

**VIRGINIA:**

**IN THE COURT OF APPEALS**

**TERRENCE JEROME RICHARDSON,**  
**Petitioner,**

**v.**

**Record No. 0361-21-2**

**COMMONWEALTH OF VIRGINIA,**  
**Respondent.**

---

**COMMONWEALTH'S EXHIBITS  
TO HER ANSWER TO THE  
PETITION FOR A WRIT OF ACTUAL INNOCENCE**

---

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**TABLE OF CONTENTS**

Exhibit A – Indictment ..... 1

Exhibit B – Documentation Reflecting Firearms Charge Was Nol Prossed ..... 3

Exhibit C – Federal Indictment ..... 5

Exhibit D – Federal Trial Transcript ..... 9

Volume I ..... 9

Volume II ..... 177

Volume III ..... 560

Volume IV ..... 820

Volume V ..... 968

Volume VI ..... 1017

Volume VIII ..... 1244

Volume IX ..... 1252

Exhibit E – VSP Interview with Shannequia Gay, May 13, 1998 ..... 1263

Exhibit F – ATF Investigation Report, Interview with Shannequia Gay, Oct. 29, 2000 ..... 1265

Exhibit G – OAG Interview Report, Sharon Gay Turner, August 19, 2021 ..... 1267

Exhibit H – OAG Interview Report, Greg Russell, August 21, 2021 ..... 1269

Exhibit I – OAG Summary Regarding Attempts to Contact Shannequia Gay .. 1272

Exhibit J – Federal Notice Regarding Shannequia Gay ..... 1275

Exhibit K – ATF Investigation Report, Interview with Shannequia Gay, Sept. 19, 2000 ..... 1277

Exhibit L – 8News Investigates: Not Guilty? Sentenced to Life, WRIC News, Jan. 8, 2017 ..... 1281

Exhibit M – OAG Interview Report, David Chappell, Esq., August 18, 2021..	1308
Exhibit N – OAG Interview Reports, David Boone, Esq., Sept. 13, 2021 and Oct. 13, 2021 .....	1310
Exhibit O – OAG Interview Report, Deputy Tommy Cheek, Sussex County Sheriff’s Office, Aug. 23, 2021.....	1313
Exhibit P – OAG Interview Report, Valerie Patterson Ricks, Aug. 23, 2021 ..	1316
Exhibit Q – OAG Interview Report, Terry Ann Stevens, Aug. 31, 2021 .....	1318
Exhibit R – Document from Sussex County Sheriff’s Office file with Handwritten Phone Message Tips from Virginia State Police .....	1320
Exhibit S – Handwritten Statement, Leonard Newby, April 26, 1998.....	1321
Exhibit T – VSP Interview Report, Troy Seabome, April 27, 1998.....	1322
Exhibit U – VSP Interview Report, Troy Seabome, May 1, 1998 .....	1323
Exhibit V – Handwritten Statement, Lorenda Taylor, May 4, 1998.....	1324
Exhibit W – <u>Prosecutor Explains Decision to Bargain in Cop-Killing Case</u> , Newport News Daily Press, Dec. 12, 1999 .....	1325

Case #98-314

COMMONWEALTH OF VIRGINIA:

IN THE CIRCUIT COURT OF SUSSEX COUNTY

COMMONWEALTH OF VIRGINIA,

v.

A FELONY

TERENCE JEROME RICHARDSON

Social Security No.: [REDACTED]

*Copy*

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Sussex, and now attending the Circuit Court of said County at its November 10th, 1998 Term, upon their oaths present that TERENCE JEROME RICHARDSON, on or about the 25th day of April, 1998, in the County of Sussex, did willfully, deliberately, and premeditatedly kill and murder Officer Allen W. Gibson, Jr., a law enforcement officer, when such killing was for the purpose of interfering with the performance of his official duties, against the peace and dignity of the Commonwealth of Virginia.

Virginia Code Section 18.2-31.6

Upon the testimony of:

Investigator T. J. Cheek

GRAND JURORS RETURN

Returned in open Court this 10 day of NOV., 1998.

A TRUE BILL

*Cecily P. Marks*  
Foreman



COMMONWEALTH OF VIRGINIA:

IN THE CIRCUIT COURT OF SUSSEX COUNTY

COMMONWEALTH OF VIRGINIA,

v.

A FELONY

TERENCE JEROME RICHARDSON

Social Security No.: [REDACTED]

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Sussex, and now attending the Circuit Court of said County at its November 10th, 1998 Term, upon their oaths present that TERENCE JEROME RICHARDSON, on or about the 25th day of April, 1998, in the County of Sussex, did willfully, deliberately, and premeditatedly kill and murder Officer Allen W. Gibson, Jr., a law enforcement officer, when such killing was for the purpose of interfering with the performance of his official duties, against the peace and dignity of the Commonwealth of Virginia.

*C.A. amends indictment 12/8/99 to involuntary manslaughter*

Virginia Code Section 18.2-31.6

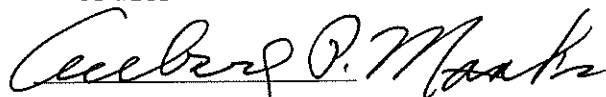
Upon the testimony of:

Investigator T. J. Cheek

GRAND JURORS RETURN

Returned in open Court this 10 day of NOV., 1998.

A TRUE BILL



Foreman





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**Sussex Circuit Court**

Case #: **CR98000344-00**

Defendant: **RICHARDSON, TERENCE JEROME**

**Defendant Information** ^

Address: **WAVERLY, VA 23890**  
 Gender: **MALE**  
 Race: **BLACK**  
 DOB: **05/23/\*\*\*\***  
 Attorney: **BOONE, DAVID E.**

**Case/Charge Information** ^

Defendant Status: **BAIL**  
 Filed Date: **11/10/1998**  
 Locality: **COMMONWEALTH OF VA**  
 Code Section: [18.2-53.1](#)  
 Charge: **USE OF FIREARM**  
 Case Type: **FELONY**  
 Class:  
 Commenced By: **DIRECT INDICTMENT**  
 Offense Date: **04/25/1998**  
 Arrest Date: **04/26/1998**  
 Amended Code Section:  
 Amended Charge:  
 Amended Case Type:  
 Amended Class:

**Appeal Information** ^

Appeal Date:

**Hearing Information** ^

Date	Time	Result	Type	Courtroom	Plea	Duration	Jury
12/08/1999	09:00 AM	NOLLE PROSEQUI	TRIAL				
10/20/1999	09:00 AM	CONTINUED	MOTION - OTHER PRE-TRIAL				
08/18/1999	09:00 AM	CONTINUED	MOTION - OTHER PRE-TRIAL				
06/16/1999	09:00 AM	CONTINUED	MOTION - OTHER PRE-TRIAL				
05/18/1999	02:00 PM	CONTINUED	TO BE SET				
04/21/1999	09:00 AM	CONTINUED	MOTION - OTHER PRE-TRIAL				
03/23/1999	02:00 PM	CONTINUED	MOTION - OTHER PRE-TRIAL				
02/17/1999	09:00 AM	CONTINUED	MOTION - OTHER PRE-TRIAL				
12/16/1998	09:00 AM	CONTINUED	CAPIAS				
11/10/1998	10:00 AM	TRUE BILL	GRAND JURY				

**Disposition Information** ^

Disposition: **NOLLE PROSEQUI**  
 Disposition Date: **12/08/1999**  
 Concluded By: **NOLLE PROSEQUI**  
 Jail/Penitentiary:  
 Concurrent/Consecutive:  
 Life/Death:  
 Sentence Time:  
 Sentence Suspended:  
 Program Type:



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### Sussex Circuit Court

Case #: **CR98000344-00**

Defendant: **RICHARDSON, TERENCE JEROME**

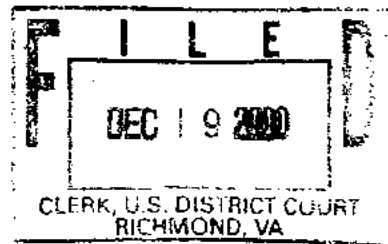
Traffic Fatality: Court/DMV Surrender: Driver Improvement Clinic: VASAP: Restitution Paid: Restitution Amount: Fine: * Costs: * Fine/Costs Paid: Fine/Costs Paid Date: * This system cannot process online payments at this time. Please refer to ' <a href="#">How to Pay Traffic Tickets and Other Offenses</a> ' for more information.
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<b>Service/Process</b>	▼
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<b>Pleadings/Orders</b>	▼
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Return to Search Results

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA



Richmond Division

UNITED STATES OF AMERICA	)	
	)	
	)	Criminal No. 3:00CR383
v.	)	
	)	21 U.S.C. § 846
	)	Conspiracy to Distribute
TERENCE JEROME RICHARDSON,	)	"Crack" Cocaine
(Counts 1-3)	)	(Count 1)
	)	
FERRONE CLAIBORNE,	)	18 U.S.C. § 924(c) & (j)
aka "Ron"	)	Using a Firearm to Commit
(Counts 1-3)	)	Murder during Drug Trafficking
Defendants	)	(Count 2)
	)	
	)	21 U.S.C. § 848(e)(1)(B)
	)	Murder of Law Enforcement Officer
	)	During Drug Trafficking
	)	(Count 3)

**SUPERSEDING INDICTMENT**

**DECEMBER 2000 TERM - At Richmond, Virginia**

**COUNT ONE**

**Conspiracy to Distribute "Crack" Cocaine**

**THE GRAND JURY CHARGES:**

From on or about an unknown date in 1991 until April 28, 1998, at Waverly, Virginia, in the Eastern District of Virginia, and elsewhere within the jurisdiction of the Court, the defendants

**TERENCE JEROME RICHARDSON,**

**FERRONE CLAIBORNE,  
aka "Ron"**

did unlawfully, knowingly, and intentionally combine, conspire, confederate and agree with each other and with other persons, known and unknown to the Grand Jury, to distribute a Schedule II controlled substance, that is, fifty (50) grams or more of a mixture and substance described in Title 21, United States Code, Section 841(b)(1)(A)(iii), which contains a detectable amount of cocaine base, commonly known as "crack," in violation of Title 21, United States Code, Section 841(a)(1).

(In violation of Title 21, United States Code, Section 846).

COUNT TWO.

Use of a Firearm to Commit Murder During Drug Trafficking

THE GRAND JURY FURTHER CHARGES:

On or about April 25, 1998, at Waverly, Virginia in the Eastern District of Virginia, and elsewhere within the jurisdiction of the Court, the defendants

TERENCE JEROME RICHARDSON,

FERRONE CLAIBORNE,  
aka "Ron"

did knowingly use a firearm during and in relation to a drug trafficking crime for which the defendants may be prosecuted in a court of the United States, namely, the distribution of cocaine base, commonly known as "crack," in violation of Title 21, United States Code, Section 841(a)(1), and, in the course of said offense, caused the death of another person through the use of a firearm, which killing was a murder in the second degree as defined in Title 18, United States Code, Section 1111, in that the defendants, with malice aforethought, did unlawfully kill Waverly Police Officer Allen Gibson, Jr., by shooting him with a firearm, and did aid, abet, and assist one

another in the commission of said offense.

(In violation of Title 18, United States Code, Sections 924(c) & (j), and 2).

COUNT THREE

Murder of Law Enforcement Officer During Drug Trafficking

THE GRAND JURY FURTHER CHARGES:

On or about April 25, 1998, at Waverly, Virginia in the Eastern District of Virginia, and elsewhere within the jurisdiction of the Court, the defendants

TERENCE JEROME RICHARDSON,

FERRONE CLAIBORNE,  
aka "Ron"

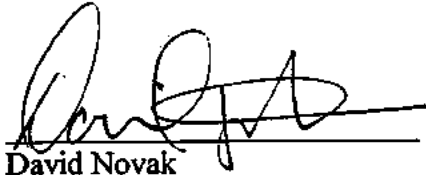
during the commission of, in furtherance of, and while attempting to avoid apprehension and prosecution of, the felony offense of distribution of cocaine base, commonly known as "crack," in violation of Title 21, United States Code, Section 841(a)(1), did intentionally kill, and did counsel, command, induce, procure, and cause the intentional killing of, a local law enforcement officer, namely Waverly Police Officer Allen Gibson, Jr., engaged in, and on account of, the performance of his official duties, and such killing resulted, and did aid, abet, and assist one another in the commission of said offense.

(In violation of Title 21, United States Code, Section 848(e)(1)(B), and Title 18, United States Code, Section 2).

**A TRUE BILL:**

\_\_\_\_\_  
**FOREPERSON**

**HELEN F. FAHEY  
UNITED STATES ATTORNEY**

A handwritten signature in black ink, appearing to read 'David Novak', is written over a horizontal line.

**David Novak  
Assistant United States Attorney**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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UNITED STATES OF AMERICA,

v.

TERENCE JEROME RICHARDSON AND  
FERRONE CLAIBORNE,  
  
Defendants.

Criminal No.  
3:00CR00383

June 4, 2001

VOLUME I

COMPLETE TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

DIANE J. DAFFRON, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT





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APPEARANCES:

DAVID NOVAK, Assistant United States Attorney  
Richmond, Virginia  
Counsel on behalf of the United States

BOATWRIGHT & LINKA  
Richmond, Virginia  
BY: JOHN B. BOATWRIGHT, III, ESQ.

and

BARNES & BATZLI, P.C.  
Chesterfield, Virginia  
BY: MICHAEL HUYOUNG, ESQ.

Counsel on behalf of Defendant Richardson

WHITE, BLACKBURN & CONTE, P.C.  
Richmond, Virginia  
BY: CHARLES A. GAVIN, ESQ.

and

RICE, EVERHART & BABER  
Richmond, Virginia  
BY: JEFFREY L. EVERHART, ESQ.

Counsel on behalf of Defendant Claiborne

## I N D E X

	DIRECT	CROSS	REDIRECT	RECROSS
CHARLES R. ALDRIDGE	260	302/306	308	--
DR. RAYUDU JUJJAVARAPU	309	--	--	--

## E X H I B I T S

		Page
	<u>GOVERNMENT'S EXHIBITS</u>	
	NUMBER	
	P-1 Photograph of Allen Gibson	263
	CS-3 Photo of Waverly Village Apts.	266
	CS-41 Photo of Officer Gibson's patrol vehicle	268
	CS-11 Photo of Officer Gibson's position on the ground	274
	CS-12 Photo of Officer Gibson's position on the ground	274
	CS-13 Photo of Officer Gibson's position on the ground	274
	CS-14 Photo of Officer Gibson's position on the ground	274
	CH-1 Photo of Waverly Village Apt. Complex	274
	FE-1 Glock Model 21 handgun	289
	CS-15 Officer Gibson's uniform	295
	CS-16 Photo of Officer Gibson's duty gun	296
	CS-17 Photo of gunbelt, uniform shirt	297

		PAGE
1		
2	NUMBER	
3	CS-18	Photo of bulletproof vest 297
4	CS-19	Photo of bullet hole in vest 298
5	CS-20	Close-up photo of hole in vest 298
6	CS-21	Photo of hole in vest and Kevlar 299
7	GC-9	Police radio 300
8	HP-1	Medical report 311
9	FE-2	Bullet removed from Officer Gibson 319
10	GC-3	Officer Gibson's underwear 319
11	GC-4	Officer Gibson's socks 319
12	AP-1	Autopsy report 323
13	AP-12	Computer animation 323
14	GR-2	Gunshot residue kit 323
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (The proceedings in this matter commenced at  
2 9:00 a.m.)

3  
4 THE CLERK: Criminal No. 3:00CR00383, the  
5 United States of America v. Terence Jerome Richardson  
6 and Jerome Claiborne. Mr. David Novak represents the  
7 United States.

8 Mr. John B. Boatwright, III, and Mr. Michael  
9 HuYoung represent the defendant, Terence Jerome  
10 Richardson, and Mr. Charles A. Gavin and Mr. Jeffrey  
11 L. Everhart represent the defendant, Ferrone  
12 Claiborne.

13 Are counsel ready to proceed?

14 MR. NOVAK: The United States is ready.

15 MR. BOATWRIGHT: Mr. Richardson is ready.

16 MR. EVERHART: As is Mr. Claiborne.

17 THE COURT: All right. Good morning.

18 MR. BOATWRIGHT: Good morning, sir.

19 MR. HUYOUNG: Good morning.

20 MR. NOVAK: Judge, I just asked to see the  
21 Court briefly to indicate that we objected to a couple  
22 of the questions that were submitted in the proposed  
23 voir dire by Defendant Richardson, and I highlighted  
24 which ones those were.

25 I gave a copy to the Court, and I gave a

1 information so you'd have it and know what your  
2 schedule is. If you need to make telephone calls, the  
3 marshals will help you with that.

4 And when you come back after lunch, we'll  
5 see you and get started, and we'll come back and get  
6 started in an hour from that clock up there, which  
7 will be ten minutes to two. Thank you very much.

8

9 (Jury left the courtroom at 12:50 p.m.)

10

11 THE COURT: All right. Anything that we  
12 need to take up?

13 MR. BOATWRIGHT: I can't think of anything,  
14 sir.

15 MR. NOVAK: No, Judge.

16 THE COURT: We'll be in recess until ten  
17 minutes of two.

18

19 (Recess taken.)

20 (Jury entered the courtroom at 1:50 p.m.)

21 THE COURT: Mr. Neal?

22 THE CLERK: Yes, sir.

23 THE COURT: Are you-all kind of cold?

24 THE JURY: Yes.

25 THE COURT: We may have gotten one of those

1 reverse thermostats. I'm going to turn it up another  
2 four or five degrees and see if that does us any good.

3 Ladies and gentlemen, this is the time when  
4 the counsel make opening statements. And what they  
5 say is not evidence, but it's important because it  
6 helps you understand what they think the evidence is  
7 going to show.

8 So please give your kind attention to  
9 counsel as they present their opening statements.

10 MR. NOVAK: Thank you, Your Honor. If it  
11 please the Court, counsel, good afternoon ladies and  
12 gentlemen.

13 As you know by now, my name is David Novak,  
14 and I'm an assistant U.S. attorney. And I have the  
15 honor of representing the United States of America in  
16 this case, presenting this case to you on behalf of  
17 the government.

18 A grand jury has returned an indictment that  
19 charges these two individuals, Terence Richardson and  
20 Ferrone Claiborne, with three charges as Judge Payne  
21 has told you.

22 Count One charges them with participating in  
23 a conspiracy to distribute more than 50 grams of crack  
24 cocaine. Count Two charges them with using a firearm  
25 to commit murder during a drug trafficking offense,

1 and Count Three charges them with the murder of a law  
2 enforcement officer during a drug offense.

3 Now, at the end of this case, Judge Payne is  
4 going to instruct you as to what each and every one of  
5 those charges is all about. He's going to define for  
6 you what those charges are.

7 And you must follow what he has to say, not  
8 what I say, not what defense counsel say. But I want  
9 to talk to you for a few moments about these charges  
10 so you have an idea what to look for in this case when  
11 you hear the evidence that we're going to present to  
12 you over the next couple of days.

13 Count One charges both defendants with  
14 participating in a conspiracy to distribute, again,  
15 more than 50 grams of crack cocaine. I think y'all  
16 probably know what crack cocaine is by now,  
17 unfortunately, by hearing it on the news. It's an  
18 illegal drug.

19 A conspiracy is essentially an agreement by  
20 at least two people to commit a crime. In this  
21 instance, the sale of crack cocaine. Criminals by  
22 their nature don't go around getting written  
23 agreements to commit a crime. It's not like they got  
24 a contract where two criminals sit down and say, Hey,  
25 Terence Richardson and Ferrone Claiborne agree today

1 to commit a crime.

2 So the law recognizes that that agreement  
3 can be informal, that you can draw inferences about  
4 that agreement based upon how people act. Do they act  
5 in concert? Do they work together for basically a  
6 common scheme?

7 And that's what you're going to hear.  
8 You're going to hear that in this case these two  
9 defendants worked in concert from at least 1991 in  
10 their hometown of Waverly, Virginia, to sell crack  
11 cocaine, up until the time and shortly thereafter the  
12 time that they killed a Waverly police officer on  
13 April the 25th of 1998.

14 So from 1991 to 1998, they were selling  
15 crack cocaine in the streets of Waverly, Virginia, a  
16 city that you're going to hear a lot about over the  
17 next couple of days.

18 Count Two charges the defendants with using  
19 a firearm to commit murder during a drug trafficking  
20 offense. A drug trafficking offense is what I just  
21 told you about, a conspiracy, and the fact they are  
22 working together to sell crack.

23 Sadly, the firearm in this case is the  
24 firearm of the fallen officer himself, Officer Allen  
25 Gibson, where they killed him with his very own gun



1 when they jumped him in the woods when he tried to  
2 arrest them for the distribution of crack cocaine.

