and this is not
5 a person that calls for the death penalty. You know, talk
6 about mercy. Shakespeare said, the quality of mercy is not
7 strained. It droppeth like the gentle rain from heaven upon
8 the place beneath. It is twice blessed. It blesseth him who
9 gives and him who receives.

10 Mercy is not earned. Justice is earned. Mercy
11 tempers justice. And it blesses you when you extend it, as you
12 did to Gary Eye. And it blesses Gary Eye when he receives it.
13 Steven Sandstrom is responsible, is held responsible.
14 Steven Sandstrom asks of you your collective justice and your
15 individual mercy. Choose life.

16 THE COURT: Mr. Ketchmark.

17 MR. KETCHMARK: Thank you, Your Honor.

18 Ladies and gentlemen, just like Mr. Sandstrom asks
19 for your mercy, Mr. McCay didn't get a chance to ask for his
20 life. He didn't get a chance to ask for mercy.

2 Starting with Mr. Rogers' discussion of the statutory
2 aggravating factor. I lost Mr. Rogers in his argument when he
2 starts talking about the fact that driving cannot be part of a
2 purpose or part of a plan. And I would submit to you that it
2 is clear that as soon as the decision is made, and I respect

1 your verdicts on not finding Mr. Sandstrom guilty of being
2 involved in the alleyway shooting. But as soon as he signs up
3 for the program and knows what's going to happen, he knows from
4 being with Mr. Eye throughout the course of the evening that
5 there was no doubt when that gun was pointed out the window
6 after those shots were fired, soon as the shots began to ring
7 out, it's clear what Mr. Eye was intending to do. And the
8 discussion about taking it too far, the discussion about
9 hesitation, is reflection and deliberation on his part. And
10 once he begins driving to the second location, driving with a
11 purpose is planning. And to suggest that driving is not
12 because it wasn't his plan or his purpose, look at the
13 instructions. It is clear in Instruction 10 when it talks to
14 you about what is required to find planning. It's achieving
15 some goal or end. Is there any dispute that when they left the
16 location after they get back to the alleyway, what they were
17 going to do when they found him? They were going to kill him.
18 They were going to kill him because he's a black man. They
19 were going to kill him because he was using the street. And
20 they're going to kill him to silence him as a witness. And the
21 time that it takes to get from that location following those
22 discussions, to where Mr. McCay is ultimately found, and killed
23 in cold blood, is more than enough to find what you need to
24 under the statutory aggravating factor.
25 Now, this discussion that Mr. Rogers starts both his

1 opening and his closing with, what the fuck are you doing?
2 Gary, I ask you, from the time that Mr. Eye gets back into the
3 car, who is the driving force behind what happens next? They
4 go to Sandstrom's house to get the stolen car. Sandstrom leads
5 to the location where they burn the Intrepid to destroy it as
6 evidence. Sandstrom keeps the trophy, the gun. Sandstrom is
7 the one whose got that in his possession when the cops are
8 tracking him down a week later, when he's at his girlfriend's
9 house and he has to hide it. Sandstrom is the one who puts his
10 sister in this case. It's not the government. The government
11 is doing its job, by running down information to bring in and
12 put these witnesses, whether they're family, friends, it's
13 about the truth. And that's where it comes down to the most
14 important thing, from our standpoint as the government, how can
15 we reconcile and come to you as a jury and ask you to entertain
16 the most serious punishment against Mr. Sandstrom when it's
17 clear that he wasn't the shooter?
18 Knowing that you deliberated. Knowing that you
19 deemed to be just the punishment of life on Mr. Eye. And the
20 question becomes then how can there be, when you look at the
2 individualized punishment, how can there be a more serious
2 punishment to be sought against the man whose finger was not on
2 the trigger?
2 And, ladies and gentlemen, we talked to you in voir
2 dire and we talked to you in voir dire about whether you all

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1 could apply the law and if you were in a position where you had
2 to make this decision, would you automatically exclude the
3 person whose finger was not on the gun. And every one of you
4 indicated that you wouldn't. Now, I understand that the
5 mitigator now with a respect to more culpable or equally
6 culpable person is getting life and that's Mr. Eye. So then
7 you have to ask yourself and we have to ask ourselves how can
8 I, in fact, come in here and make this argument? And the
9 important thing in looking at your verdict and, obviously, we
10 weren't party to your deliberations. But in looking at your
11 verdicts and looking at what you returned on Mr. Eye for his
12 involvement, and those non-statutory aggravators that you
13 returned and more importantly, the non-statutory aggravators
14 that you did not return. You did not return on Mr. Eye a
15 non-statutory aggravator on the obstruction of justice. And I
16 submit to you, Mr. Gibson forcefully submitted to you, that had
17 this defendant, Mr. Sandstrom, gotten his wish, had he gotten
18 what he was asking for, there would have been several people in
19 addition to Mr. McCay who would have lost their lives. And to
20 suggest it is puffing and it is a joke is insulting.

2 Did anybody tell Mr. Buchanan, hey, I'm just letting
2 off steam. Don't be taking me seriously. Mr. Buchanan has
2 already pled guilty to this. He knew. He knew.

2 MR. ROGERS: Objection. Improper argument. May we
2 approach?

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1 THE COURT: Overruled.