3 They're charged with committing murder using  
4 that firearm, Officer Gibson's very own service  
5 revolver, to commit murder, murder in the second  
6 degree, which requires the government to prove what is  
7 known as malice aforethought, which is what  
8 Judge Payne is going to define for you at the end of  
9 this, which means they either deliberately and  
10 intentionally killed the officer or that they acted in  
11 disregard, one, in callus disregard for the value of  
12 human life, in this instance, the value of Officer  
13 Allen Gibson's life.

14 And that brings us to Count Three.  
15 Count Three is the murder of a law enforcement officer  
16 during a drug trafficking offense, and that requires  
17 the government, myself, to prove to you, first of all,  
18 that Officer Gibson at the time that he was killed was  
19 working as an officer.

20 And you're going to hear that he was on  
21 duty. He was in uniform, and he was trying to make an  
22 arrest and apprehension of these two defendants for a  
23 drug sale.

24 Specifically, Mr. Claiborne was selling some  
25 crack cocaine to Mr. Richardson, and because of that,

1 in order to avoid apprehension, in order to avoid  
2 prosecution, these defendants murdered that police  
3 officer on April the 25th of 1998. And that's  
4 Count Three.

5 Judge Payne is also going to instruct you at  
6 the end of the case there's a concept in the law  
7 called aiding and abetting. And aiding and abetting  
8 occurs when somebody else helps another to commit a  
9 crime.

10 In that instance, the person that helps is  
11 just as responsible as the person who carries out the  
12 crime. So in this instance, you're going to have a  
13 triggerman, the person that actually used Officer  
14 Gibson's gun to shoot him to death.

15 That triggerman is Terence Richardson, and  
16 he's sitting right over there. And the person that  
17 aided and abetted him during the commission of that  
18 murder was Ferrone Claiborne, and he's sitting right  
19 over there.

20 And under the law, as Judge Payne is going  
21 to define for you, somebody that helps the triggerman,  
22 in this instance, is just as guilty as if they had  
23 pulled the trigger themselves.

24 But before I start talking to you about  
25 horrible crimes that these defendants committed, I

1 want to talk to you a little bit about Officer Allen  
2 Gibson because at the end of the day, that's what this  
3 case is about.

4           Officer Allen Gibson, when he died, was  
5 25 years old. He's from an area called Big Stone Gap,  
6 Virginia, in Southwest Virginia, where his family  
7 still resides. He had moved to Waverly, Virginia,  
8 approximately 2 1/2 months before his death.

9           Twenty-five years old, in February of 1998,  
10 he joined the Waverly Police Department and had served  
11 as a police officer in this small town for 2 1/2  
12 months leading up to his death.

13           And I think the one thing you're going to  
14 hear throughout the trial is that this officer was an  
15 officer that everybody respected, that everybody  
16 thought was a fine officer, even those that he  
17 arrested because he treated everybody well. The  
18 people in the area of Waverly, they liked him an awful  
19 lot.

20           Contrast his life to the lives of Terence  
21 Richardson and Ferrone Claiborne. You're going to  
22 hear what they did when they grew up in Waverly,  
23 Virginia, a town that you're going to hear an awful  
24 lot about, and you're going to see my trusty maps and  
25 pictures of Waverly.

1           If I could, Your Honor?

2           You may have heard of the Town of Waverly,  
3 Virginia. It's probably most famous for the fact it's  
4 on Route 460 as you head down to the beach. If you're  
5 leaving from Hopewell or Colonial Heights and you're  
6 headed to the Outer Banks, you go down through 460.

7           And you go through one of those smaller  
8 towns. One of those towns is Waverly, Virginia. It's  
9 a small town, and that's something to remember here  
10 during this case because it's a small town such that  
11 people get around this town.

12           You can get through the whole town in a  
13 couple minutes by car, maybe 10 or 15 minutes by  
14 walking. You're going to hear that by 1991, these two  
15 defendants were living in Waverly.

16           Specifically, Terence Richardson was living  
17 on a street you're going to hear an awful lot about  
18 called Dogwood Street, which is located right here,  
19 with his father.

20           Ferrone Claiborne at that time had moved  
21 onto a street called Locust Street, which is the next  
22 street over from Dogwood Street. He had moved there  
23 with his two sisters and his mother because his mother  
24 had married a fellow by the name of Mikey Allen.

25           And this fellow, Mikey Allen, lived with his

1 own family on Locust Street. These two families came  
2 together, the Allen family and the Claiborne family.

3 Unfortunately, they weren't the Brady Bunch  
4 because what they were involved in doing was selling  
5 crack cocaine. Specifically, Mikey Allen's daughter,  
6 Roxie Allen, also her formal name is Eulanda Holloman,  
7 had a drug connection.

8 And she was selling crack as early as 1991  
9 with her boyfriend, Ronald Williams, who they called  
10 Booty, and you're going to hear about Mr. Booty  
11 throughout this trial, who lived on the same street as  
12 Terence Richardson on Dogwood, on Dogwood Avenue.

13 And you're going to hear that basically  
14 these two streets, which run parallel, they were  
15 connected by a little pathway that goes in between.  
16 And in the early Nineties, these two defendants,  
17 living on those two streets, about the same age, and  
18 many of their other young friends who were 18, 19, 20,  
19 21 years old at that time were all selling drugs in  
20 this area together, crack cocaine they were getting  
21 through this common connection that they had with this  
22 woman, Roxie Allen, and her boyfriend Booty Williams.

23 This goes on for a number of years.  
24 Approximately 1994, Ferrone Claiborne's mother breaks  
25 up with this fellow, Mikey Allen, and she and her son,

1 Ferrone Claiborne, and their sisters move into an  
2 apartment complex, an apartment complex called the  
3 Waverly Village Apartments that are right down the  
4 street. In fact, it's approximately two blocks.

5 And you're going to see a close-up. You're  
6 going know everything about the Waverly Village  
7 Apartments by the time this case is over because this  
8 is where Officer Gibson spent his last moments.

9 This apartment complex is right down the  
10 street, and as you get to see on this map, Dogwood  
11 Street and Locust Street run parallel. And they run  
12 into a street called Middle Street.

13 And if you're coming from Dogwood and  
14 Locust, you make a left, and you go down to Amherst  
15 Road. And it goes right into the Waverly Village  
16 Apartments right here (indicating).

17 And you're going to hear that both these  
18 defendants regularly sold crack cocaine in the Waverly  
19 Village Apartment area up until the time the officer  
20 died. You're going hear they may have changed  
21 suppliers. One of them had a different source of  
22 supply than the other during that time period.

23 But as things went on, they continued to  
24 sell drugs in the Waverly Village Apartments.  
25 Specifically, you're going to hear an awful lot about

1 this playground area right here (indicating).

2 This apartment complex is a lower income  
3 area there in Waverly. The complex puts up a  
4 playground for the kids to play in, and unfortunately,  
5 this is where the dope dealers are hanging out and  
6 selling their crack cocaine.

7 The dope dealers, referring to Terence  
8 Richardson, Ferrone Claiborne and their buddies, they  
9 are selling the drugs over by the playground and by  
10 this green utility box, which you're going to hear  
11 over and over again.

12 Well, this goes on even after Mr. Claiborne  
13 and his mother and his sisters, they move, and they  
14 moved down to Hopewell and are living down there.

15 But even then, by 1996, 1997, Mr. Claiborne,  
16 who is doing a little bit better in the drug trade  
17 than Mr. Richardson, he's bringing his drugs up on the  
18 weekend from Hopewell and the Petersburg area up to  
19 the Waverly Village Apartments, and the two of them  
20 would sell drugs.

21 We're going to tell you right now, folks,  
22 these two weren't the two biggest drug dealers in the  
23 world because they weren't the best drug dealers in  
24 the world because their problem was they would sell  
25 the drugs in order to use it because you'll hear that

1 all they ever did was get high, get drunk and sell  
2 drugs.

3 God forbid they'd actually get up to go to  
4 work one day because actually what you're going to  
5 hear Terence Richardson say, told one of the law  
6 enforcement officers on one occasion, "Why work?"

7 Why work because they get money from their  
8 parents every now and then, and they're out there  
9 hustling, selling drugs, getting drunk, getting high,  
10 basically, constantly.

11 That's the life that they were leading up  
12 until the time that the officer got killed in this  
13 case, on April the 25th of 1998, which brings us to  
14 that day in the week shortly before then.

15 April 25th, 1998, was a Saturday. It  
16 happened to be very nice Saturday. It was a beautiful  
17 sunny day in April. On the week before that, Terence  
18 Richardson, who was still living with his father up on  
19 Dogwood Street, had gone over to stay with one of his  
20 drug-using buddies by the name of Shawn Wooden.

21 Shawn Wooden, who you're going to hear  
22 testify in this courtroom, is going to tell you about  
23 how he's been a crack addict for a large period of  
24 time and how he and Mr. Richardson would get high and  
25 get drunk.



1                   And they basically spent this week living at  
2 Mr. Wooden's trailer, which is located on a road  
3 called Robert Wilkins Avenue, which is depicted over  
4 here on this side of the map.

5                   You're basically seeing the entire Town of  
6 Waverly, and you can see that even with the entire  
7 town, how you can get from one location to the other  
8 quite quickly because they're not that far away.

9                   So Mr. Richardson and Mr. Wooden, they spend  
10 this week getting high, getting drunk, doing the  
11 things that they commonly would do.

12                   And one of the occasions, by the way, they  
13 would go down -- a place that all three of these  
14 people would hang out was at a Ramada Inn down at  
15 Petersburg, where one of their buddies was a night  
16 manager.

17                   And he would allow them to get a room, and  
18 they would all hang out in this room and get drunk and  
19 get high and get girls over there and do things like  
20 that. And they had been there during that week.

21                   By Friday, Friday, April the 24th of 1998,  
22 they wanted -- Mr. Richardson and Mr. Wooden wanted to  
23 score some drugs, and they set about that afternoon to  
24 try to find some drugs.

25                   And eventually, they ran into this

1 defendant, Ferrone Claiborne, over at a store that  
2 again you're going to hear an awful lot about called  
3 Dobie's.

4 Dobie's is a store on a road called Railroad  
5 Avenue. You can see that's where the railroad tracks  
6 are, which is why they probably called it Railroad  
7 Avenue.

8 Railroad Avenue runs down and hits Dogwood  
9 Avenue and Locust Street. It's a couple blocks up.  
10 You can see it's maybe two blocks up, and it happens  
11 to be like an old, small town convenience store.

12 It happens to sell a lot of beer in large  
13 part to these defendants over here. They go, hang out  
14 and buy beer all the time, and that was one of the  
15 places they would hang out, in addition to selling  
16 drugs there, as well.

17 But they run into Mr. Ferrone Claiborne.  
18 Mr. Wooden and Mr. Richardson, they run into him on  
19 that Friday. At that time, Mr. Richardson asked  
20 Mr. Claiborne -- actually, Mr. Claiborne asked  
21 Mr. Richardson first for a ride because he said he  
22 could get some drugs.

23 If he went down to Petersburg, he would get  
24 some, quote, weight. He would get some weight, which  
25 in the world of drug dealers refers to large

1 quantities of drugs. Unfortunately, Mr. Richardson  
2 and Mr. Wooden didn't have a car at that time. So  
3 they had to say, no, we can't go with you to go get  
4 the drugs.

5 But Mr. Claiborne tells Mr. Richardson,  
6 look, I'll have the drugs by tomorrow morning. I'll  
7 hook up with you then. So they agree that they're  
8 going to meet on the next day, on Saturday morning to  
9 get some drugs.

10 And you're going to hear how Mr. Claiborne  
11 was able then to go get some drugs later on, on that  
12 night, that Friday tonight, which brings us to  
13 Saturday morning.

14 Saturday morning, Mr. Richardson and  
15 Mr. Wooden wake up in Mr. Wooden's trailer. They had  
16 been drinking all night, and they're hung over. They  
17 wake up, and they start walking over towards the  
18 Dobie's area over here on Railroad Avenue.

19 And they ultimately run into Mr. Claiborne  
20 on Railroad Avenue near a funeral home that's adjacent  
21 to this store, called Pete's Funeral Home, and at that  
22 time, they have a discussion about the fact that  
23 Mr. Claiborne can get them these drugs. He can get  
24 them some crack cocaine.

25 One of the persons that wanted the crack, by

1 the way, was Shawn Wooden because he wanted to get  
2 high because he was a crack addict, as well as  
3 Mr. Richardson. So they decide what they're going to  
4 do is meet in the Waverly Village Apartments down  
5 here.

6 So the three of them eventually motor in to  
7 the Waverly Village Apartments, which is depicted in  
8 this photograph. They enter into the Village  
9 Apartments.

10 Mr. Wooden -- I'm sorry. When they enter  
11 into the Waverly Village Apartments, Mr. Wooden and  
12 Mr. Richardson go behind these buildings into this  
13 wood line back here behind the back of the apartments.

14 Mr. Claiborne first stops at a friend of his  
15 apartment by the name of Nicky Coleman. From there,  
16 then he joins them in the back of the woods.  
17 Unbeknownst to them at the same time Officer Gibson is  
18 on routine patrol.

19 He had started his shift that day at  
20 approximately 10:20 in the morning. You're going to  
21 hear this from his dispatcher at the Waverly Police  
22 Department. He had gone to another area, another set  
23 of apartments, and then he had entered into the  
24 Waverly Village Apartments.

25 Initially, he drove in, circled around and

1 drove out, but then for some reason, he returns. And  
2 when he comes back in, he drives into the Waverly  
3 Village Apartments, and he parks to the back of the  
4 rear apartment.

5 And he sees a fellow by the name of Eric  
6 Garrett, who everybody says looks like Michael Jordan,  
7 the basketball player. At least Eric Garrett is going  
8 to tell you he looks like Michael Jordan, the  
9 basketball player. You can be the judge of whether he  
10 does.

11 And he knows -- he knows Officer Gibson  
12 because they play basketball together. Again, Officer  
13 Gibson is somebody who is well liked in the community,  
14 got along well with everybody.

15 And they chat for a few moments over here on  
16 the side of this apartment complex where there is no  
17 windows. It's just a side over here. And he asked  
18 him -- Officer Gibson asked him where he's going to.

19 Well, the reason Eric Garrett was there that  
20 morning is he happened to live on Dogwood Street,  
21 basically across the street from where Terence  
22 Richardson lived, but he's not living a life of  
23 criminality.

24 Instead what happens to him that Saturday  
25 morning, he was with his grandmother, and his grandma

1 says -- she's calls him Lamont. And she said,  
2 "Lamont, how about mowing my grass this morning."

3 So as any good grandson, he decides to go  
4 get a lawnmower and mows his grandmother's grass, but  
5 the lawnmower is not at his grandmother's place. It's  
6 down at one of his aunt's places, which is down in  
7 this area here (indicating).

8 And in order to get the lawnmower, he has to  
9 go through -- he can take a shortcut that can take him  
10 through the Waverly Village Apartments to get the  
11 mower. The only thing, you can can't take the same  
12 shortcut back with the mower because you have to push  
13 the mower on the cement, and this is woods.

14 So he's walking along to go get this  
15 lawnmower to cut his grandma's grass, and he stops  
16 over here. And he's talking to his friend, Officer  
17 Gibson, or at least they're friendly. And they start  
18 talking about basketball and things like that.

19 Then he goes on. Eric Garrett goes onward,  
20 and he goes through these woods. Now, you're going to  
21 hear in this case that this these woods have basically  
22 three paths that go through them to the other side to  
23 where there are houses. There's the path on the left,  
24 the path in the middle and the path on the right.

25 Eric Garrett took the path on the left to go

1 on to his aunt's place to get this lawnmower, which he  
2 did. He eventually went on and got this lawnmower to  
3 return back to his grandma's house to cut the grass.

4 Officer Gibson returned to his vehicle and  
5 talked on the radio, and at 10:57 a.m. he tells his  
6 dispatcher that he's going to go on foot patrol in the  
7 Waverly Village Apartments.

8 Time here becomes very important. So at  
9 10:57 he exits his vehicle, and he starts walking  
10 around the back towards this wooded area. At the same  
11 time, Mr. Claiborne, Mr. Richardson and Mr. Wooden are  
12 back here engaged in the middle path area, where  
13 there's a little berm where it sits on top of a hill.

14 Right behind that, they are engaged in the  
15 sale of crack cocaine, where Mr. Claiborne, who pulls  
16 out approximately a quarter ounce of crack cocaine,  
17 and he gives part of that to Mr. Richardson, who gives  
18 it to Mr. Wooden, who is a crack user, to test the  
19 crack.

20 Mr. Wooden steps over to the side of the  
21 woods, and he's got his crack pipe. And he's testing  
22 the crack when all of a sudden he hears Officer Gibson  
23 say, "Halt."

24 Of course now the three are surprised, and  
25 certainly Mr. Claiborne and Mr. Richardson are

1 surprised because they're in the midst of a drug deal.  
2 And that point, Mr. Claiborne initially starts  
3 running.

4 Officer Gibson grabs Mr. Richardson, and  
5 he's holding him so he can't get away. But  
6 Mr. Claiborne goes back to help his drug dealing and  
7 using buddy, and they jump the officer. And they  
8 start wrestling with him to try to get Mr. Richardson  
9 away.

10 Mr. Richardson disarms the officer, with his  
11 service revolver, takes it out and shoots him one time  
12 right below the bulletproof vest that Officer Gibson  
13 was wearing.

14 You're going to hear that Officer Gibson,  
15 again, he was on duty, in uniform, in a marked  
16 vehicle, wearing his Waverly police officer uniform.  
17 And under that uniform, he had a bulletproof vest.

18 Of course, when these two defendants are  
19 struggling with the officer, they can feel the vest  
20 because you can -- you're going to see the vest as we  
21 present the evidence in this case.

22 It's heavy. So when you're fighting with  
23 somebody, you can tell that it's on there.  
24 Mr. Richardson shoots him immediately below the vest  
25 such that there's -- in a bulletproof vest, there's



1 this material called Kevlar, which is supposed to be  
2 the material that deflects the bullet.

3 But it's held within a carrier that's right  
4 below. It's kind of like a -- you'll see a part of  
5 the fabric that supports the Kevlar within the belt  
6 and that the bullet went in and just nudged the bottom  
7 of the Kevlar and went down into the officer's  
8 stomach, went down towards his right thigh, striking  
9 his femoral artery.

10 He starts bleeding to death immediately  
11 inside. One of the things you're going to hear is he  
12 falls right away, and one of the things you're going  
13 to hear during the course of this case, and actually  
14 you're going to hear this afternoon, is that there's  
15 not a lot of blood.

16 In fact, there's very minimal blood, if any,  
17 on the outside of the officer's uniform. When the  
18 officers originally arrive to take care of him, they  
19 can't find the wound because there's no blood on the  
20 outside.

21 And that becomes important in this case  
22 because you're going to hear that even though there  
23 was a struggle between the officer and these two men,  
24 we're going to show you the shirt that Terence  
25 Richardson was wearing at the time he committed this

1 crime.

2 It was a white T-shirt that had a marijuana  
3 emblem on it that said the word "blunt" on it that was  
4 eventually found to be torn, and none of Officer  
5 Gibson's blood is on there because all the bleeding is  
6 internal as opposed to external.

7 We're going back to what happens now. After  
8 Mr. Richardson shoots Officer Gibson, Mr. Claiborne  
9 and Mr. Wooden start running back through the woods  
10 immediately.

11 Mr. Richardson initially comes to the front,  
12 and you can see a small path here. You're going to  
13 see lots of pictures of this area, more pictures than  
14 you'll probably ever want to see.

15 He's standing on the top of this berm area,  
16 holding a weapon in his hand, wearing this T-shirt  
17 with the marijuana symbol on it, almost stunned.

18 And then he decides he can't run out here  
19 because it's Saturday morning. There's a lot of  
20 people out here. So he turns around and runs back  
21 past the officer, dropping the weapon and then runs  
22 back towards the woods.

23 Well, the residents in this community, they  
24 hear a gun shot, and a young lady by the name of  
25 Kaneka Jackson calls 911. And that 911 call is logged

1 in at 11:14 a.m. So you know that this murder  
2 happened sometime between 10:57 a.m. and 11:14.

3 I would submit to you a little closer to  
4 11:14, approximately 11:10 a.m. When they called the  
5 police, they called the rescue squad reporting that  
6 somebody had been shot.

7 The first officer that arrives on the scene  
8 is a deputy from Sussex County Sheriff's Department.  
9 One of the things you're going to hear about is that  
10 in this small town of Waverly, they have their own  
11 police department, which at that time was a  
12 five-member police department.

13 But the City of Waverly is also in the  
14 County of Sussex County that has their own sheriff's  
15 department, and so they can go out there and patrol  
16 and make arrests as well.

17 Additionally, there are members of the  
18 Virginia State Police that also have their own station  
19 down in Waverly. So you have three different law  
20 enforcement agencies that are present down in Waverly  
21 to investigate crimes, essentially.

22 On that day, the first officer to arrive at  
23 the scene was a deputy by the name of Rick Aldridge,  
24 and he immediately responds to the scene, knowing that  
25 an officer has been shot, pulls up, and he runs to the

1 back.

2 He doesn't know what's going on. He knows  
3 nothing about the facts of this case, and he also has  
4 a problem hearing. And he's yelling out to the fallen  
5 officer, trying to find out where he is.

6 He actually goes along the same path to the  
7 left area that Eric Garrett was on, and he eventually  
8 moves over, and he eventually finds Officer Gibson  
9 laying there in the fetal position.

10 And he's laying there, and he's asking him  
11 what's the matter. And Officer Gibson is still alive.  
12 He's still conscious. He's going in and out of  
13 consciousness.

14 But Deputy Aldridge can see right away  
15 there's a problem. He can see that there's this ash  
16 color that goes over Officer Gibson, which indicates  
17 to him that there's some serious bleeding somewhere,  
18 that this man is going to lose his life.

19 At the same time -- at the same time or  
20 shortly thereafter, while Deputy Aldridge is tending  
21 to Officer Gibson, the chief of the Waverly Police  
22 Department -- the police department being located over  
23 here.

24 You can see on the map. You can see where  
25 the apartment complex is. It's right down here. You

1 can see it's also a block and a half, two blocks away  
2 from where the defendants resided.

3 The chief of police from Waverly, he arrives  
4 at the scene shortly after Deputy Aldridge, and at  
5 this time, Officer Gibson's weapon is laying maybe  
6 10 feet away from Officer Gibson's body in a direction  
7 towards the Waverly Village Apartments.

8 The chief of police doesn't check with his  
9 officer. He picks up the murder weapon for some  
10 unexplained reason, picks it up and runs out into this  
11 apartment complex, without talking to the officer or  
12 doing anything.

13 And quite frankly, he goes berserk, and he  
14 acts in ways that officers should not be acting  
15 because he takes the gun out there and starts  
16 threatening the people in the community, yelling  
17 various profanities, telling them he's going to blow  
18 their heads off unless somebody tells him what's going  
19 on here and does horrible things, which you're going  
20 to hear about.

21 The little girl who originally called the  
22 police tells him, look, we saw the officer talking to  
23 Eric Garrett earlier, but Eric Garrett, that  
24 conversation was purely friendly. And Eric Garrett  
25 went into the woods, and Officer Gibson went to his

1 car.

2 And there was no interaction, but based upon  
3 this, for some reason the chief of police starts  
4 screaming that he's going to kill Eric Garrett, and he  
5 runs off and goes to get Eric Garrett. And he doesn't  
6 act, quite frankly, in a very professional fashion,  
7 the way that a police officer is supposed to act.

8 In the meantime, unfortunately, he also has  
9 the murder weapon, and he's destroyed the ability to  
10 get any type of fingerprints off that weapon. And  
11 you're going to hear that there were no fingerprints  
12 that were able to be taken off the murder weapon,  
13 Officer Gibson's own weapon.

14 Well, while Chief Sturrup, the Chief of  
15 Police from Waverly is down there acting like a  
16 lunatic, fortunately Deputy Aldridge stays with the  
17 fallen officer. He's trying to comfort him, trying to  
18 provide whatever aid while they're waiting for the  
19 rescue squad to come.

20 And as he's trying to get him stabilized and  
21 stuff, he starts talking to him, and he starts asking  
22 him what happened. This officer knows he's about to  
23 die. This officer is telling him he's going to die,  
24 and he knows it.

25 Deputy Aldridge knows he's going to die,

1 too, but he tries to get as much information as  
2 possible from the officer. Immediately thereafter,  
3 Officer Gibson starts telling him that he had gone  
4 into the woods after two black males and was trying to  
5 stop them from doing a drug transaction, and they  
6 jumped him.

7 And he described the two black males, the  
8 drug dealers, one being thin with dreadlocks pulled  
9 back into a ponytail with like a baseball cap over top  
10 of them, a description that fits Terence Richardson  
11 because that's the way he looked back then.

12 He doesn't look the way he looks today,  
13 folks. You're going to see a picture of the way he  
14 looked back then with the dreadlocks pulled back, that  
15 fit exactly the description of the drug dealer that  
16 Officer Gibson -- who's not here to tell you who shot  
17 him. He told the deputy then who did it.

18 And the other person he told is another  
19 black male who had nearly bald, if not a close-cropped  
20 haircut, just like the defendant, Ferrone Claiborne,  
21 and that's the other person. Both these defendants  
22 exactly fit the description.

23 Deputy Aldridge is getting as much of a  
24 description as he can. By happenstance, the next  
25 person that arrives after the chief had left is a

1 Virginia State Police Trooper by the name of Jared  
2 Williams.

3 By coincidence, Jared Williams is also from  
4 the small town of Big Stone Gap where the Gibson  
5 family is from, out there in southwest Virginia by  
6 Tennessee and Kentucky, way, way out there, and he had  
7 gone to high school with Allen Gibson.

8 They weren't the best of friends, but they  
9 were friendly. But then when Officer Gibson moved to  
10 Waverly, it happened that Trooper Williams got  
11 assigned to Waverly. They rekindled their friendship,  
12 and they became very good friends and both being law  
13 enforcement officers from the same small town.

14 Sadly, Trooper Williams is the next person  
15 that arrives on the scene, to find his fallen friend.  
16 When he arrives on the scene, of course his friend  
17 recognizes him, and he's trying to comfort Allen  
18 Gibson as he's laying there.

19 And Allen Gibson is telling him he's going  
20 to die, and he knows it. He starts telling him, tell  
21 my family I love them and all the things that people  
22 do before they die. But he also then starts giving  
23 them a detailed description, a very detailed  
24 description of exactly what occurred on this instance.

25 And you're going hear that Trooper Williams



1 did exactly what a law enforcement officer is supposed  
2 to do. He stayed there, protected his friend,  
3 comforted him, stayed there until the rescue squad  
4 came, took him to the hospital.

5 And then he went home and wrote everything  
6 down right away so that he would never forget that  
7 day, so that information would be available for when a  
8 jury like you would be here. So you would know  
9 exactly what happened.

10 And at that time, Officer Gibson told him  
11 again, there were two black males that did this. They  
12 were involved in a drug transaction. One was a medium  
13 build with real short hair, maybe bald, that person  
14 being Ferrone Claiborne.

15 The other one was taller and skinny, with  
16 dreadlocks pulled back in a ponytail. They were both  
17 wearing jeans, and the skinny one had on a white  
18 T-shirt and a blue baseball cap.

19 And it was the skinny one who shot him, the  
20 skinny one with the dreadlocks. It was Terence  
21 Richardson that shot him. And he told him -- and then  
22 he quoted Officer Gibson. "He said, 'They were trying  
23 to get my gun, Jared. I tried to stop them, but  
24 somehow they got it. And it went off. I tried to  
25 wrestle it away from them. I got it pointed away from

1 me. They shot me. They shot me with any own damn  
2 gun.'

3 I told him that he'd done the best that he  
4 could to save his own life, and he again started  
5 saying about how much he loved his family, please tell  
6 his family how much he's going to miss them, and he  
7 was sorry."

8 And then as he was about to go out of  
9 consciousness, he started screaming again, over and  
10 over and over again, two black males, one with  
11 dreadlocks pulled into a ponytail with an old blue  
12 ball cap on, one short, bald hair, both white shirts,  
13 both wearing blue jeans, over and over again so that  
14 information would someday be available to a jury to  
15 know exactly what happened.

16 In the meantime, while Officer Gibson is  
17 laying there, Trooper Williams is trying to take care  
18 of him with Deputy Aldridge, Chief Sturrup, who thinks  
19 he's Wyatt Earp, is out there, and he goes over to  
20 Eric Garrett's house.

21 And he grabs Eric Garrett in, again, ways  
22 that he shouldn't have treated Eric Garrett. And he  
23 brings him back. And I'm going to tell you, folks,  
24 you're going to hear in this case that Chief Sturrup  
25 himself faces charges, and he's not going to be -- the

1 government is not going to call him as a witness based  
2 upon his conduct in this case.

3 But Chief Sturup brings Eric Garrett back  
4 and brings him back to the crime scene, and  
5 ultimately, as he shoves him down to Officer Gibson,  
6 Officer Gibson is losing his eyesight. And he says he  
7 can't see right then.

8 But ultimately, they were able to determine  
9 that's not the guy. As Eric Garrett starts saying,  
10 "Remember me, remember me, I talked to you, I talked  
11 to you," they're able to determine that that's  
12 obviously not the guy.

13 And they're also realizing by this time,  
14 Chief Sturup, who didn't stay there to get any  
15 information from the fallen officer, then finds out  
16 that, hey, Officer Gibson gave a description, which  
17 Eric Garrett doesn't fit.

18 It's not the guy, and they release Eric  
19 Garrett. They take Officer Gibson eventually by  
20 rescue squad down to the Southside Regional Hospital  
21 where he eventually dies from one gunshot wound to the  
22 stomach. He bled to death inside.

23 And again, I say to you, it's very important  
24 for you to understand that there's no blood, really,  
25 on the exterior of his body because that becomes

1 important in terms of evidence later on in this case.

2 While the officers are there trying to save  
3 Officer Gibson's life, the defendant is trying to get  
4 away with the crime, and they do two different things,  
5 going back to my trusty map of the City of Waverly.

6 You're going to find out -- you're going to  
7 hear that the night before that Ferrone Claiborne had  
8 stayed, as he would regularly stay on the weekends  
9 when he would go to Waverly, at his Uncle Roosevelt's  
10 apartment, which is at like a retirement village  
11 that's over off the road called Beaver Dam Road, which  
12 is, again, just minutes away from the Waverly Village  
13 Apartments over in this area.

14 You're going to find out that he is seen.  
15 Ferrone Claiborne is seen at the same time all the  
16 rescue sirens are going off, that he is seen over by a  
17 ball yard, over by a house, by a deputy by the name of  
18 Ernest Giles.

19 And I submit to you, ladies and gentlemen,  
20 that the evidence is going to show that he then went  
21 home to his -- well, not home but to his uncle's place  
22 where he changed clothes because later on that day,  
23 about 12:30 or one o'clock in the afternoon, he  
24 returns back to this area where this Deputy Ernest  
25 Giles from the Sussex County Sheriff's Office sees

1 him.

2           And at that time, he's now wearing like a  
3 Los Angeles Laker's or Golden State Warriors  
4 basketball jogging suit, a bright yellow. You've  
5 probably seen it on television, or your kids wear it  
6 when they play basketball, a bright yellow type of  
7 basketball suit.

8           While he's doing that, Shawn Wooden runs  
9 over to his trailer, and he goes back -- now he's  
10 terrified. He's a drug addict. He's just been  
11 present when an officer was killed, and he doesn't  
12 know what to do.

13           So he starts trying to get his own alibi  
14 together here. He happens to live at this trailer  
15 with his girlfriend, a woman by the name of Jovanna  
16 Jones, and her kids.

17           When Shawn Wooden and Terence Richardson  
18 woke up that morning, Jovanna Jones stayed in bed.  
19 She slept in. She didn't get up until later on that  
20 day, but her kids were outside watching TV.

21           Shawn Wooden goes back, and he eventually  
22 crawls back into bed with his girlfriend to act like  
23 he had never left, like he was always in bed with her.  
24 Terence Richardson returns back to the trailer as  
25 well.

1           And he then at that point tells Shawn  
2 Wooden, you better not tell anybody about what  
3 happened here or something is going to happen to you.  
4 I'm going to get one of cousins or somebody to do  
5 something to you.

6           And that's one of the things that's so  
7 important to understand. This is a small town, and  
8 you're going to hear people didn't always tell the  
9 truth in the beginning when they were asked about this  
10 case.

11           And the reason for that is they didn't want  
12 to be labeled a snitch in a small town, and the truth  
13 slowly came out in this case. Well, Shawn Wooden  
14 abided by that, initially, the instructions from  
15 Terence Richardson.

16           And Terence Richardson was staying at the  
17 trailer until they get some phone calls by a woman  
18 that you're going to hear called Nuke. Nuke is the  
19 girlfriend of another drug dealer by the name of Joe  
20 Mack, or at least his nickname is Joe Mack.

21           And he lived across the street from Shawn  
22 Wooden, and these phone calls become important because  
23 you're going to hear that the Caller ID information  
24 that an officer saw at Shawn Wooden's trailer shows  
25 this woman Nuke called at 12:27 p.m. on that Saturday

1 looking for Joe Mack.

2 This fellow Joe Mack lived, again, basically  
3 across the street or down the road, and his girlfriend  
4 went looking for him, to call over to Joe Mack's  
5 mother's place who didn't have a phone.

6 So they called over to Shawn Wooden and  
7 said, hey, can you go get Joe Mack and get him on the  
8 phone. That's what she did that day. Shawn Wooden  
9 sends one of those kids, one of Jovanna Jones's kids  
10 down to the house.

11 This fellow Joe Mack comes up, and  
12 eventually this woman, his girlfriend Nuke, calls back  
13 at one o'clock. When she calls back at one o'clock,  
14 she says, hey, did you hear an officer got killed?

15 And at that point, Joe Mack guesses as to  
16 which officer it was, and Terence Richardson corrects  
17 him and said, no, it's the new one, the one they call  
18 Hillbilly, referring to Officer Gibson because he was  
19 from out there in the rural area in southwest  
20 Virginia.

21 Thereafter, Terence Richardson and Shawn  
22 Wooden -- Terence Richardson actually comes up with  
23 the idea, hey, let's go back to the Waverly Village  
24 Apartments and act like we're just normal bystanders.

25 So if anybody saw us, they would say, hey,

1 the reason they saw us that day is because they were  
2 in the crowd like everybody else, just being nosy.

3 So you're going to hear that they went back  
4 to the Waverly Village Apartments. You're going to  
5 hear a number of people saw them. That's not really  
6 open to dispute.

7 At that time, they're mingling with the  
8 crowd, and eventually, they leave and go over to  
9 Dobie's. Why? To get some beer. That's what their  
10 life is about. That's what Terence Richardson's life  
11 is about, Shawn Wooden's life is about, Ferrone  
12 Claiborne's life is about.

13 While they are over there that afternoon,  
14 you're going to hear that as he's talking, a resident  
15 of the community with nothing to gain in this case  
16 overhears them talking about the fact that Terence  
17 Richardson's saying, "I killed a cop," and  
18 fortunately, he notifies the police.

19 The police are then -- I'm sorry. Then  
20 after that, Terence Richardson leaves, and he and  
21 Shawn Wooden, they go back to Shawn Wooden's trailer.  
22 And eventually that night, Terence Richardson goes off  
23 to a party.

24 He goes over to another section of Waverly  
25 called New Street. You're going to hear, by the way,



1 that Waverly in the world of drug dealers has  
2 basically got two little sets of drug dealers. You've  
3 got the Dogwood/Locust Street drug dealers. Then  
4 you've got the New Street drug dealers.

5 Well, some of the guys that hung out on New  
6 Street were having a party at this fellow John Brown's  
7 trailer, and you're going to hear that Terence  
8 Richardson went over to that party.

9 And he did what he always does, which is get  
10 drunk, get high, gets obliterated, and he starts  
11 shooting his mouth off. He starts saying about how he  
12 messed up that day and how he gets into an argument  
13 with somebody else at the party by the name of Brandon  
14 Gilcrest.

15 When he gets into this argument with this  
16 fellow Brandon Gilcrest, he says, look, I killed  
17 somebody -- I already killed somebody already today.  
18 I can kill somebody else. Again, I submit to you  
19 which references the fact he killed Officer Gibson  
20 earlier that day.

21 Terence Richardson after the party, you're  
22 going to hear, drunk out of his mind, was originally  
23 taken back to Shawn Wooden's house. They wake up the  
24 next day.

25 They're walking along -- well, in the

1 meantime, while Terence Richardson is sleeping at  
2 Shawn Wooden's house, the police now have an idea that  
3 Terence Richardson is involved in this.

4           So at one o'clock in the morning, on the  
5 Sunday morning from -- of course, the police are  
6 working nonstop from Saturday night into Sunday  
7 morning.

8           At one o'clock in the morning, they go over  
9 to Terence Richardson's house on Dogwood Street where  
10 he lived with his dad. Terence Richardson was not  
11 living there -- was not there at the time.

12           But his father gave the officers consent to  
13 search his bedroom. And they search, and they find a  
14 white T-shirt, the shirt that had been described to  
15 them as the T-shirt that this defendant, Terence  
16 Richardson, was wearing at the time that he committed  
17 the murder.

18           And they found this T-shirt, which you're  
19 going to see, and the T-shirt, first of all, is wet  
20 and damp. And it was stuck in his stereo area. At  
21 that time, the T-shirt sleeve, one sleeve was ripped  
22 off.

23           I would submit to you it would show that it  
24 was torn off in a fashion consistent with somebody  
25 who'd gotten into a struggle with somebody else. And

1 they seized this shirt. And that's at one o'clock in  
2 the morning on that Saturday night.

3           Meanwhile, while Terence Richardson is doing  
4 this, Ferrone Claiborne, he's doing what he always  
5 does after the murder. First of all, he goes back to  
6 the Waverly Village Apartments, then.

7           He sees this Deputy Giles over here off of  
8 Butler Street, and of course, by now he's changed his  
9 clothes. And he's wearing his basketball outfit, and  
10 he says to Officer Giles -- this is about 12:30,  
11 one o'clock.

12           He says, "Hey, I hear an officer got shot.  
13 Is he dead?"

14           And the officer said, "No, thank God, he's  
15 not dead. We're all pulling for him."

16           And he says in a very nervous fashion, "Do  
17 they have any idea who did it?"

18           And at that point, the deputy, of course,  
19 did not know that Ferrone Claiborne was involved in  
20 the murder at that point, but he says, "No, but if you  
21 hear anything, let us know."

22           Later on that day in addition to going down  
23 to the Waverly Village Apartments himself, Ferrone  
24 Claiborne, he then sets about to get more drugs.  
25 You're going to hear he was also at a drug house.

1 There's a crack house where everybody gets high.

2 All the drug dealers sell drugs at a  
3 residence right on the corner of Locust Street and  
4 Middle Street that's owned by a fellow by the name of  
5 Raul Johnson, who they call Daddy-O.

6 At Daddy-O's house anything goes, which  
7 means drug dealers can hook up with junkies in there,  
8 drug dealers such as these defendants, who you're  
9 going to hear that they'd gone there in the past.

10 Of course, they live on the same street.  
11 Well, Mr. Claiborne lived on the same street, and  
12 Mr. Richardson lived a block over. But they would go  
13 there, sell drugs to junkies, trade essentially drugs  
14 for sex with some females, and do all kinds of other  
15 things that drug dealers do.

16 And basically, Raul Johnson himself was a  
17 crack addict who would let these things go on as long  
18 as somebody gave him some crack to use himself. And  
19 you're going to hear that on that day Ferrone  
20 Claiborne, having some drugs, went into Raul Johnson's  
21 house.

22 Remember, he's still got the drugs from this  
23 aborted sale. Of course, he's using himself. Later  
24 on, he goes out to buy more crack cocaine that day as  
25 well, which brings us to Sunday.

1           On Sunday, Terence Richardson is arrested on  
2 Railroad Avenue by members of the Sussex County  
3 Sheriff's Department, and they take him into custody.  
4 And they start asking him about where he was at the  
5 time of the crime.

6           First of all, you're going to see a picture  
7 of what he looked like, a picture that fit exactly  
8 the description that was given by Officer Gibson.  
9 Remember, he's telling -- Officer Gibson says that two  
10 drug dealers are engaged in a transaction, and he  
11 tries to break it up.

12           And you know and you'll know for a certainty  
13 that these two defendants regularly sold drugs in the  
14 Waverly Village area. This was their turf. So the  
15 officers arrest Mr. Richardson, and he gives -- at  
16 that point he gives an alibi defense.

17           He says, well, I was at Shawn Wooden's  
18 house. I had been there for awhile, but I was  
19 watching cartoons at the time. Shawn and I were  
20 watching cartoons. Originally, Shawn Wooden backs him  
21 up. Shawn Wooden denies knowing anything about it.

22           That only lasts for so long because sooner  
23 or later Shawn Wooden starts telling the police about  
24 what happened, and you're going to hear Shawn Wooden  
25 tell you exactly what happened that day.

1           You're going to hear that he has lied in the  
2 past. You're going to hear that he originally lied to  
3 the police. He's going to tell you that it was  
4 because he was afraid.

5           Originally, he said that he wasn't back in  
6 the woods, that instead he was in the front of the  
7 apartments serving as a lookout. A couple days later,  
8 two days later, the police arrest Ferrone Claiborne,  
9 and he gives a statement.

10           He gives the first of his many alibis. One  
11 of the things you're going to hear about in this case  
12 is that Ferrone Claiborne changed his alibis as often  
13 as he changes his underwear because he first tells the  
14 state officers who are interviewing him that he had --  
15 he was at his Uncle Roosevelt's place and hadn't even  
16 woken up until about 1:30 in the afternoon that day.