2 MR. KETCHMARK: Mr. Buchanan knew what this defendant
3 was asking of him. Remember the correspondence, dawg, the
4 paper trail is a mother fucker. I got you. I understand.
5 Quit writing me. I got it. Is that a joke? Is that puffing?
6 So when you factor that in to the appropriate
7 disposition and punishment on Mr. Sandstrom, and if you look at
8 Instruction 3, S3, and it defines those terms. And it tells
9 you the word to aggravate means to make worse or more offensive
10 or to intensify. And an aggravating factor then is a fact or
11 circumstance which would tend to support the imposition of the
12 death penalty.

13 Ladies and gentlemen, his conduct before, he might
14 not have been the trigger man. He might not have been the one
15 who fired those initial shots in the alleyway. But his conduct
16 after is substantially more egregious than that of Mr. Eye.
17 Because he wanted to not only obstruct the process by killing
18 Mr. McCay as a witness, by disposing of the gun, by burning of
19 the vehicle, but to take it to the next level and to kill more
20 people, one of which was Ms. Rios' mom, who wasn't even
2 involved as a witness.

2 So I ask you, when you go back and you weigh all of
2 the information, you collectively have to decide what justice
2 is. You have to decide what is an appropriate punishment.
2 What is a just punishment. And what is the right punishment.

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1 And I ask you to do what you've already done twice
2 before. To be deliberate. To be thorough. And to be just.
3 Thank you.

4 THE COURT: Mr. Quatrocky and Ms. Drew, thank you
5 again. You are, of course, welcome to remain in the building
6 and await the ultimate outcome. But you are now excused.
7 As a final word, until the jury reaches its verdict
8 you should not discuss the case or read any news reports about
9 it.

10 And now it is time for you to go to work again.

11 We'll be in recess until we hear from you.

12 (At 4:50 p.m., the jury retired to deliberate on its
13 verdicts.)

14 (The following proceedings were had OUT OF THE
15 PRESENCE AND HEARING OF THE JURY:)

16 (A discussion was had off the record.)

17 MR. ROGERS: I just wanted to state for the record my
18 grounds for objection during Mr. Ketchmark's part of closing.
19 I think it's improper to imply the guilt of the guilty plea of
20 Justin Buchanan and that's what he was arguing.

21 THE COURT: Maybe what you heard is not what I heard.
22 The objection is still overruled.

23 MR. ROGERS: If you sustain it now, are we going to
24 bring them back?

25 THE COURT: We'll be in recess, folks.

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1 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

2 (At 6:55 p.m. the jury returned to open court with
3 its verdicts.)

4 (The following proceedings were had OUT OF THE
5 PRESENCE AND HEARING OF THE JURY:)

6 THE COURT: Thank you. Be seated, please.

7 I am told that there are verdicts in this case. In a
8 moment we'll bring the jury in. I need to repeat what I said
9 before and that is that I will not tolerate outbursts,
10 emotional or otherwise. And if there are any, the court
11 security officers and marshals are directed to escort the
12 persons from the courtroom.

13 Let's bring the jury in.

14 Do you want the jury polled?

15 MR. ROGERS: No, Your Honor. We'll waive polling the
16 jury.

17 MR. KETCHMARK: No.

18 THE COURT: I'll go to Section 6 of the verdict forms
19 again. I will make certain that they have made the predicate
20 findings.

2 MR. KETCHMARK: Yes.

2 (The following proceedings were had IN THE PRESENCE
2 AND HEARING OF THE JURY:)

2 THE COURT: Please be seated.

2 Mr. Whitworth, have you completed your work?

1 THE FOREPERSON: We have, Your Honor.
2 THE COURT: Would you, please, hand the verdict book
3 to Ms. Fees?
4 The verdicts are in proper order.
5 The predicate findings have been made by the jury so
6 I will turn directly to Section 6 of each of the four special
7 verdict forms.
8 The first part of Section 6A reads as follows. We
9 determine by unanimous vote that a sentence of death shall be
10 imposed. And the jury has marked, no.
11 6B. We determine by unanimous vote that a sentence
12 of life imprisonment without the possibility of release shall
13 be imposed. The jury has answered, yes.
14 The jury's verdict on Count 4 follows. They
15 determine that the appropriate sentence is life imprisonment
16 without the possibility of release.
17 The jury's verdict as to Count 5 also follows form.
18 They have determined that a sentence of life imprisonment
19 without the possibility of release shall be imposed.
20 And as to Count 6, the jury makes the same finding.
2 So on each of the four counts the jury is
2 recommending by unanimous vote a sentence of life imprisonment
2 without possibility of release.
2 I'll ask that a presentence report be prepared both
2 with respect to Mr. Eye and Mr. Sandstrom.

1 Is there anything further before this jury is

2 discharged?

3 MR. KETCHMARK: Not on behalf the government, Your

4 Honor.

5 MR. ROGERS: Not on behalf of the defendant, Your

6 Honor.

7 THE COURT: Thank you, ladies and gentlemen very,

8 very much for your hard work. If you'll remain in the jury

9 room for just a few minutes, I'll come in and we'll talk.

10 You are now discharged.

11 (The following proceedings were had OUT OF THE

12 PRESENCE AND HEARING OF THE JURY:)

13 THE COURT: Folks, we are adjourned.

14 * * *

15 CERTIFICATE

16 I certify that the foregoing is a correct transcript from the

17 record of proceedings in the above-entitled matter.