17           They had been sleeping at his uncle's place.  
18 Well, you're going to hear -- his very own relatives  
19 are going to tell you that isn't true. They're going  
20 to tell you how they had seen him downtown earlier in  
21 the day.

22           You're also going to hear that he told other  
23 people he was in Hopewell at the time at his mother's  
24 place or that he was on Route 35 outside of Waverly,  
25 about a half an hour out, or that he was in another

1 part of Waverly, the everchanging alibi, which, again,  
2 is a sign.

3           Something that a couple days later at the  
4 time a police officer is killed, they don't have to  
5 lie about where they were unless they have a reason to  
6 lie. And that defendant has a reason to lie because  
7 he was there, participated and helped Terence  
8 Richardson kill that police officer.

9           Originally, this case was prosecuted in the  
10 state system. Judge Payne told you a little bit about  
11 that this morning during jury selection. And I  
12 originally started off with these alibi defenses, that  
13 Mr. Richardson was at Shawn Wooden's trailer watching  
14 these cartoons.

15           And of course, the only person in the world  
16 that could be his alibi is Shawn Wooden, but, oops,  
17 he's testifying against him. So that doesn't work.  
18 And then you hear Mr. Claiborne, and I've already told  
19 you how he changes his alibi all the time.

20           Well, it gets to the time that it's in  
21 court, and you're going to hear that on December the  
22 8th of 1999 that their lawyers in the state system  
23 were able to negotiate a sweetheart deal with the  
24 state prosecutor down there.

25           Whereas, Terence Richardson, the triggerman

1 in this case, pled guilty to a lesser offense -- they  
2 were originally charged with capital murder for  
3 killing a police officer -- instead, Terence  
4 Richardson pled guilty to involuntary manslaughter,  
5 suggesting it was an accident when the gun went off,  
6 that he was there, had done it, but the gun  
7 accidentally went off.

8 And he pled guilty to voluntary manslaughter  
9 that exposed him to up to ten years in prison, and  
10 Ferrone Claiborne got an even better deal. He got a  
11 misdemeanor accessory after the fact and admitted that  
12 he was at the crime scene but lied to Deputy Giles  
13 when he had seen him after the fact, when Deputy Giles  
14 asked him, hey, do you know anything about this and he  
15 said no.

16 Well, then after that guilty plea on  
17 December the 8th of 1999, which certainly was very  
18 much in their benefit -- and you're going to hear  
19 about that in this case -- a federal investigation  
20 then began, an investigation spearheaded by Agent  
21 Ritchie from the FBI and Special Agent Michael Talbert  
22 from the ATF.

23 As part of the investigation, Agent Ritchie  
24 and Agent Talbert, they went down, and they  
25 interviewed Terence Richardson, then. At that point,



1 he was no longer represented by an attorney, and he  
2 said he wanted to tell them what he knew about the  
3 case.

4 Well, remember now, he started off with the  
5 old alibi defense in the beginning, and that didn't  
6 work because Shawn Wooden was going to testify against  
7 him. But then he got the sweetheart deal. So then he  
8 was saying, well, it was an accident because it was  
9 involuntary manslaughter.

10 But you're going to hear without any doubt  
11 there was no accident because physically, you have to  
12 try to press the trigger on the gun. You're going to  
13 hear from a firearms expert who's going to tell you  
14 that in Officer Gibson's firearm, there's basically  
15 three safety mechanisms.

16 So there cannot be such a thing as an  
17 accidental shooting, that you have to put 7 1/2 pounds  
18 of pressure on the trigger directly for that gun to go  
19 off. Of course, that makes sense because we don't  
20 want officers shooting themselves in the foot by  
21 mistake. So you have to put 7 1/2 pounds of pressure.

22 Think of it, 7 1/2 pounds of pressure. For  
23 those of you that cook -- as you can tell, my wife  
24 cooks a lot. For those of you that cook, a 5-pound  
25 bag of sugar and then a half of that again, that's

1 7 1/2 pounds. You have to apply that pressure on a  
2 trigger.

3 There's no accident here. Remember, of  
4 course, they shot him right under the bulletproof  
5 vest, hit the bottom of the vest. You think those two  
6 guys knew he was wearing a vest and tried to shoot  
7 underneath them? There's no accident here.

8 By then, after the feds became involved,  
9 when they went down to interview Mr. Richardson, of  
10 course, he wised up and realized, well, this accident  
11 defense, it ain't going to work again. Let's go back  
12 to the old alibi defense again.

13 So he goes down, and Agent Ritchie says,  
14 "You tell me everything you want to tell me about what  
15 happened that day." And he gave a painstaking detail  
16 about how he was sitting at Shawn Wooden's trailer and  
17 how he was watching cartoons with these kids, that he  
18 was watching Eerie Indiana and Ultimate Goose Bumps at  
19 the time of this murder and gave the exact times.

20 There's only one big problem. He moved the  
21 times of the TV shows down to cover the time period of  
22 the murder. The shows were earlier in the morning by  
23 half an hour, and he can't account for the time of  
24 this murder.

25 You're going to hear that they've

1 stipulated, they've agreed to what shows were on that  
2 time period, and the shows that he said he was  
3 watching were half an hour earlier than what he told  
4 Agent Ritchie before the murder.

5 But not only that, he says that shortly  
6 thereafter, there's this phone call a little after  
7 eleven, maybe about 11:30, from this woman Nuke. And  
8 then this guy Joe Mack comes over at noon.

9 One big problem with that. He moved all  
10 that up an hour because the Caller ID records on Shawn  
11 Wooden's trailer shows exactly the opposite.

12 One of things he did admit, though, during  
13 that interview, he admitted he was a drug dealer. He  
14 said he used to sell drugs in the past. That is the  
15 one thing he did admit during that interview.

16 And as the investigation went on,  
17 ultimately, Ferrone Claiborne and Terence Richardson  
18 were charged as they are today.

19 And you're going to hear that Ferrone  
20 Claiborne when he was initially charged was in this  
21 building, in the United States Marshal's Service with  
22 another drug dealer from Farmville who had nothing to  
23 do with this case, knew nothing about it, and he  
24 starts telling him about the crime.

25 And he starts telling him about how he

1 hadn't done the shooting. He had just, quote, cleaned  
2 up afterwards, but he was there.

3 Ladies and gentlemen, when you hear the  
4 evidence in this case, you're going to have absolutely  
5 no doubt as to what happened on that day, that these  
6 two defendants were engaged in a drug transaction, the  
7 sale of crack cocaine. They murdered that officer.

8 How are we going to prove that to you?  
9 We're going to prove it to you in different ways.  
10 We're going to prove it by the testimony of police  
11 officers, such as Deputy Aldridge and Trooper  
12 Williams, who are going to tell you about the dying  
13 declaration that they took from their fallen friend.

14 You're going to hear from scientists, such  
15 as the firearms expert who's going to tell you about  
16 how you've got to put that pressure on the trigger.  
17 There's no way this was an accidental shooting.

18 You're going to hear from just normal  
19 citizens who came forward and agreed to report what  
20 they knew. For example, people that had lived in that  
21 Waverly Village Apartments for years would look out  
22 their window, unfortunately, and see these defendants  
23 selling crack cocaine in the playground where their  
24 kids were playing at.

25 Then you're going to hear from what we call

1 cooperating witnesses, people that have pled guilty  
2 and admitted their crimes who are hoping to get some  
3 type of leniency from their judges by telling you what  
4 they know about the crime.

5           You're not going to like them. Most of them  
6 are drug dealers. You don't have to like them. The  
7 question is whether you believe them, and when you  
8 listen to them, keep in mind that this is a small  
9 town.

10           And people are not going to come forward  
11 unless they have a reason to come forward because they  
12 don't want to be labeled a snitch because you're going  
13 to hear people deny things in the beginning, and  
14 eventually as they start telling a story about what  
15 they knew, including a woman by the name of Evette  
16 Newby, a woman who herself had bought drugs in the  
17 past while living in the Waverly Village Apartments  
18 from both of these defendants, a woman who was living  
19 in this apartment building and whose windows were  
20 facing the woods, who saw the struggle.

21           And you can see there's a lot of foliage  
22 around this, but she could see bits and pieces as  
23 she's looking down from her second floor window into  
24 patches where there's not leaves. And she would see  
25 them as they would go back and forth, struggling.

1                   And she saw Mr. Richardson as he came out,  
2 then, after the gunshot, holding the gun in his hand,  
3 wearing that shirt, the shirt with the marijuana  
4 emblem on it, the shirt that was found torn and damp  
5 in Mr. Richardson's house.

6                   So you're going to hear from those  
7 cooperating witnesses as well. After you hear from  
8 that evidence, ladies and gentlemen, again, there's  
9 going to be no doubt as to what happened in this case.

10                   And that's why I'm going to come back before  
11 you again, and I'm going to ask that you render the  
12 only appropriate verdict in this case. And that is  
13 that both of these defendants, Terence Richardson and  
14 Ferrone Claiborne, are guilty of the three charges  
15 that they face in the indictment.

16                   Thank you for your time.

17                   MR. BOATWRIGHT: May it please the Court,  
18 government, co-counsel and you 14 ladies and  
19 gentlemen.

20                   You know who I am by now, John Boatwright.  
21 I'm here, as is Michael HuYoung, on behalf of Terence  
22 Richardson. Just like Mr. Novak, we have the honor of  
23 representing someone as well, and we represent  
24 Mr. Richardson.

25                   Now, on behalf of Mr. Richardson and his

1 family, we thank you for being able to come here to  
2 perform the public service that you've already started  
3 on and will last apparently the rest of the week.

4 Now, that was a very good presentation that  
5 Mr. Novak gave, and he needs to be commended. He laid  
6 it out real well for you. He's a very experienced  
7 prosecutor. He's very good at what he does, and  
8 frankly, he summed up his evidence in a wonderful way.

9 He summed it up favorably, of course, to his  
10 side, but there are a few things that I'm going to  
11 tell you about that maybe he left out.

12 But at the outset, there's a couple of  
13 things we have to ask you to do, and one of them, the  
14 first one is I think the last thing Judge Payne  
15 mentioned to you, in terms of the duties that you have  
16 to do and the mental tasks that you have to undertake  
17 in performing your duties as jurors.

18 And that is, you have to listen to the whole  
19 thing before you are allowed to start making up your  
20 mind about what you're going to believe and what  
21 you're not going to believe. In other words, we're  
22 asking you to do something that we don't ordinarily do  
23 in our lives.

24 Most times when we hear people talk or see  
25 something on the TV or hear it on the radio, we star

1 to form impressions and opinions about what we've  
2 heard while it's going on.

3 But here in the courtroom we have to ask you  
4 to listen to the -- not just to what everything a  
5 witness has to say before you're going to decide how  
6 you feel about that witness.

7 We're asking you to suspend even that until  
8 you've heard all of the evidence and, indeed, heard  
9 what Judge Payne tells you by way of instructions at  
10 the end of the case because in trials, all sorts of  
11 things can happen.

12 And it could be the very last piece of  
13 evidence that you hear in a case that one of you  
14 individually might feel is the most important thing of  
15 all. So we're asking you to hold off doing what you  
16 ordinarily would do, wait until all of the evidence is  
17 in and you're instructed on how to deal with that  
18 evidence by Judge Payne until you start forming those  
19 impressions.

20 And really, you're asked to wait to do that  
21 until you get back into the jury room and you start  
22 having the discussions back and forth that jurors have  
23 to have before you can decide cases, listening to what  
24 the other jurors have to say, considering their  
25 thoughts, their memories.



1 We ask you to do that, please, because this  
2 is going to be a long case, and throughout the case  
3 for the most part, you're going to hear from  
4 Mr. Novak, from the government and the prosecution  
5 first, just like you heard from him first now.

6 And indeed, sometimes you're going to hear  
7 from him last. At the end of the case, for example,  
8 when we do arguments, he goes first. We will have the  
9 opportunity on behalf of Mr. Richardson, and his  
10 lawyers will have the opportunity on behalf of  
11 Mr. Claiborne, and then Mr. Novak has the opportunity,  
12 indeed, to get back up and point out to you why in his  
13 view we weren't correct.

14 So please, hold off in forming those  
15 judgments until the time that that comes, which is the  
16 time that you enter the jury room and are allowed to  
17 begin deliberating.

18 Now, this is a difficult case because it  
19 involves the death of a human being, and not just any  
20 human being, the death of a police officer. And I'm  
21 sure every one of you respects the role that the  
22 police, investigators and law enforcement personnel  
23 play in our society, as do we.

24 But a case like this, despite all of that,  
25 we have to focus on the facts, and it certainly is not

1 reason to disbelieve anything Mr. Novak had to say  
2 about Officer Gibson.

3 But the case is not about whether he was a  
4 good police officer, which he was, whether he was a  
5 good person, we're sure he was, whether he was well  
6 liked, we're sure he was, and whether he was loved by  
7 his family, obviously he is and was.

8 And it's not about the loss that they feel.  
9 None of us could begin to experience for a moment the  
10 pain that they had to experience and continue now to  
11 experience today. And it would be an insult to their  
12 loss to say that we can feel it the same way they do.

13 Be that as it may, what this case is about  
14 is whether the government will do the job they  
15 promised to do and that is to show you a sufficient  
16 quantity and quality of evidence for you to come to  
17 the conclusion that, in our case, Mr. Richardson is  
18 guilty of what he's been charged with doing.

19 Now, let me remind you, there are two people  
20 on trial here, and each one of them have two lawyers.  
21 Mr. Claiborne has two very capable lawyers who will  
22 address the allegations and evidence against him.

23 We're not going to do that. They're going  
24 to take care of that part of the case. We're taking  
25 part of the part of the case that involves

1 Mr. Richardson. So naturally, that's what we're going  
2 to be speaking to you about here and later.

3 Now, it is true that Mr. Richardson, who is  
4 a man in his late twenties, who grew up in that area,  
5 who attended Sussex Central High School and graduated  
6 and who lived with his family until his parents split  
7 up years before this all happened and then continued  
8 to live with his father, he was not employed on any  
9 kind of consistent basis. That's true, and that's not  
10 a crime.

11 Regardless of how Mr. Novak expresses his  
12 personal feelings about what his lifestyle was, he's  
13 not on trial for his lifestyle. He's on trial for  
14 specific allegations of crimes, and the fact of the  
15 matter is that both Mr. Richardson's parents, his  
16 mother and his father -- his mother's name is Annie  
17 Westbrook. His father's name is David Westbrook.

18 Frankly, they spoiled him. They both  
19 worked, and they would give him money from time to  
20 time, just enough money to get by. He had a car at  
21 one time. The car broke down and needed repair, and  
22 he didn't have the money to repair it.

23 And he ended up living -- continued to live  
24 with his father on Dogwood, and it's not a crime to  
25 live with your parents, even if you're in your late

1 twenties. It's not a crime to have parents give you  
2 money, which they did. They'll tell you they did.

3 And yes, his ambitions in life may not have  
4 been the same ambitions that some of us have, but he's  
5 not on trial for lack of ambition. He's on trial for  
6 being allegedly a drug dealer going back to 1991.

7 He's on trial for use of a firearm in the  
8 commission of the killing of Officer Gibson, and he's  
9 charged with actually participating in the killing of  
10 Officer Gibson.

11 Now, what you heard from Mr. Novak was that  
12 both Mr. Claiborne and Mr. Richardson were supposedly  
13 drug dealers. That may lead you to the question of,  
14 well, then how come on April 24th of 1998, why was it  
15 so difficult to find drugs? Why was it so difficult  
16 to find drugs?

17 He made it sound as though the Waverly  
18 Village is pretty much a happening thing everyday.  
19 You will find that the reason that he's wrong about  
20 that is that that's really not true. There were  
21 people dealing drugs there from time to time, but it's  
22 not all day, every day or anything like that.

23 And Mr. Richardson had friends who lived at  
24 Waverly Village. So it's not unreasonable for him to  
25 be there. He lived a very short two blocks away. We

1 know this. We've all been there.

2 Now, April 25th, Saturday, April 25th, yes,  
3 it was a beautiful day, and spring was in full bloom.  
4 And by that I mean the leaves were on the trees. Why  
5 is that important? Well, you'll see from the  
6 photographs that the government is going to introduce  
7 that it would have been extremely difficult for Evette  
8 Newby to see what she said she saw.

9 The reason for that is what she was doing  
10 was she lived in an apartment. Their apartments are  
11 two doors side-by-side. One door leads directly up a  
12 flight of steps to the upstairs apartment.

13 That's where she lived. She lived on the  
14 end apartment on the back of the building. The  
15 building that ran parallel to the earthen berm that  
16 divided the area of the apartments from the wooded  
17 area.

18 And that earthen berm is about, I don't  
19 know, 6, 7 feet high, and there are several areas or  
20 paths through that berm leading back into the wooded  
21 area. We all know that. We've all been there, and  
22 you'll see this. It's very easy to see.

23 But what's not easy to see is from her  
24 apartment directly down into the woods. That's  
25 because not only are there leaves on the trees, the

1 berm itself has all sorts of wild shrubbery and bushes  
2 and weeds and all sorts of stuff growing on it, and  
3 the view is extremely obstructed.

4           So when you see those photographs, I ask you  
5 to ask yourself how could she see what she said she  
6 saw. We're going to ask you to consider if it's true  
7 that Mr. Wooden and Mr. Richardson ran into Ferrone  
8 Claiborne at Pete's Funeral Home, which is a few doors  
9 down from where Dobie's is, a convenience store, and  
10 probably by walking five, six, seven minutes from  
11 Waverly Village, if that, if Mr. Claiborne had the  
12 drugs, then why did he need to go over into the woods  
13 at Waverly Village?

14           And indeed, if the drug dealing out there in  
15 the playground area is such as Mr. Novak's describing,  
16 why did he need to go into the woods if they decided  
17 to go to Waverly Village?

18           There's no question that Eric Garrett did  
19 indeed pass through Waverly Village Apartments that  
20 day. The home where he was going to cut the grass is  
21 almost directly across the street on Dogwood from  
22 where the Westbrook home is, where Terence was living.

23           But he was taking a shortcut to go get the  
24 lawnmower from someone else's home. Now, as Mr. Novak  
25 said and, he's absolutely right, you couldn't push a

1 lawnmower through those woods if you tried because not  
2 only is it a wooded area, there are these drainage  
3 ditches that run through there that are several feet  
4 deep.

5           And it would be very, very difficult to try  
6 to get a lawnmower through there. Once you got the  
7 lawnmower, you're going to push it down the street and  
8 around the corners and so forth, and that's apparently  
9 what Eric Garrett did.

10           But Eric Garrett is going to tell you when  
11 he went through the woods, there's no one there. Now,  
12 once you get in the wooded area, once you are over the  
13 berm into that wooded area, it's not like a thicket or  
14 anything of that nature at all. You can see fairly  
15 well back in there, particularly on a bright, sunny  
16 day such as April 25th was.

17           Unfortunately, it's been a dumping ground.  
18 You see a chair or sofa or some other trash back  
19 there, but that doesn't get in the way of being able  
20 to see if there are several, three other people back  
21 there, Ferrone Claiborne, Shawn Wooden and supposedly  
22 Terence Richardson.

23           Mr. Garrett certainly should have been able  
24 to see them, as you'll see from the photographs the  
25 government is going to introduce. Indeed, it's not

1 too difficult -- if you went back there today, you  
2 wouldn't have too tough a time trying to figure out  
3 pretty much the area where the officer fell after he  
4 was shot because even today there are some medical  
5 debris back there.

6 The bags that have the liquid that will drip  
7 in your arms and so forth are still back there. You  
8 will see that it's very, very difficult to look back  
9 in there from outside, but once you're in the woods,  
10 it's not that difficult at all to look around and see  
11 if other people are there.

12 Now, remember the government is asserting  
13 that Mr. Claiborne has about a quarter ounce of crack  
14 cocaine on him at that time, and yet somehow within a  
15 couple of hours, he needs more drugs. That's what  
16 he's trying to tell you.

17 Now, Mr. Novak has described the officer's  
18 gun for you as a service revolver with three internal  
19 safeties. He might be right about the number of  
20 safeties, but it's not a revolver.

21 If you know anything about handguns, it's a  
22 semiautomatic handgun made by a company called Glock,  
23 G-L-O-C-K, and it may very well have all the internal  
24 safeties he talked about, but what it takes to fire  
25 the gun is to pull the trigger.



1           And 7 1/2 pounds of pressure, while it  
2 sounds like a lot if you're talking about bags of  
3 sugar, is not a great deal of pressure as the firearms  
4 expert who's going to testify will tell you.

5           The allegation is that Mr. Richardson  
6 participated in the shooting of Officer Gibson and  
7 then went home and changed. Well -- oh, and then his  
8 shirt was torn in the process.

9           In fact, you're going to hear testimony from  
10 a scientist who examined the shirt and who is going to  
11 say there were some very recent tears in the shirt and  
12 so forth and tested the shirt for DNA, for like blood,  
13 found none. They tested it for -- looked for hairs,  
14 for example, found nothing that matched  
15 Mr. Richardson.

16           And essentially what the government is going  
17 to ask you to accept is the idea that Terence  
18 Richardson, knowing that he just participated in a  
19 struggle with the officer which ultimately culminated  
20 with his death, during which, supposedly the  
21 government is going to try convince you, his shirt was  
22 ripped and torn. His sleeve was torn off.

23           Then he simply went home, balled it up,  
24 stuck it right back in the place where he always kept  
25 it and left it there for the police to find on the

1 next day. What happened the next day was when they  
2 came to the house to look for Terence -- the police  
3 were coming to look for Terence first. They thought  
4 he might be at home. His father was there. Terence  
5 was not.

6 They asked if Terence was there. His father  
7 said he wasn't. They asked if they could come in, and  
8 he allowed them to come in. And they asked to check  
9 the house for Terence, and he let them do that.

10 And then they asked if they could check the  
11 house to see if there was evidence they might collect,  
12 and he said, sure, go ahead. They discover in this  
13 stereo cabinet this T-shirt, and well, maybe this is  
14 the shirt.

15 And what they did with the shirt was they  
16 took it and laid it out and took at least one  
17 photograph of it and perhaps several. And doggone it,  
18 don't you know they lost the photographs. Can't  
19 anybody find them.

20 And they're going to tell you, the lab  
21 person is going to tell you when he received it, it  
22 was torn, the way he's going to describe it for you.  
23 So it raises a couple of questions, like what really  
24 was the condition of the shirt at the time it was  
25 seized.

1           How come we don't have the photographs, and  
2 where is the rest of the shirt? If it was torn in the  
3 struggle, I assume it's back there in the woods, but  
4 no one is going to come forward and tell you that they  
5 found it back there. So the shirt is a bit of a  
6 problem.

7           Now, then Mr. Novak went to the question  
8 about, well, Chief Sturup's actions. You know, it's  
9 a shame that Chief Sturup did pick up the weapon and  
10 did run off with it.

11           The direction the weapon was pointing or how  
12 it was situated you'll find doesn't have anything to  
13 do with telling you who committed the crime. It's  
14 just the way it was laid out.

15           Here's where we come to the really big  
16 questions in the case, at least part of the questions.  
17 Two different people talked to Officer Gibson between  
18 the time of the shooting and the time he was taken  
19 away in the helicopter to the hospital.

20           You have already heard one of them is  
21 Corporal Aldridge from the Sussex Sheriff's  
22 Department, and the other is Trooper Jared Williams,  
23 who already knew Officer Gibson from Big Stone Gap.

24           You will find from Dr. Kay, who is the  
25 medical examiner who did the autopsy in this case,

1 that Officer Gibson at the time of his death was, on  
2 April 25th, 1998, was 5'11" tall. You will find from  
3 the evidence at some point in this case that  
4 Mr. Richardson is 5'7", approximately.

5 And between the two of them; that is,  
6 Mr. Claiborne and Mr. Richardson, that Mr. Claiborne  
7 is clearly taller than Mr. Richardson. All it takes  
8 is one glance, and you can see that.

9 But the dying declaration of Officer Gibson  
10 upon which the government relies says as follows or  
11 consists of the following things: Officer Gibson told  
12 Aldridge that the tall, thin one wrestled with him  
13 over his gun and that he was struggling with that  
14 person when the gun went off.

15 We're going to ask you to consider whether  
16 it makes sense if you're 5'11" and describe someone as  
17 Mr. Richardson who is 4 inches shorter than you as  
18 being tall, we'll suggest to you that it doesn't bear  
19 out.

20 As Mr. Novak tells you, he fits the  
21 description in every way. Well, Corporal Aldridge  
22 said on another occasion that Officer Gibson told him  
23 they had dreadlocks. One had a ponytail. Both of  
24 them wore jeans and white shirts. I was fighting with  
25 the tall, skinny one for my gun.

1           You're going to hear from Jared Williams,  
2 Trooper Williams, that he was interviewed, and at one  
3 point he described -- "he" being Officer Gibson,  
4 described the people with whom he struggled as two  
5 black males, one with dreadlocks, one with short hair  
6 or baldheaded, both wearing blue jeans, and a baseball  
7 cap was mentioned.

8           The one fighting was tall and skinny. Bear  
9 with me here. I'm reading handwriting, and it's a  
10 little difficult to read sometimes. Trooper Williams  
11 wrote out, in fact in his own handwriting, two black  
12 males, one with dreadlocks pulled into a ponytail, an  
13 old blue ball cap on, one short, bald hair, both white  
14 shirts, both wearing blue jeans. I was fighting with  
15 the tall skinny one.

16           So you're going to find, we suggest, the  
17 description is not indeed consistent with  
18 Mr. Richardson's description. Mr. Richardson at the  
19 time of his arrest on April 26th, 1998, was he had  
20 cornrows in his hair, and the cornrows did admittedly  
21 extend beyond down the back of his neck somewhat.

22           You can decide for yourself whether you can  
23 pull them back in a ponytail when you see the  
24 photograph that the government is going to introduce.  
25 I think you're also going to find from the evidence

1 Mr. Novak tells you that Officer Gibson is referred to  
2 as Hillbilly.

3 Actually, the person that's on the Waverly  
4 police force who was referred to as Hillbilly was  
5 another officer, another officer who'd been there  
6 longer.

7 And it is true, the evidence is going to  
8 show you that it's true that Shawn Wooden and Terence  
9 ended up back -- in fact, never were there the first  
10 time, ended up at Waverly Village because a large  
11 crowd congregated once all these police cars started  
12 rolling into Waverly, which there probably were at one  
13 point 20-some police vehicles of various agencies on  
14 the scene.

15 There were helicopters flying around.  
16 Everybody in town knew something had happened. In  
17 fact, you'll find from all the evidence in this case  
18 that this is one of the single most talked about and  
19 known about events in terms of its actual occurrence  
20 in the last many, many years in Waverly, Virginia.

21 And it still is to this day something that  
22 the people there recall very distinctly, at least in  
23 terms of the fact that it occurred and that there was  
24 a great deal of speculation about what had taken  
25 place.

1           Mr. Wooden and Mr. Richardson are at -- are  
2 among the crowd, riding bicycles, trying to see what's  
3 going on like everybody else. As I say, there was a  
4 very large crowd out there. If I'm not mistaken the  
5 evidence is going to show you that the police had  
6 tracking dogs out there at the time that came within  
7 feet of Mr. Richmond. No reaction.

8           And then we turn to the question of Joe  
9 Jones. Now, I want to emphasize one other thing.  
10 There's a ton of people on the government's witness  
11 list. I don't recall the exact number, but it's a lot  
12 of folks. Now, you're probably not going to hear from  
13 each and every one of them because out of an abundance  
14 of caution they've listed everybody they can possibly  
15 call.

16           I'm sure they're not going to end up calling  
17 everyone, but there are an awful lot of people lined  
18 up to testify here. We know about a lot of them.  
19 Because of the rules of court, we know a lot about  
20 what many of them will say.

21           But I'm not here at this time, at this stage  
22 of the trial to tell you what each and every one would  
23 say or to contradict or show why each and every one of  
24 them is wrong. I'm trying to hit some of the high  
25 spots in terms of what Mr. Novak has mentioned and

1 some of the things that we're going to bring forth for  
2 you to consider.

3 I'm not going to waste your time talking  
4 about each and every thing that he alleged or each and  
5 every witness that will appear because it's  
6 unnecessary until we get into the meat of the case, if  
7 you will.

8 Joe Jones, Joe Jones on April 25th, the  
9 night of April 25th, went to the Waverly Police  
10 Department, which is just a little -- it's right off  
11 of Main Street in downtown Waverly. If you've ever  
12 past through Waverly, it's one stoplight there.  
13 There's a McDonald's and a Burger King.

14 McDonald's is on the south side of 460. The  
15 Burger King is on the north side, and the street that  
16 cuts across becomes Main Street. It runs right across  
17 the railroad, which parallels 460 for a long way up  
18 and down that stretch of road.

19 Then there's -- you take the first left is  
20 Railroad Avenue. The second left is -- I believe is  
21 the left that takes you to the police department, and  
22 Mr. Jones showed up and was interviewed by several  
23 people, including some people from the Virginia State  
24 Police.

25 And apparently, he showed up, and he was



1 drunk. It's noted specifically that he was  
2 intoxicated, and he didn't want to talk with those  
3 folks. He wanted to only talk with Chief Sturup.  
4 Chief Sturup came over.

5 And the first thing he tells him is, "I was  
6 at Waverly Village when the shooting occurred." He  
7 wasn't. Why he'd say that, we don't know. Maybe  
8 we'll find out. Then he says, "Well, I overheard this  
9 thing about Terence Richardson supposedly being  
10 involved," and comes in and tells the chief about  
11 that.

12 Well, we'll see about that, too. We all  
13 know these things. I'm reading from a document  
14 provided by the government in this case.

15 I'll talk about Mr. Wooden for a minute.  
16 I'm not going to talk about everything there is to  
17 talk about because there's a lot. When we get to  
18 closing argument, I will dwell on him at length but  
19 not now.

20 But let's just hit a few points about  
21 Mr. Wooden right now. Mr. Wooden, even by the  
22 government's own admission, has lied consistently  
23 about this situation. They believe that he's telling  
24 the truth when he says he was present when this all  
25 happened.

1           Now, what they believe is fine and good, but  
2 it doesn't have any place in your consideration of the  
3 evidence. Mr. Wooden tells the following stories:  
4 Terence Richardson was with me, No. 1. Terence  
5 Richardson and Ferrone Claiborne went back into the  
6 woods to do a drug deal.

7           I stayed as a lookout. I stayed back in the  
8 main area of the apartments. I didn't really hear  
9 anything. I didn't really see anything. What he did  
10 hear was a gunshot.

11           Now, that, in fact, folks -- I'll come back  
12 to this topic in just a second. That is indeed the  
13 testimony he gave under oath in the Sussex County  
14 General District Court, the preliminary hearing of  
15 these two young men.

16           He's going to tell you today or whenever he  
17 testifies, probably tomorrow, I guess, that he lied  
18 when he said that. He committed perjury when he said  
19 that. What's the next story he told?

20           Well, Mr. Ritchie goes to see him. At some  
21 point, he tells Mr. Ritchie, everything I told you  
22 about my involvement in this is wrong. I have nothing  
23 to do with this. I don't know anything about it. I  
24 made it all up.

25           Then he tells several months later, well,

1 yes, as a matter of fact, I was back in the woods. He  
2 got prosecuted in this very courthouse for obstruction  
3 of justice for telling all these different stories,  
4 and he received a sentence that is the equivalent of  
5 120-month sentence.

6 He's one of those people that Mr. Novak  
7 referred to, although he didn't name him. He's one of  
8 those people who's testifying in the hopes that he  
9 will receive some type of lenient treatment in terms  
10 of, in his case, a sentence reduction.

11 That's the one thing you'll find out that he  
12 wants to happen most for him in the world, and that is  
13 indeed why he's going to be here on the stand. He's  
14 doing it for himself. He's not exactly, as you will  
15 find, a public spirited citizen.

16 By the way, the evidence will also tell you  
17 that Mr. Wooden, for whatever reason, has never been  
18 prosecuted for his perjury in the Sussex County  
19 General District Court. There, you'll find, he took  
20 the same oath that he is going to take when he appears  
21 in front of you probably tomorrow.

22 Now, that brings us to the question of the  
23 state court cases. What happened was  
24 Mr. Richardson -- and the same is true for  
25 Mr. Claiborne, but his lawyers will address it -- was

1 charged with two charges in the state prosecution.

2 He was charged with capital murder. That's  
3 the murder of a law enforcement officer while that  
4 officer was in the performance of his duties. He also  
5 was charged with the use of a firearm in the  
6 commission of that murder.

7 Two separate crimes. Now, capital murder in  
8 Virginia carries two possible punishments. You'll  
9 find that out as well. Number 1, you can receive the  
10 death penalty. Number 2, you could receive life  
11 imprisonment without parole.

12 For various reasons, the lawyer who was  
13 representing Mr. Richardson at that time discussed  
14 with the prosecutor a negotiated resolution in the  
15 case, and eventually, it was agreed upon that  
16 Mr. Richardson would enter a plea of guilty to a  
17 manslaughter charge and then other firearm charge  
18 would be dropped.

19 They would reduce or the legal term is amend  
20 the charges of capital murder to manslaughter, and he  
21 would enter a plea to that. And indeed, he did. Now,  
22 Terence Richardson has never said out of his own  
23 mouth, No. 1, this killing was an accident. He never,  
24 ever said that. Not once.

25 That's Mr. Novak's conclusion, if you will,

1 from the charge to which he entered a plea in state  
2 court. Now, you're going to find that in the state  
3 court, the judge there read a series of questions to  
4 Mr. Richardson when he took his guilty plea.

5 Now, one of the questions that he asked him  
6 is, "Are you pleading guilty because you are in fact  
7 guilty?"

8 And Mr. Richardson answered, "Yes."  
9 Mr. Richardson, as well as the attorney who  
10 represented him at that time, between the two of them  
11 will explain to you exactly why that happened.

12 In essence, the answer is Mr. Richardson was  
13 looking at a situation where if his plea wasn't  
14 accepted on manslaughter, the only alternative he had  
15 left to him was to stand trial on the charge of  
16 capital murder and the other charge of use of a  
17 firearm in the commission of a felony.

18 And he had to look at the possibility on one  
19 hand of possibly receiving the death penalty or life  
20 in prison without parole or pleading to a charge that  
21 carried a maximum penalty of ten years in the  
22 penitentiary, and he chose the latter for reasons that  
23 he'll explain to you, including what I just mentioned.

24 The government -- well, I'll get to that  
25 later. Now, those pleas were unsatisfactory to

1 everyone with the possible exception of Mr. Claiborne  
2 for reasons you will hear about.

3 It was unsatisfactory certainly for Officer  
4 Gibson's family for reasons you can readily imagine.  
5 It was unsatisfactory really to Mr. Richardson because  
6 still he knew in all likelihood he would and did go to  
7 the penitentiary. And it was unsatisfactory to the  
8 Court and public opinion, if you will. And that's why  
9 a federal investigation was initiated.

10 Now, killing a police officer in the  
11 performance of their duties, while it is a capital  
12 murder charge in Virginia state court is not in  
13 federal court.

14 In order for it to be a federal crime, a  
15 murder must also in this instance be accompanied or be  
16 done in the commission of or in relation to a drug  
17 trafficking crime.

18 So it was necessary in order to make a  
19 federal investigation turn into a federal charge there  
20 to be a link to drug trafficking in order to make this  
21 case fly, if you will, as a federal case. And that's  
22 what the federal government set out to do over a year  
23 and a half, almost two years ago.

24 They had the assistance of Mr. Ritchie and  
25 Special Agent Mike Talbert with the Alcohol, Tobacco

1 and Firearms. They had a federal grand jury conduct  
2 an investigation for a long period of time, took  
3 testimony from folks.

4 Charges were brought against people down  
5 there in the hopes of gaining their cooperation, and  
6 in many instances, they were able to do so. And  
7 you'll hear from some of those people if not most of  
8 them.

9 I'm not going to bore you with details as to  
10 each and every one. They went down there essentially  
11 and turned Waverly upside down. They investigated  
12 this case. They had the luxury of time because  
13 Mr. Richardson was in the penitentiary. He wasn't  
14 going anywhere.

15 And they had the luxury of two very  
16 experienced investigators and a very experienced and  
17 able prosecutor to assist in the investigation, and  
18 that's what's been going on up until December of this  
19 year when the indictment in this case was returned.

20 Actually, some of this has been going on  
21 since that time. It didn't stop then. They continued  
22 to pursue their efforts to interview people,  
23 reinterview people -- you'll hear about all this in  
24 the course of the case -- and they gained further  
25 cooperation from people involved.

1           In fact, when you talk about -- pardon me.  
2       When the prosecutor talked about Mr. Ritchie  
3       interviewing -- pardon me, Mr. Richardson, that took  
4       place at the prison in which Mr. Richardson was then  
5       residing. I believe it was the Deep Meadow  
6       Correctional Center out in Powhatan County.

7           Mr. Novak, Mr. Talbert and Mr. Ritchie went  
8       out there and asked if they could speak to him, and  
9       remember, Mr. Richardson has been prosecuted in the  
10      state court at this point. He knows full well that  
11      there is a federal investigation going on at this  
12      point, and he also knows that Shawn Wooden has sort of  
13      left the fold, if you will, in terms of supporting his  
14      story.

15           How does he know that? Well, because of his  
16      testimony at the preliminary hearing in start court,  
17      which took place months before that. That was what  
18      sort of got the ball rolling in court in Sussex  
19      County.

20           And he knew that Mr. Wooden had, for  
21      whatever reason, abandoned his support of  
22      Mr. Richardson's statement that he was asleep in  
23      Mr. Wooden's trailer at or about the time that this  
24      took place, asleep or watching cartoons.

25           They were very clever when they went and



1 interviewed him. They knew already because he had  
2 already told this very same account to local  
3 investigators that way back when, when the state court  
4 case was getting started, they knew pretty much what  
5 he was going to tell them.

6 He was going to be consistent about this  
7 account that he gave in terms of what his earlier  
8 account was. In fact, you'll find that Mr. Richardson  
9 has never said anything different than he said the  
10 first time he was interviewed by any law enforcement  
11 person about this.

12 They may have gone into a little more depth  
13 about it than the initial interview, but the essential  
14 details have remained unchanged the entire time. They  
15 knew or they strongly suspected at least that he was  
16 wrong about the time of the phone call and about the  
17 time or the timing of the cartoons that were on TV.

18 So what they did was they just asked if he  
19 would give an account again of what took place, and he  
20 did that. And they were kind of rubbing their hands  
21 when he did that because, again, he repeated what he  
22 said way back then, and they knew that he was wrong  
23 about the times.

24 What they didn't do -- and the evidence is  
25 going to show you this -- is they didn't say to him,

1 look, we have proof that you're wrong. We can show  
2 you that the phone call came in at a different time,  
3 and we can show you that you have the time of the  
4 shows off by half an hour. How do you explain that?

5 They didn't do that. They just simply  
6 walked away because they had what they needed. They  
7 didn't give him the opportunity to explain it, and he  
8 will have the opportunity here, and he will tell you.  
9 But that was what happened when Terence was  
10 interviewed back then.

11 Let's talk about Evette Newby for just a  
12 moment. I've already told you that you'll find it is  
13 extremely difficult based on the photographs and other  
14 evidence to determine that she could have indeed seen  
15 what she said she saw from the position she was in at  
16 the time of the officer's death.

17 The funny thing is she was there in her  
18 apartment with two other people. One is her son. One  
19 is her boyfriend. If I'm not mistaken, his correct  
20 name is Earl White. I believe people refer to him as  
21 Tony White.

22 Somehow, somebody got Tony White to back up  
23 her story that this is what they had seen looking out  
24 the window. But guess what? Tony White later on  
25 said, you know what, I didn't see it. I didn't see

1 it. I just went on, you know, what I heard she said  
2 she saw. I didn't see it. I wanted to back her up.  
3 I wanted to help her out.

4 It's not what happened as far as he's  
5 concerned because he didn't see it. I can't tell you  
6 each and every witness that the government is going to  
7 call, but I can tell you -- I'll pick one out. I  
8 suspect very strongly they'll call this gentleman.

9 And to illustrate to you for the rest of the  
10 folks we're talking about, people who had charges or  
11 potentially had charges that could have been brought  
12 against them, why they would come forward and say  
13 things that you're going to hear about this case.

14 There's a guy named William Henry Smith who  
15 is in some way related to Terence. Terence, while his  
16 state court case was pending, at some point was able  
17 to get out on bond. One of the conditions of his bond  
18 was that he had to live in Richmond at the home of his  
19 aunt and uncle, and a condition by which he abided.

20 During the time he was out, his grandmother  
21 on his mother's side passed away, and funeral services  
22 were held for her first in Petersburg, and then there  
23 was an interment down in the Stony Creek area, down  
24 off 95 further south of Petersburg.

25 Terence was allowed to attend so long as he

1 was in the physical company of this aunt or his uncle  
2 at all times. How things worked that day was they  
3 started off at Terence's aunt's house. Her name's  
4 Christie.

5 She actually had a trailer down in the  
6 southern part -- I guess it would be the southwestern  
7 part of Sussex County. The family gathered there.  
8 There was a family car or limousine provided by the  
9 funeral home. The family then got in that car.

10 Terence got in the car with his mother and  
11 his aunt and some other relatives, and they all rode  
12 up together to the services in Petersburg. No stops  
13 along the way. Then after the service up there was  
14 concluded, drove down back to the Stony Creek area for  
15 the graveside services, no stops along the way.

16 Once that was concluded, they rode back over  
17 to his Aunt Christie's trailer, and no stops along the  
18 way. Mr. Ellsworth, the lady who passed away, was his  
19 aunt. So he's going to tell you that he went to these  
20 services as well.

21 Now, he's going to tell you that somewhere  
22 along the way, whether it was during that time or  
23 perhaps afterwards when Terence and his uncle left to  
24 travel back to Richmond, that he and his wife and his  
25 daughters stopped at a 7-Eleven.

1           And he got out, and for some reason, he  
2 wandered around back behind the 7-Eleven. And he  
3 encountered Terence Richardson back there, and Terence  
4 was back there talking to a bunch of young boys that  
5 he, Mr. Ellsworth, didn't know.

6           And then he said, I killed the officer, and  
7 it was a mistake. I never meant to do it. If I could  
8 die in his place, I would. Words to that effect. And  
9 he was very surprised by all this.

10           Well, guess what he did about it? Nothing.  
11 Nothing, until a year later. Mr. Ellsworth ran across  
12 a little problem in his life. He got picked up and  
13 charged with two felonies.

14           He was charged with a felony offense called  
15 habitual offender, which relates to the operation of a  
16 motor vehicle after you've been declared an habitual  
17 offender and told not to drive.

18           And he was charged with possession of a  
19 firearm by a convicted felon. Now, this problem put  
20 him and representatives at the Sussex County Sheriff's  
21 Department together. We'll have to hear exactly how  
22 that happened. The mechanics aren't exactly clear,  
23 but they spoke.

24           He was referred to the Commonwealth Attorney  
25 down there who was at that time still handling the

1 case, the state court case involving the death of  
2 Officer Gibson. He was never used as a witness in  
3 that case. He might very well be used as witness in  
4 this case.

5 And don't you know it, the state court cases  
6 were dismissed. We're going to show you from our  
7 evidence that Mr. Ellsworth could not possibly be  
8 telling you the truth about this, but that's just one  
9 factual scenario related to a potential government  
10 witness. There are many more. There are many more.

11 You will have to search very diligently to  
12 find people who don't have a personal interest in the  
13 act of testifying that they will undertake here before  
14 you in this courtroom in the next several days.

15 Now, I'm going to halt with this here in  
16 terms of the facts of the case because it's time for  
17 Mr. Claiborne's lawyers to address you.

18 What I want to point out to you is this:  
19 Mr. Huyoung and I feel just as strongly as Mr. Novak  
20 feels about his case that when you've heard all the  
21 evidence, you're going to have heard a great deal of  
22 conflicting evidence.

23 You're going to have heard evidence that  
24 doesn't fit the allegations, such as the evidence  
25 we've talked about in terms of the dying description

1 from Officer Gibson. You're going to be left with a  
2 situation that is difficult to resolve in the way the  
3 government's suggesting it should be resolved.

4 I thank you for taking your time to listen  
5 to me right now as attentively as you have. What  
6 we're suggesting to you respectively is that when you  
7 hear it all and hear all the evidence and after you've  
8 heard the Judge tell you how to evaluate that evidence  
9 and what the law is, after you've heard what Mr. Novak  
10 has to say, the two times you're going to hear from  
11 him at the end of the case, you're going to find  
12 Mr. Richardson not guilty of these charges because the  
13 evidence just simply is not there, despite the time  
14 that the government has had, the luxury, the time the  
15 government has had to prepare this case and present it  
16 to you in this courtroom.

17 I thank you.

18

19 (Discussion off the record.)

20

21 MR. GAVIN: May it please the Court, counsel  
22 and members of the jury. The first lesson that you  
23 have learned very painfully is that we, as lawyers --  
24 and I say that collectively -- can probably talk too  
25 much.

1           But what I would say to you is that doesn't  
2 really matter because what we say is not evidence.  
3 What Mr. Novak says is not evidence. What I say and  
4 what Mr. Boatwright and his lawyer say is not  
5 evidence.

6           It's our pleasure to represent Mr. Ferrone  
7 Claiborne. Jeff Everhart and I represent him. There  
8 is no doubt, ladies and gentlemen, that the death of  
9 any 25-year-old is a tragedy, especially an officer.

10           But it's not a case about avenging a dead  
11 officer's life. You heard Mr. Novak get up here and  
12 say several times about, you know, this is a drunk and  
13 they are getting high and they are not working and  
14 they don't do what you do.

15           And he pointed at them so many times. He  
16 pointed at them about 12 times. These are bad people.  
17 It's not a case about bad people. It's about facts.  
18 This courtroom is about facts. It's about evidence.

19           It's not about convincing somebody that they  
20 are a bad person, and therefore, because they are a  
21 bad person, they must have done it. Or you shouldn't  
22 feel as guilty about convicting a bad person versus a  
23 good person.

24           It's not about that. It's about facts.  
25 It's about evidence. We believe that this evidence in



1 this trial is going to prove to you Ferrone Claiborne  
2 didn't have anything to do with it.

3 It basically breaks down into two cases.  
4 There's a drug case against Ferrone Claiborne and a  
5 murder case against Ferrone Claiborne. The first  
6 case, the drug case, what the government is going to  
7 do is basically bring in all these people.

8 Now, you're going to see that the same  
9 people that the government is basically saying on our  
10 hand are bad people, drug users, people who get high,  
11 people who sell crack are the exact same people that  
12 they are going to be saying you have to believe these  
13 people.

14 It's sort of like, we're going to use bad  
15 guys to get the bad guys, but when the bad guys agree  
16 to cooperate with us, we'll change their hat. We'll  
17 turn them from bad guy to good guy. It doesn't work  
18 that way.

19 With regard to the drug case, you're going  
20 to hear that most, if not all, of their witnesses have  
21 only seen Ferrone use crack, and we'll admit to you  
22 that he occasionally used crack. There's a huge, huge  
23 difference between using crack and conspiring to  
24 distribute crack. Huge.

25 Now, we're talking about '91 to '98. What

1 did you-all do in 1991? Ask yourselves. Do you  
2 remember? When you think about the credibility of  
3 these witnesses, think about what you did eight years  
4 ago, seven years ago. How credible are your memories  
5 of that?

6 This case is going to be a lot about  
7 credibility, and I'm going to submit to you that a lot  
8 of these people aren't credible. You're going to hear  
9 instructions at the end that says, in fact, you can  
10 not look at these people the same way you would look  
11 at a regular person without these types of drug  
12 problems, without these convictions because they're  
13 not as credible.

14 The law says that they are not as credible  
15 as someone that doesn't have those problems or those  
16 convictions. So keep in mind as you listen to their  
17 testimony, are they a good person or a bad person?  
18 What do they have to gain?

19 Because every one of them just about has  
20 something to gain, whether there's time off their  
21 sentence, whether it's an eliminated charge, they all  
22 generally have something to gain.

23 Now, you're going to hear about Ferrone  
24 Claiborne. Is he a person that you want your son to  
25 hang out with or your daughter to marry? Maybe not.

1 Maybe. He didn't hold down a great job all the time.  
2 He worked at some odd jobs.

3 He did, in fact, live with his parents. So  
4 he had no expenses. He made a little bit of money  
5 here and there, and a lot of it he used when he had it  
6 to use crack. Big difference between selling.

7 You're not going to hear any testimony that  
8 Ferrone Claiborne was driving around in a big Cadillac  
9 or Mercedes or flashing cash or walking around living  
10 the big life, living the drug dealer life. You're not  
11 going to hear any of that. It's not happening. It's  
12 not there. He was a user maybe, and that's it.

13 Moving on to the murder -- well, let me  
14 actually go back to one more thing on the drugs  
15 because I think it's important. Mr. Novak mentioned  
16 to you, ladies and gentlemen, and really harped on the  
17 fact that this is a small town.

18 Don't want to be a snitch in a small town.  
19 Keep in mind, you'll hear this. Mr. Claiborne doesn't  
20 have any felony drug convictions. I believe he may  
21 have had one marijuana conviction a long time ago, but  
22 he doesn't have anything that supports the charge that  
23 they have weighed against him.

24 There are no people out there in the  
25 community or at least in the law enforcement community

1 that Ferrone Claiborne was on their radar screens.  
2 You'd think in a small town, if it is in fact a small  
3 town, and Ferrone Claiborne is doing the types of  
4 things that they allege he has done, that he wouldn't  
5 be on somebody's radar screen?

6 It doesn't add up. It's not consistent with  
7 somebody who, according to them, is selling drugs  
8 every weekend, every day in this one isolated place.  
9 It's inconsistent.

10 Moving on to the murder.

11 THE COURT: Mr. Gavin, excuse me. I think  
12 what might be happening is you're putting pressure on  
13 that line that you're stepping on.

14 MR. GAVIN: This one right here?

15 THE COURT: Just move your feet and watch  
16 it. I think that's what they say is happening, and  
17 then we'll fix it during the recess.

18 MR. GAVIN: I'll just step aside.

19 THE COURT: That isn't the answer. So much  
20 for that theory.

21 MR. GAVIN: Ladies and gentlemen, with  
22 respect to the murder, our defense on the murder is  
23 pretty simple. It's an alibi defense. An alibi  
24 defense is we weren't there.

25 Now, is it a rock solid alibi defense? No,

1 it's not. The reason I say that is because it would  
2 only be solid if we could say that he was at MCV under  
3 anesthesia between eleven and twelve on April 25th,  
4 1998, and having his gallbladder removed. That would  
5 be a rock solid alibi. All right?

6 But is it a solid alibi? Yes, it is. And  
7 what it is, is that Ferrone Claiborne, who got up and  
8 stayed at his Uncle Roosevelt's house right here on  
9 Beaver Dam Road, he got up around 10:30. He showered.  
10 He ate.

11 Sometime around eleven o'clock, he walked  
12 out of Beaver Dam Road and was walking down East Main  
13 Street, and this is the intersection of Main Street  
14 and 460. As he's walking down this road, his cousin  
15 and his cousin's wife, two girls, Michelle Claiborne  
16 and Marilyn Claiborne, they see him as they are coming  
17 down here because they are coming from Dendron.

18 And they have a little girl in their car,  
19 and they want to take this little girl to a Burger  
20 King. And the Burger King is located right there, and  
21 you'll see it. There's a Burger King right there, and  
22 it's right there at the corner of 460 and Main Street.

23 And in this Burger King, believe it or not  
24 because they don't really in Richmond, they sell  
25 sausage biscuits, and they sell them until

1 eleven o'clock in the morning.

2           And they were trying to take this young girl  
3 to the Burger King in time to get a sausage biscuit at  
4 this Burger King before they changed over to lunch.  
5 That's why they know it was shortly after eleven.  
6 What made you think that? What would make you recall  
7 that?

8           Well, if you're trying to get a little girl  
9 a sausage biscuit and you're trying to beat the store  
10 to the lunch hour, that would make you remember that.  
11 And I would submit to you that's why they do remember  
12 it.

13           But when they get there, it's too late.  
14 They've already changed over. They can't get it.  
15 Notwithstanding that, they see Ferrone Claiborne right  
16 here in front of this Beale Boy's Store, which is  
17 right there at the intersection, walking towards town.  
18 That's right around eleven o'clock.

19           You're going to hear evidence that this is  
20 from here, all the way down to here, all the way to  
21 here, all the way to here, all the way to here is  
22 about a mile and a half. You're going to hear  
23 evidence that walking that distance, even at a brisk  
24 pace, will take about 23 minutes.

25           The murder in this case had to take place

1 between 10:58 and 11:14. The officer checked out of  
2 his car at 10:58. The 911 call came in at 11:14. If  
3 the 911 call came in at 11:14, it's safe to assume it  
4 would maybe take the person two minutes to get back to  
5 the telephone, maybe one minute.

6 So let's assume the murder took place a  
7 couple minutes before 11:14. The murder had to take  
8 place between eleven o'clock and 11:10, 11:12, maybe.

9 So you're talking about a 12-minute lapse of  
10 time. There's no way in the world that Ferrone  
11 Claiborne could have gotten from here to here, to  
12 here, to here, to here, to here and went behind a  
13 building and made a drug transaction in 12 minutes.  
14 It doesn't work.

15 Now, is the alibi solid? I say yes. What  
16 do we have? All we've got is the testimony of Marilyn  
17 and Michelle Claiborne. Do we need all these other  
18 alibis that you've heard Mr. Novak talk about him  
19 having? We don't need them because we've got two  
20 independent people that confirm what he's saying.

21 Two independent people will say they saw him  
22 right there, right around the time of the shooting.  
23 So keep that in mind.

24 The last thing I'd have you keep in mind is,  
25 according to the government's theory -- and I think

1 Mr. Boatwright mentioned this, but it's a very  
2 important question.

3 According to the government's theory, they  
4 met somewhere along in here at Dobie's Store, and at  
5 Dobie's store, they evidently decided that they would  
6 go make this drug transaction.

7 The government said that they dealt drugs at  
8 Dobie's Store. The government said that they dealt  
9 drugs basically everywhere. So they would not have  
10 had any particular fear, if you adopt the government's  
11 theory of selling drugs at Dobie's Store.

12 If Ferrone Claiborne was involved in this  
13 thing and had drugs from the previous night or that  
14 morning or whenever, why would he take this other  
15 person all the way down the railroad, all the way down  
16 Locust, all the way to Amherst behind an apartment  
17 complex to do a transaction?

18 He could have just done it at Dobie's. It  
19 is consistent with our evidence that Ferrone Claiborne  
20 wasn't there. Ladies and gentlemen, there's going to  
21 be a lot of evidence you will hear. I think the  
22 government has probably 60 witnesses that they're  
23 going to call, a lot of them which we will not  
24 dispute, a lot of them we won't ask a lot of questions  
25 to because we're third in line.



1           Mr. Boatwright and his co-counsel will  
2 probably have already covered them. So please don't  
3 hold that against us. We're just trying to be as  
4 brief as possible as such.

5           I submit to you, ladies and gentlemen, when  
6 the day is done or when the week is done, there are  
7 going to be a lot of problems with their proof, and  
8 it's not going to be beyond a reasonable doubt.

9           And whether the defendant testifies or not,  
10 he hasn't made that decision, but whether he does or  
11 not, their evidence is not going to meet that  
12 standard.

13           You have the obligation to find that they do  
14 meet it, and we urge you to find him not guilty.  
15 Thank you.

16           THE COURT: All right. Ladies and  
17 gentlemen, it's a good time, I think, to take a little  
18 recess for the afternoon, to take a 20-minute break.

19           When we come back, we'll hear the testimony  
20 of the first witness. If you will just take your pads  
21 with you, Mr. Neal will take them up at the end of the  
22 day, but for now, if you will just take them with you  
23 to the jury room.

24           All right. You may retire to take a break.  
25 Just come on up and come out right here.

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(Jury left the courtroom at 3:50 p.m.)

THE COURT: Anything we need to take up.

MR. NOVAK: Yes, Judge. May I address the Court?

THE COURT: Yes.

MR. NOVAK: When I sat down after my opening, I was handed a note that indicated one of the government's witnesses, who also Mr. Boatwright referred to, Dr. Kay, a medical examiner -- I know you've seen her in the courtroom -- on the way over here fell and broke her ankle. She's in the emergency room.

We were going to call her this afternoon, and we had that computer generation thing to show. What we had done is we had taken all the nasty photos out so there could be no issue of prejudice, and just used a couple of photos in a computer animation, which they have seen. They've all agreed to that.

But what I was going to suggest, if they want a piece of evidence, obviously they want height and weight, but all we want is really the bullet path and a couple of other things, but I don't think they're in dispute.

1           If we could have a couple minutes, perhaps  
2 we can work out a stipulation to prevent her from  
3 having to come in Tuesday or Wednesday from the  
4 emergency room, but I wanted to disclose that, first  
5 of all, to defense counsel.

6           But secondly, if we can work it out, Judge,  
7 I don't have a written stipulation, I would just --

8           THE COURT: You can state it verbally.

9           MR. NOVAK: -- verbally give it after I talk  
10 to my colleagues on the other side, if that's all  
11 right.

12           THE COURT: All right. You-all go see what  
13 you can work out. If you can't, we'll reschedule and  
14 take the witness at a later time.

15           We'll take a 20-minute recess, which by the  
16 time we get out here on that clock, it will be a  
17 quarter after by that clock, and we'll try to work out  
18 the electrical problem while we're in recess. We may  
19 already have.

20           Thank you. We'll be in recess.

21  
22           (Recess taken.)

23           (Jury entered the courtroom at 4:20 p.m.)

24

25           THE COURT: All right. Your first witness.

1 MR. BOATWRIGHT: Rick Aldridge.

2 MR. NOVAK: Judge, we resolved that other  
3 matter.

4  
5 CHARLES R. ALDRIDGE, a Witness, called by the  
6 Government, first being duly sworn, testified as  
7 follows:

8  
9 DIRECT EXAMINATION

10 BY MR. NOVAK:

11 Q. Sir, you want to introduce yourself to the ladies  
12 and gentlemen of the jury?

13 A. My name is Charles Richard Aldridge, former deputy  
14 sheriff, Sussex County Sheriff's Department.

15 Q. Mr. Aldridge, do you go by the first name of Rick?

16 A. Yes, I do.

17 Q. What do you do for a living right now?

18 A. I'm a heavy equipment operator for Chapparal Steel  
19 in Dinwiddie, Virginia.

20 Q. You previously, though, before that, you worked at  
21 the Sussex County Sheriff's Department; is that right?

22 A. Yes, for about nine years.

23 Q. When did you leave the Sussex County Sheriff's  
24 Department?

25 A. December 31st of 1999.

1 Q. When had you joined the department, then, as well?

2 A. I'm sorry?

3 Q. When did you join the Sussex County Sheriff's  
4 Department?

5 A. July 1st of 1991.

6 Q. Now, before working as a deputy with the Sussex  
7 County Sheriff's Department, did you work in law  
8 enforcement?

9 A. Yes, I'd just come from a year-long employment  
10 over in Germany teaching military police  
11 investigations, and prior to that, I retired from the  
12 Washington, D.C. Police Department, where I spent  
13 20 years.

14 Q. I want to ask you, while you have served as a  
15 police officer during those 20-plus years, did you  
16 receive any type of training in CPR or any first aid  
17 type of training?

18 A. Yes, I did, both with the District of Columbia  
19 Police and with the Sussex County Sheriff's Office.

20 Q. Can you tell the ladies and gentlemen what type of  
21 training you received, basically?

22 A. We had Red Cross personnel come to both agencies  
23 and give us classes on CPR.

24 Q. Now, I want to direct your attention back to April  
25 of 1998. At that time, were you working as a Sussex

1 County Deputy Sheriff?

2 A. Yes, I was a corporal with the Sheriff's Office  
3 then.

4 Q. Were you familiar with an officer from the Waverly  
5 Police Department?

6 A. Yes, I was familiar with all the officers there.

7 Q. Before I -- I'm sorry. Before I ask you about a  
8 specific officer, let me ask you, is the City of  
9 Waverly within Sussex County?

10 A. Yes, it is within the boundaries.

11 Q. Does the City of Waverly -- did it have its own  
12 police department?

13 A. Yes, it did and does.

14 Q. Now, Sussex County, y'all had your own sheriff's  
15 department; is that right?

16 A. Yes, sir.

17 Q. You also have law enforcement authority within the  
18 City of Waverly?

19 A. Yes, we do.

20 Q. Now, let me ask you specifically, then, about  
21 Officer Allen Gibson. Did you know him?

22 A. Yes, I did know him.

23 Q. If I could show you Government's Exhibit P-1.

24 Mr. Aldridge, I'll ask you to take a look at

25 Exhibit P-1. Do you recognize the person depicted in

1 that photograph?

2 A. Yes, it's Allen.

3 Q. Officer Gibson?

4 A. Yes.

5 MR. NOVAK: Judge, I'd move for admission of  
6 P-1 at this time. If we could just turn it and show  
7 it to the jury, please?

8 THE COURT: Any objection?

9 MR. BOATWRIGHT: No, sir.

10 MR. EVERHART: No, sir.

11 THE COURT: It's admitted.

12

13 (Government's Exhibit P-1 is admitted into  
14 evidence.)

15

16 BY MR. NOVAK:

17 Q. Now, I want to direct your attention back to  
18 Saturday, April 25th of 1998, and ask you if you were  
19 employed specifically on that date.

20 A. Yes, I was.

21 Q. Were you working?

22 A. Yes, I was working selective traffic enforcement  
23 prior to the start of my regular shift.

24 Q. Can you keep your voice up a little bit or move  
25 the microphone a little closer?

1 THE COURT: Just back it up towards you.

2 BY MR. NOVAK:

3 Q. So I gather you were in uniform; is that right?

4 A. Yes, sir, I was in uniform and operating a marked  
5 patrol vehicle.

6 Q. Do you recall what type of weather existed on that  
7 day?

8 A. A day much like today, sunny, comfortable, not  
9 overly hot.

10 Q. Now, you had an occasion to accept a 911 call at  
11 approximately 11:14 a.m.; is that right?

12 A. Yes, sir.

13 Q. Where were you when you received that 911 call?

14 A. I was in the vicinity of Wakefield Airport, about  
15 7 miles east of Waverly on Route 460.

16 Q. When you received that radio call, did it indicate  
17 to you that an officer had been shot in Waverly  
18 Village Apartments?

19 A. Yes, that's what my dispatcher relayed to me.

20 Q. After you received that radio call, what did you  
21 do?

22 A. I drove as quickly as I could to the Waverly  
23 Village Apartments and arrived there about four  
24 minutes later.

25 Q. Approximately 11:18 a.m.?



1 A. Yes, sir, about 11:18.

2 Q. Can you tell us what it is you saw when you  
3 arrived at that location?

4 A. My dispatcher indicated that the officer was in  
5 the rear of the apartment complex. That's where I  
6 responded to. There's a front portion and a rear  
7 portion.

8 Q. If I could show you, perhaps, Exhibit CS-3.

9 MR. NOVAK: Judge, if I could just -- if  
10 Mr. Mack will be kind enough to hold it up so the jury  
11 can see it at the same time Mr. Aldridge is referring  
12 to it?

13 BY MR. NOVAK:

14 Q. Do you recognize the Exhibit CS-3?

15 A. Yes, sir, this is an overhead photograph of the  
16 Waverly Village Apartment complex, to include the  
17 Amherst Lane that continues all the way into the  
18 apartment.

19 Q. Does that photograph fairly and accurately depict  
20 the condition of the apartment complex on that day?

21 A. Yes, sir, it does.

22 Q. As a matter of fact, there were a number of police  
23 cars that were depicted over there in Amherst Lane  
24 that were still there from the crime scene; is that  
25 right?

1 A. Yes sir.

2 MR. NOVAK: Judge, I move for admission of  
3 CS-3 at this time.

4 MR. BOATWRIGHT: No objections, sir.

5 MR. EVERHART: No objection, Your Honor.

6 THE COURT: It's admitted without objection.

7

8 (Government's Exhibit CS-3 is admitted into  
9 evidence.)

10

11 MR. NOVAK: Mr. Mack, if you would be kind  
12 enough to hold it up.

13 BY MR. NOVAK:

14 Q. Mr. Aldridge, referring to the photograph, if you  
15 could tell the ladies and gentlemen how you entered  
16 the apartment complex and what occurred next.

17 A. Well, I entered by way of Amherst Lane. This is  
18 the front office area, the first set of buildings,  
19 apartment buildings. These are the 100 series  
20 apartments, this being the 600 series back here  
21 (indicating).

22 I proceeded to the rear of the apartment  
23 parking area and noted officer Gibson's Town of  
24 Waverly marked patrol unit.

25 MR. NOVAK: Your Honor, if I could show the

1 witness Exhibit CS-41 on the monitor? Judge, perhaps  
2 you can explain how our monitors work to the jury?

3 THE COURT: I don't know that that's within  
4 my technical capacity. There's one at each end, and  
5 you can look at either one you want to.

6 MR. NOVAK: That's technically sufficient  
7 for us, Judge.

8 THE COURT: That exhausts my technical  
9 knowledge.

10 BY MR. NOVAK:

11 Q. At that same time -- Mr. Aldridge, I'm going to  
12 ask you if you've got a monitor in front of you? Is  
13 that right?

14 A. Yes, sir.

15 Q. Do you recognize the photograph that's depicted  
16 there in front of you?

17 A. Yes, sir, that's a Waverly Police marked unit.

18 Q. Is that actually Unit 5, referring to Officer  
19 Gibson's unit?

20 A. Yes, sir, it is.

21 Q. Does that accurately reflect the car that you saw  
22 that night at that location at the time you pulled up?

23 A. Yes, sir.

24 MR. NOVAK: I move for admission of that  
25 Exhibit CS-41, please.

1 THE COURT: Any objections?

2 MR. BOATWRIGHT: No, sir.

3 MR. EVERHART: No, Your Honor.

4 THE COURT: It's admitted.

5

6 (Government's Exhibit CS-41 is admitted into  
7 evidence.)

8

9 BY MR. NOVAK:

10 Q. Now, Mr. Aldridge, could you show us where it is  
11 that you saw Officer Gibson's vehicle?

12 A. Allen's car was parked at the end of this  
13 building, the 1600 series apartment building,  
14 approximately the last marked parking space.

15 Q. Where did you park your vehicle?

16 A. I pulled up into the sandy, grassy area to the  
17 left of where Allen's car was parked.

18 Q. What did you do next?

19 A. Advised my dispatcher that I had arrived, gotten  
20 out of my car and noticed a group of people who were  
21 gathered somewhere around these double doors here at  
22 approximately 638 Amherst Lane.

23 Q. At that point did you decide to enter the woods?

24 A. After I spoke with the people who were gathered in  
25 front of that apartment, I did decide --

1 Q. So you got information as to where the officer  
2 was; is that right?

3 A. Yes, I did.

4 Q. Based upon that information, you went into the  
5 wooded area?

6 A. Yes, I did.

7 Q. Did you go -- strike that.

8 Are you familiar with the number of paths  
9 that are in that wooded area?

10 A. As I recall, there are about three paths from the  
11 back of this apartment building that enter the woods.

12 Q. Can you show the ladies and gentlemen where  
13 exactly on that photograph those three paths would be?

14 A. There's a glare here. There's one path right here  
15 in the corner where the berm makes a sweep, and you  
16 enter in this direction.

17 There's one approximately on the center rear  
18 of this Building 6, and there's another one over here  
19 at the edge of the woods (indicating).

20 Q. Which path did you take, Mr. Aldridge?

21 A. I took the path that I knew that was lesser used.  
22 That was a much narrower path than the one that was in  
23 the middle.

24 Q. Why did you do that?

25 A. It was my figuring if there were any suspects

1 still in the woods that they would expect me to come  
2 from the more heavily used path.

3 Q. You still had no idea what was going on back  
4 there; is that right?

5 A. None whatsoever.

6 Q. So you entered the woods?

7 A. Yes, sir.

8 Q. What happen next?

9 A. Well, I entered the woods on this left path and  
10 began calling out...

11 Q. Take your time.

12 A. "Waverly officer, where are you?" About the third  
13 time I repeated that --

14 Q. Let me ask you this, Mr. Aldridge, do you have  
15 hearing difficulty in one of your ears?

16 A. Yes, my frequency range, I lost approximately  
17 99 percent in my right ear and now about 85 percent in  
18 my left ear.

19 Q. So you're hollering out with your hearing  
20 difficulties. Did you hear him at first?

21 A. No, I did not.

22 Q. So what did you do?

23 A. I repeated, "Waverly officer, where are you," not  
24 knowing who was back there yet. About the third time  
25 that I repeated that, I heard a low moaning off to my

1 right, and that's when I first spotted Allen.

2 Q. Did you see anybody else back there other than  
3 Officer Gibson?

4 A. No.

5 Q. Could you tell us where it is in relation to that  
6 map at first where it is that you saw Officer Gibson,  
7 approximately?

8 A. From the back of Building 6 here it's  
9 approximately 100 feet to where Allen was laying in  
10 the woods.

11 Q. Off of which path?

12 A. Off of the center path.

13 Q. Now, obviously you went over to see the officer;  
14 is that right?

15 A. Yes, sir, I did.

16 THE COURT: Mr. Aldridge, could you be so  
17 kind as to point that same thing out on that view so I  
18 can see where you were going?

19 THE WITNESS: Oh, yes, sir.

20 THE COURT: Where did you go?

21 THE WITNESS: I went -- followed the path  
22 over here on the left, Your Honor.

23 THE COURT: All right. Thank you.

24 MR. NOVAK: You can put that down, Mr. Mack.

25 BY MR. NOVAK:

1 Q. Now, can you tell us when you observed Officer  
2 Gibson was he alone or was there anybody else in the  
3 woods?

4 A. He was by himself.

5 Q. What was his condition when you observed him?

6 A. Allen was...

7 THE COURT: Would you like a cup of water?

8 THE WITNESS: Allen was laying on his left  
9 side. His feet were in the direction of the berm that  
10 goes along the back side of this building. His head  
11 was facing towards the woods, and his back was towards  
12 me.

13 BY MR. NOVAK:

14 Q. Now, Mr. Aldridge, you were the first one on the  
15 scene; is that correct?

16 A. Yes, sir.

17 Q. After Officer Gibson is transported out of there,  
18 you stayed with investigators and lay down on the  
19 ground yourself and had yourself photographed in the  
20 position Officer Gibson was in when you found him; is  
21 that right?

22 A. Yes, sir.

23 MR. NOVAK: Judge, if I could show him on  
24 the monitor Exhibits CS-11, 12, 13, 14 and 15?

25 BY MR. NOVAK:



1 Q. Mr. Aldridge, I'm going to ask you what it is that  
2 we're looking at right there.

3 A. I'm laying in the spot that Allen was laying on  
4 when I first saw him.

5 Q. Is that the position that he was in?

6 A. Yes, sir.

7 Q. Now, we can see to the side that there are other  
8 items behind you. Does that represent some of his  
9 clothing and such he was wearing at the time?

10 A. It looks like his vest panel, and I don't know  
11 what the white object is, probably his T-shirt.

12 Q. Those items were not there when you arrived; is  
13 that correct?

14 A. No, Allen had them on his person.

15 Q. We'll get to that in a second.

16 MR. NOVAK: If we could show him 12, please?

17 BY MR. NOVAK:

18 Q. Is that the shot from the rear as if he was  
19 laying?

20 A. Yes, that's basically what I saw when I came up on  
21 Allen.

22 MR. NOVAK: 13, please.

23 BY MR. NOVAK:

24 Q. Center photograph from a different position?

25 A. Yes, this would have been towards the apartment

1 building.

2 Q. So his feet there are pointing in the direction --  
3 his head and his feet, which one is pointing to the  
4 apartment?

5 A. His feet.

6 Q. And the last one, 14, do you recognize that?

7 A. Yes, sir, this angle would have been from the  
8 woods side.

9 MR. NOVAK: Judge, I move for the admission  
10 of CS-11, 12, 13 and 14.

11 THE COURT: Any objection?

12 MR. BOATWRIGHT: No, sir.

13 MR. EVERHART: No, sir.

14 THE COURT: They are admitted.

15

16 (Government's Exhibits CS-11, 12, 13, and 14  
17 are admitted into evidence.)

18

19 BY MR. NOVAK:

20 Q. Now, you found him laying in that fetal position,  
21 essentially. Can you tell us what happened next when  
22 you saw him?

23 A. I ran over to Allen, and I kneeled down at his  
24 back.

25 Q. What was the visibility like in the woods, sir?

1 A. Good. There was some foliage, but there were open  
2 areas. I could see very good distances in the woods  
3 from that position.

4 Q. Fair to say the foliage is on the top, and the  
5 inside of the woods is an open area?

6 A. Correct. Very little underbrush, very little.

7 Q. Were you able to see anybody else in the woods at  
8 that time? Are you looking for suspects, in your  
9 mind?

10 A. I scanned the woods for suspects already and don't  
11 see anybody presenting any kind of a threat. There  
12 was nobody else that I could see.

13 Q. When you came upon Officer Gibson, was he  
14 initially conscious?

15 A. No, he was unconscious, initially.

16 Q. Did you observe any blood?

17 A. No.

18 Q. Did you see any blood on the exterior of his  
19 uniform at that point?

20 A. No.

21 Q. Did you know where he was shot at that point,  
22 then?

23 A. No, I did not.

24 Q. Do you want to tell us what the condition of his  
25 face looked like?

1 A. Allen's skin, not only his face but his hands,  
2 that I could see, appeared ashen in appearance. They  
3 were not pink and fleshy, or they were ashen in  
4 appearance.

5 Q. Based upon your training that you talked about,  
6 what did that indicate to you in terms of his  
7 condition?

8 A. That he was in shock.

9 Q. At that time, did you see where -- if he had a  
10 firearm anywhere?

11 A. As I was kneeling towards Allen, I noted his  
12 firearm laying on the wooded floor of a leaf-covered  
13 woods floor, about 10 feet from his feet towards the  
14 apartment building.

15 MR. NOVAK: Judge, if I could show the  
16 witness, first of all, CH-1? Judge, may I approach?  
17 Sir, first of all, may the witness step down for a  
18 second, Judge?

19 THE COURT: Sure.

20 BY MR. NOVAK:

21 Q. Will you step down for a second?

22 Mr. Aldridge, do you recognize the item  
23 that's been marked as CH-1?

24 A. This is a diagram of the Waverly Village Apartment  
25 complex.

1 Q. Does that -- first of all, does that diagram  
2 fairly and accurately represent the condition of the  
3 Waverly Village Apartments that day?

4 A. Yes, it does.

5 MR. NOVAK: Judge, I'd move for the  
6 admission of CH-1 at this time.

7 THE COURT: Objections?

8 MR. BOATWRIGHT: No, sir.

9 MR. EVERHART: No, Your Honor.

10 THE COURT: It's admitted.

11

12 (Government's Exhibit CH-1 is admitted into  
13 evidence.)

14

15 BY MR. NOVAK:

16 Q. Would it be fair to say this diagram is the upside  
17 down version of the photograph we had before, CS-1?

18 A. Yes, it is.

19 Q. Maybe you can again show us where it is that you  
20 entered and get us back to the woods, and if you want  
21 to use this, then, for you to explain where various  
22 items were.

23 A. This intersection, which is not shown very well in  
24 the photograph, is Locust, Locust to Amherst, follows  
25 Amherst all the way around to the back of the parking

1 lot.

2 I noted Allen's car parked at this end of  
3 the building in approximately the last marked parking  
4 space. Right over here is that grassy, sandy area  
5 that I parked in.

6 This is the trail, the lesser used trail on  
7 the left-hand side of the woods that I followed into  
8 the woods. This is the middle trail, the more heavily  
9 used, and this is the approximate area where Allen was  
10 found just off the trail (indicating).

11 Q. Now, I had asked you if you had observed Officer  
12 Gibson's firearm?

13 A. Yes, sir.

14 Q. Let me first ask you, do you see an area that  
15 indicates an area where the victim was located?

16 A. Yes, sir.

17 Q. Does that depict where you found Officer Gibson  
18 lying?

19 A. Yes, sir.

20 Q. Can you tell us where in relation to that X did  
21 you observe his firearm?

22 A. His service pistol was in this direction toward  
23 the apartment building about 10 feet away from his  
24 feet.

25 Q. You can return for a second.

1                   That brings us up to Officer Gibson. You  
2 went up to Officer Gibson, then; is that right?

3 A. Yes, sir.

4 Q. You've already told us what you observed. Can you  
5 tell us what you did then?

6 A. I checked Allen for a pulse by placing my index  
7 and middle finger, right index and middle finger on  
8 his right corotid artery. I felt a weak pulse, and it  
9 was right at that time when Chief Sturupp came on the  
10 scene.

11 Q. What did Chief Sturupp do? First of all, you're  
12 familiar with who Warren Sturupp is?

13 A. Yes, sir.

14 Q. Was he the Chief of Police for the City of  
15 Waverly?

16 A. Yes, sir.

17 Q. That's the other independent police department; is  
18 that right?

19 A. Yes, sir.

20 Q. So you don't -- does he have authority over you?

21 A. No, sir, he does not.

22 Q. He arrived at the scene, and why don't you tell us  
23 what he did?

24 A. As I was checking Allen's corotid pulse, I saw  
25 Chief Sturupp enter my field of vision on the right

1 side, and as I was checking the pulse, I recognized  
2 who he was. And I told him, "I have a pulse. I have  
3 a pulse."

4 Q. Did he come over to you to help you care for the  
5 officer?

6 A. No, he didn't.

7 Q. At that point, had you received any information  
8 yet from Officer Gibson?

9 A. No, nothing.

10 Q. What did Chief Sturup do?

11 A. I saw Chief Sturup go directly to Allen's pistol,  
12 pick it up, and then he disappeared, following that  
13 middle trail back towards the apartments.

14 Q. Before getting any type of information; is that  
15 correct?

16 A. He had no information.

17 Q. You had no idea where he went; is that right?

18 A. No, sir.

19 Q. After Chief Sturup left with the firearm, what  
20 did you do in terms of tending to Officer Gibson?

21 A. Allen began to come around, regain consciousness,  
22 and I asked him where he was hit, "Allen, where are  
23 you hit?"

24 Q. Did he respond?

25 A. He told me that -- in the stomach, "I'm shot in my



1 stomach."

2 Q. Did you look at his stomach then?

3 A. At that time, I leaned over a little bit and could  
4 see -- well, when he told me that he was shot in the  
5 stomach, I rechecked his back to see if there was any  
6 kind of an exit wound, and I did not see one.

7 Q. Were you able to move him at all?

8 A. Yes. After I advised my dispatcher that I had  
9 located the officer and I needed a rescue squad, I  
10 tried to comfort Allen, advise him that I had the  
11 rescue squad coming, I needed to try to get him ready  
12 for transport, that I needed to roll him over onto his  
13 back.

14 I rolled Allen over. It was the first time  
15 that I noted the hole in his uniform shirt.

16 Q. Where was that hole at?

17 A. It was located at the approximate bottom of the  
18 outline of his bullet-resistant vest.

19 Q. Was there any blood visible at that time?

20 A. I didn't see any.

21 Q. What was the next thing you did?

22 A. I told Allen that I needed to remove his gun belt  
23 and his vest because that's what the squad was going  
24 to do when they got there. I wanted to try to get him  
25 ready.

1           He seemed to understand that. He seemed to  
2 understand that, and he helped me. I reached around  
3 and unsnapped his belt keepers in the front, reached  
4 under him and unsnapped the ones on his back, unhooked  
5 his gun belt, and he assisted me in lifting him to get  
6 the gun belt out from underneath him.

7 Q. So at this point he's at least conscious; is that  
8 right?

9 A. He is conscious, yes.

10 Q. After you were able to get his gun belt off of  
11 him, how do you lay him?

12 A. I'm sorry?

13 Q. How do you lay him after you take the gun belt  
14 off? How do you lay him?

15 A. He's still on his back, and I tell him I need to  
16 try to get his front vest panel off. He says, "Okay."  
17 At that point -- his shirt, by the way, had a zipper.

18           It was a zipper-styled shirt. The zipper  
19 was concealed by the left flap of the shirt. Well,  
20 the flap that had buttons on it, buttons above and  
21 below the zipper. So I had to unbutton and unzip the  
22 shirt to get to his vest panel.

23 Q. Now, you're talking about his bulletproof vest.  
24 Where was that in relation to his uniform?

25 A. As far as I can tell at this point, his vest was

1 positioned correctly on his torso, the front panel  
2 over his abdomen and the rear panel over his back.

3 Q. Was it underneath his shirt or over top?

4 A. Underneath his shirt.

5 Q. Could you feel it when you touched him?

6 A. Yes, sir.

7 Q. After you -- you removed his shirt, then; is that  
8 right?

9 A. Yes, sir.

10 Q. What is the next thing? Describe for us what you  
11 did in terms of trying to treat the fallen officer.

12 A. I got the shirt off, and then I noted the hole in  
13 the carrier of Allen's vest at the bottom edge where  
14 the Kevlar panels ended and the carrier material  
15 continued on.

16 There's a flap front and rear that gets  
17 tucked into the trousers to help assist and keep the  
18 vest in the proper position, and I noted the hole in  
19 the carrier material at the bottom of the Kevlar  
20 panels. When I lifted up the panel, I saw the hole  
21 continued through his T-shirt.

22 Q. Could you see blood on his T-shirt?

23 A. I honestly don't remember blood on the T-shirt.  
24 When I lifted the T-shirt up, there was a very minute,  
25 remarkably small amount of blood around the wound in

1 his abdomen.

2 Q. What did you do next?

3 A. Well, it was about this time that the rescue squad  
4 arrived.

5 Q. Before the rescue squad arrived, did you have  
6 occasion to ask him any questions about what happened?

7 A. Yes.

8 Q. Let me ask you this, Mr. Aldridge. Would it be  
9 fair to say that Officer Gibson gave you -- gave an  
10 account when you were alone and then later another  
11 account when some of the other officers arrived?

12 A. Yes, sir, he did.

13 Q. Let's talk about the first account when you were  
14 there alone in the woods with Officer Gibson. What,  
15 if anything, did he tell you about how he had been  
16 shot?

17 A. I asked Allen if he could tell me what happened.  
18 He said, "There were two of them."

19 I said, "What race were they?"

20 He said, "They were black males." You have  
21 to bear in mind that he's fading in and out of  
22 consciousness. As I would ask him each question, he  
23 would turn his head slightly, focus on me and answer  
24 the question as best that he could.

25 Q. What, if anything, did he say about what the black

1 males were doing when he approached them?

2 A. He said that while he was driving around the  
3 apartments he'd seen these two black males enter the  
4 woods behind the apartments, and they appeared to be  
5 engaged in a drug transaction.

6 He parked his car and drove around to the  
7 back of the apartment complex to intervene in this  
8 drug transaction.

9 Q. Did he give you a description of the two black  
10 males? Well, first of all, let me ask you this: Did  
11 he know who the two black males were?

12 A. That was the next question I asked him. "Did you  
13 know these two guys who were engaged in this drug  
14 transaction," and he didn't know either one of them.  
15 I asked him if he had ever seen them before. He said,  
16 no, this is the first time he had seen them.

17 Q. Did he give you a description of either one of the  
18 black males at that time?

19 A. Yes, he said that -- he said, "They had  
20 dreadlocks, and one possibly had a ponytail. Both  
21 were wearing blue jeans and white shirts." He didn't  
22 specify a button shirt or T-shirt that I recall, just  
23 white shirts. One was tall and thin.

24 Q. During this time frame is he continuing to go in  
25 and out of consciousness at that point?

1 A. Yes, sir.

2 Q. The rescue squad then arrived?

3 A. Yes, or shortly thereafter.

4 Q. Before the rescue squad arrives, do you know --  
5 well, strike that.

6 Let me ask you this: Do you know a trooper  
7 by the name of Jared Williams?

8 A. Yes, sir, I do.

9 Q. Did you see Jared Williams at the scene at any  
10 time?

11 A. Yeah, Jared arrived just before the rescue squad  
12 personnel did.

13 Q. When Jared Williams arrived, did you switch  
14 positions at all in terms of tending to Officer  
15 Gibson?

16 A. Yes, I did. I noted that Allen was having  
17 difficulty breathing. I moved around to his head and  
18 cupped his head in my hands. He seemed to breathe  
19 easier once I elevated his head slightly. So I stayed  
20 in that position.

21 Q. Did you know that there was a preexisting  
22 relationship between Trooper Williams and Officer  
23 Gibson?

24 A. No, I did not.

25 Q. Once Trooper Williams arrived, could you tell that

1 there was some kind of relationship, though?

2 A. Yes, I could tell. I determined that immediately,  
3 that there was a greater familiarity between Allen and  
4 Jared.

5 Q. Did basically Trooper Williams, then, take over  
6 talking to Officer Gibson?

7 A. Yes, he did.

8 Q. Were you in a position to hear everything that was  
9 being said at that point?

10 A. I heard bits and pieces of what was going on.

11 MR. NOVAK: Now, if I could show the witness  
12 FE-1, please? I digress for just a second here, Your  
13 Honor.

14 BY MR. NOVAK:

15 Q. Do you recognize that, that's been marked FE-1?

16 A. Yes, sir, it's a Glock Model 21, .45 caliber, ACP.

17 Q. Do you recognize that from seeing it anywhere on  
18 April 25th of 1998?

19 A. It looks like the weapon that was laying on the  
20 forest floor or looked like the type of weapon that  
21 was laying on the forest floor.

22 Q. Is that the weapon, then, that appears to you that  
23 Chief Sturup picked up that day?

24 A. It is of the same type, yes, sir.

25 MR. NOVAK: Your Honor, I move for admission

1 of FE-1 at this time.

2 MR. BOATWRIGHT: No objections, sir.

3 THE CLERK: What number are you saying?

4 MR. NOVAK: FE-1.

5 THE CLERK: Thank you.

6 MR. EVERHART: Judge, could I ask for just a  
7 minute to speak to Mr. Novak?

8 THE COURT: Yes.

9  
10 (Discussion off the record.)

11  
12 MR. NOVAK: Judge, what I was going to say,  
13 what Mr. Everhart was indicating to save time is the  
14 defense said they'd been given two opportunities to  
15 review all the exhibits, and they have no objections  
16 to these.

17 So instead of me keep offering them and them  
18 being asked by you whether they have any objections,  
19 they don't have any objections to any of the exhibits  
20 that I intend to introduce.

21 MR. EVERHART: If that's okay with the  
22 Court, we'll just save a little time.

23 THE COURT: Are you going to introduce all  
24 the exhibits on your list?

25 MR. NOVAK: Well, a large part of them, not



1 all of them.

2 THE COURT: All right. How are we going to  
3 keep what's admitted?

4 MR. NOVAK: Well, Judge, I'll just say I  
5 move to admit it.

6 THE COURT: If there's any objection, you  
7 state that there's an objection. Otherwise, when  
8 offered, an exhibit will be accepted.

9 MR. EVERHART: Yes, sir.

10 MR. BOATWRIGHT: Yes, sir.

11

12 (Government's Exhibit FE-1 is admitted into  
13 evidence.)

14

15 BY MR. NOVAK:

16 Q. Now, I want to get back. That's the firearm that  
17 you indicated was the firearm that was removed.

18 Before Trooper Williams arrived at the  
19 scene, did you have any conversations with Officer  
20 Gibson about the nature of the struggle and how the  
21 injury occurred?

22 A. Allen offered that he was fighting with a tall,  
23 thin one when the gun went off.

24 Q. Let me ask you this, Mr. Aldridge: After that  
25 day, obviously you knew that this was part of the

1 sequence of events that occurred, this officer dying?

2 A. Yes, sir.

3 Q. Did you have an occasion to prepare a report  
4 detailing whatever information it was that Officer  
5 Gibson had told you?

6 A. Yes, sir.

7 Q. Do you have a copy of that report with you?

8 A. Yes, sir, I do.

9 Q. In the report at any point, did you write down any  
10 quotations from which you recalled on that day as to  
11 exactly what it was that he told you?

12 A. I wrote some but not all.

13 Q. All right. Would it be fair to say, though, that  
14 anything that's in quotations in your report that you  
15 wrote back then fairly and accurately represented what  
16 you recall back three years ago on April 25th?

17 A. Yes, sir.

18 Q. Would it aid you to refer to your report to recall  
19 exactly as many things as possible that Officer Gibson  
20 told you at that time?

21 A. Yes, sir, it would be beneficial.

22 MR. NOVAK: Judge, may the witness refer to  
23 his report?

24 THE COURT: Any objections?

25 MR. BOATWRIGHT: No, sir.

1 MR. EVERHART: No, sir.

2 BY MR. NOVAK:

3 Q. Referring to your report, Mr. Aldridge, could you  
4 tell us, then, what it is, as much as possible, that  
5 Officer Gibson told you?

6 THE COURT: Is this before the state trooper  
7 arrived?

8 MR. NOVAK: Yes.

9 BY MR. NOVAK:

10 Q. Can you tell us as much as possible from what he  
11 told you? This is up before the rescue squad, before  
12 Trooper Williams arrived.

13 A. Yes, sir. Allen said that he was struggling with  
14 the tall, thin one over his gun, that he tried to push  
15 it away from him, that he fought as hard as he could.

16 Q. In fact, you have a quote in your report that  
17 references your first name; is that right?

18 A. Yes.

19 Q. Why don't you read us that quote, if you don't  
20 mind?

21 MR. NOVAK: Judge, I have a report, and  
22 perhaps I could approach the witness to expedite  
23 matters, if I could. I'll withdraw that request.

24 Judge, for expedient purposes, I'll withdraw  
25 that question and move on with the witness.

1 THE COURT: All right.

2 BY MR. NOVAK:

3 Q. Let me ask you this, Mr. Aldridge: When you first  
4 arrived, when you first had this conversation with the  
5 officer, when he's going in and out of consciousness,  
6 would it be fair to say that that was a brief -- that  
7 was a brief trying to get as much information as  
8 possible?

9 A. Yes.

10 Q. And then Trooper Williams arrives; is that right?

11 A. Yes, sir.

12 Q. And he takes more control of the situation; is  
13 that right?

14 A. Yes, sir, he actually began an interrogation of  
15 Allen.

16 Q. He took a more detailed -- basically an interview,  
17 a dying declaration; is that right?

18 A. Yes, sir.

19 Q. Were you able to hear all that interview?

20 A. Not all, only parts of it.

21 Q. Would it be fair to say that your inability to  
22 hear also affects how much information you were able  
23 to get at that time from Officer Gibson?

24 A. Yes, sir.

25 Q. Now, can you tell us after Trooper Williams

1 arrived and Officer Gibson was giving his statement,  
2 was he also being worked on by the rescue squad?

3 A. Yes, he was.

4 Q. Was he in the woods for quite a while?

5 A. Yes, sir.

6 Q. Could you tell us at some point when he was in the  
7 woods, did Chief Sturrup return to the body of Officer  
8 Gibson?

9 A. Yes, he did.

10 Q. At that time was Officer Gibson still alive?

11 A. Yes, he was.

12 Q. Could you tell us what condition was -- when Chief  
13 Sturrup came back, was he alone or with somebody else?

14 A. He had a suspect in handcuffs, a black male  
15 subject in handcuffs.

16 Q. Did you know who that person was at that time?

17 A. I didn't know what his name was, but I think I had  
18 seen him around the neighborhood.

19 Q. Have you since learned his name was Eric Garrett?

20 A. Yes.

21 Q. Can you tell us what happened when Chief Sturrup  
22 came back with Eric Garrett to that location?

23 A. Chief Sturrup brought Eric Garrett over to Allen's  
24 right side, and I recall Eric being shoved down  
25 towards Allen. I don't remember the exact verbiage

1 that was exchanged at that point, but Allen was asked  
2 if this was the person who had shot him.

3 Q. Somehow from that interchange, though, was it  
4 determined that Mr. Garrett was not the person?

5 A. That's correct.

6 Q. And Mr. Garrett was taken away; is that right?

7 A. Yes, sir.

8 Q. Now, the rescue squad continued to work on Officer  
9 Gibson?

10 A. Yes, sir.

11 Q. During this time, Trooper Williams continues to  
12 talk to him?

13 A. Yes, sir.

14 Q. Now, at some point -- well, why don't you tell us  
15 what happens, then, after that?

16 A. Well, efforts continued on Allen to get him ready  
17 for transport. He was placed on a gurney. I assisted  
18 the squad and other officers in getting the gurney out  
19 of the woods and onto the ambulance.

20 Q. During that time, are you also speaking to the  
21 officer? Can you hear me?

22 A. I missed parts of what you were saying.

23 Q. During that time, were you also speaking to  
24 Officer Gibson?

25 A. No, I was not.

1 Q. Trooper Williams was; is that right?

2 A. Trooper Williams was, yes.

3 Q. And Officer Gibson is taken away; is that correct?

4 A. Yes, sir.

5 Q. Now, after Officer Gibson is taken away, do you  
6 remain at the scene?

7 A. Yes, sir.

8 Q. Do you help the investigators to take care of the  
9 crime scene?

10 A. Yes, sir.

11 Q. Is that when you posed for the pictures that we've  
12 already seen, with you lying in the position that he  
13 was in when you found him?

14 A. Yes, sir.

15 Q. Now, I'd like to show you Government's Exhibit  
16 CS-15 on the screen, if you don't mind, and tell us if  
17 you recognize this item.

18 A. That appears to be Allen's uniform. It looks like  
19 his uniform shirt.

20 MR. NOVAK: Judge, I move for the admission  
21 of CS-15.

22 THE COURT: It's admitted without objection.

23

24 (Government's Exhibit CS-15 is admitted into  
25 evidence.)

1

2 BY MR. NOVAK:

3 Q. Does that -- that uniform shirt, was that present  
4 at the location after it was removed from the officer?  
5 Is that right?

6 A. Yes, sir, that's correct.

7 MR. NOVAK: If I could show the witness  
8 CS-16, please?

9 BY MR. NOVAK:

10 Q. What's that a photograph of?

11 A. That's Allen's duty gun.

12 Q. Was that also lying there after Officer Gibson was  
13 removed?

14 A. Yes, sir.

15 MR. NOVAK: I move for admission of CS-16.

16 THE COURT: Admitted.

17

18 (Government's Exhibit CS-16 is admitted into  
19 evidence.)

20

21 MR. NOVAK: Show the witness CS-17, please.

22 BY MR. NOVAK:

23 Q. Do you recognize the items that have been marked  
24 CS-17?

25 A. I see the gun belt in the foreground. That looks



1 like his uniform shirt in the upper, left-hand corner.

2 MR. NOVAK: Judge, I move for admission of  
3 that photograph, as well.

4 THE COURT: They're admitted.

5  
6 (Government's Exhibit CS-17 is admitted into  
7 evidence.)

8

9 BY MR. NOVAK:

10 Q. Let me ask you this, Mr. Aldridge: Were there  
11 photographs taken of the bulletproof vest that the  
12 officer was wearing?

13 A. I believe photos were taken, yes, sir.

14 MR. NOVAK: If I could show the witness  
15 CS-18, please?

16 BY MR. NOVAK:

17 Q. What is that a photograph of, sir?

18 A. That's the front panel of Allen's two-part  
19 ballistic vest.

20 MR. NOVAK: I move for admission of CS-18,  
21 please.

22 THE COURT: Admitted.

23

24 (Government's Exhibit CS-18 is admitted into  
25 evidence.)

1

2 BY MR. NOVAK:

3 Q. Let me show you CS-19. Do you recognize that?

4 A. Yes, sir.

5 Q. What is that a photograph of?

6 A. It's showing the bullet hole in his vest.

7 Q. Is that the condition you found the vest in when  
8 you removed it off of him?

9 A. Yes, sir.

10 MR. NOVAK: Judge, I move for the admission  
11 of CS-19.

12 THE COURT: It's admitted.

13

14 (Government's Exhibit CS-19 is admitted into  
15 evidence.)

16

17 BY MR. NOVAK:

18 Q. Showing you CS-20, please, do you recognize that  
19 item? Is that a close-up of the vest?

20 A. The close-up of the hole through the vest.

21 MR. NOVAK: Judge, I move for the admission  
22 of CS-20.

23 THE COURT: Admitted.

24

25 (Government's Exhibit CS-20 is admitted into

1 evidence.)

2

3 BY MR. NOVAK:

4 Q. I show you CS-21. What are you showing us there  
5 in the photograph?

6 A. Another shot of the hole in the vest. That also  
7 shows the portion of the Kevlar layers.

8 MR. NOVAK: I move for the admission of  
9 CS-21.

10 THE COURT: Admitted.

11

12 (Government's Exhibit CS-21 is admitted into  
13 evidence.)

14

15 BY MR. NOVAK:

16 Q. By the way, did you have an occasion to find his  
17 radio at the scene?

18 A. Yes, sir, it was in his duty gun belt.

19 Q. If I could show you GC-9, please, do you recognize  
20 that item?

21 A. That appears to be the radio that Allen had in his  
22 gun belt.

23 MR. NOVAK: Judge, I move for the admission  
24 of GC-9.

25 THE COURT: It's admitted.

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(Government's Exhibit GC-9 is admitted into evidence.)

MR. NOVAK: Would that be -- would you please hold it for the witness?

BY MR. NOVAK:

Q. Would that be an portable, handheld radio for when an officer leaves his vehicle?

A. Yes, sir.

Q. Did you have occasion to see if the battery -- when you found that radio, did you check to see if the batteries were working in that radio?

A. Yes, sir. I noted the general condition of the radio. The off/on switch had been turned on. It was in the "on" position. I depressed the transmit button on the side of the radio.

There's a red indicator light that comes on on the top of the radio when the radio is functioning. It did not illuminate when I pressed the transmit button.

Q. So Officer Gibson's radio wasn't functioning at that time; is that right?

A. The battery was dead.

Q. Let me just ask -- let me go back to another part

1 of your testimony, Mr. Aldridge. You had mentioned  
2 that when you first arrived, that the description --  
3 that Officer Gibson referred to "they"; is that right?

4 A. I'm sorry?

5 Q. I asked you a question. When you first arrived at  
6 the -- when you first started taking information from  
7 Officer Gibson and he was moving in and out of  
8 consciousness; is that right?

9 A. Yes.

10 Q. Can you hear me?

11 A. Yes, sir.

12 Q. You mentioned a description of black males, and  
13 you used the word "they"; is that right?

14 A. Yes, sir.

15 Q. Now, thereafter when Trooper Williams arrived, did  
16 he start taking individual descriptions of the two  
17 black males?

18 A. Yes, he did.

19 Q. And you heard only bits and pieces of that; is  
20 that correct?

21 A. Yes, sir.

22 MR. NOVAK: Judge, I have no further  
23 questions of this witness.

24 THE COURT: Cross-examination?

25 MR. BOATWRIGHT: Yes, sir.

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CROSS-EXAMINATION

BY MR. BOATWRIGHT:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Mr. Aldridge, I want to ask some questions, first, about just the general physical layout of the area, particularly the wooded area.

First, can you describe the earthen berm that separates the apartment area from the wooded area? In particular, I'm asking how tall it is.

A. My best guesstimation is approximately 5 feet.

Q. It has vegetation growing on it as well; is that right?

A. Yes, sir.

Q. The trees were in full bloom back on April 25th, 1998, were they not?

A. Yes, sir, they were.

Q. As shown in the aerial photographs that you were shown earlier, correct?

A. Yes, sir.

Q. But once you get in the woods themselves, I believe you said that the visibility back there was good, correct?

A. Yes, sir.

1 Q. That is looking straight out around you; is that  
2 right?

3 A. Good visibility, yes, sir.

4 Q. There's some old chairs and sofas and that kind of  
5 stuff back there as well, correct?

6 A. Yes, sir, next to the trail that I used to enter  
7 the woods.

8 Q. But if anyone was standing within, say, 50 feet of  
9 where you were, would there have been anything that  
10 would have prevented you from seeing them?

11 A. I don't recall any large trees that would have  
12 blocked an adult.

13 Q. So your answer would be there wouldn't be anything  
14 preventing you from seeing a person back there within  
15 that range, correct?

16 A. Correct.

17 Q. I believe you said it was a bright, sunny day,  
18 correct?

19 A. Yes, sir.

20 Q. You prepared your own report about the events that  
21 you witnessed back in the woods, correct?

22 A. Yes, sir.

23 Q. You were also interviewed by others about this  
24 very same event; is that right?

25 A. Yes, sir.

1 Q. Excuse me. You were referring earlier only to  
2 your own report; is that correct?

3 A. Yes, sir.

4 Q. Were you interviewed that very same day at the  
5 Waverly Police Department by a representative of the  
6 state police?

7 A. Yes, sir, I was.

8 Q. Now, you again -- and correct me if I'm wrong.  
9 Did you advise that Officer Gibson had -- when you  
10 were interviewed at the Waverly Police Department, did  
11 you advise, again, with reference to what Officer  
12 Gibson had told you that, quote, they had dreadlocks  
13 and one had a ponytail?

14 A. Yes, sir.

15 Q. Again, you told the person who was interviewing  
16 you that Officer Gibson said, "I was fighting with the  
17 tall, skinny one for my gun when it went off"?

18 A. Yes, sir.

19 MR. BOATWRIGHT: Could I confer with  
20 Mr. HuYoung for just a minute, please, Judge?

21

22 (Discussion off the record.)

23

24 BY MR. BOATWRIGHT:

25 Q. When you prepared your report --



1 THE COURT: Are you going to use this?

2 MR. BOATWRIGHT: No, sir, I'm not. Thank

3 you.

4 BY MR. BOATWRIGHT:

5 Q. When prepared your report -- and, of course, you  
6 recognized the importance of being as accurate as you  
7 could be under the circumstances, correct?

8 A. Yes, sir.

9 Q. And the same would apply to the interview that you  
10 gave to the representative of the state police at the  
11 Waverly Police Department, correct?

12 A. Yes, sir.

13 Q. You did the best you could to accurately convey  
14 what Officer Gibson had said to you; is that right?

15 A. Yes, sir.

16 MR. BOATWRIGHT: Thank you, sir. I don't  
17 have any other questions for you. One more, please.

18 I'm sorry.

19 BY MR. BOATWRIGHT:

20 Q. Was there an effort made at the crime scene to  
21 search for evidence, so to speak?

22 A. Yes, sir.

23 Q. Did you find anything such as a portion of a  
24 ripped T-shirt?

25 A. I don't recall that at all, sir.

1 MR. BOATWRIGHT: Thank you. I am done this  
2 time.

3

4 CROSS-EXAMINATION

5 BY MR. GAVIN:

6 Q. Good afternoon, Mr. Aldridge. Officer Gibson was  
7 unconscious until Chief Sturup arrived; is that  
8 correct?

9 A. He was conscious enough to moan a third time after  
10 the third time I called out and slipped into  
11 unconsciousness. He was slipping back and forth.

12 Q. When you got to the scene, was it apparent to you  
13 that anything had been removed from Officer Gibson, by  
14 way of gun belt, anything of that nature?

15 A. His holster was empty.

16 Q. The holster was empty, but there was a gun within  
17 approximately 8 to 10 feet; is that correct?

18 A. Yes, sir.

19 Q. Had any of his clothing been removed?

20 A. No, sir.

21 Q. Any buttons ripped?

22 A. No, sir.

23 Q. Did you see anything that would indicate to you  
24 that anybody had tried to rake leaves over the scene?

25 A. Not that I'm aware of, no, sir.

1 Q. Do you recall what kind of shirt he was wearing?  
2 Was it long sleeve or short sleeve?

3 A. I believe Allen was wearing a short sleeve.

4 Q. It was already warm outside by then, wasn't it?

5 A. Yes, sir.

6 Q. His radio was still there?

7 A. Yes, sir.

8 Q. All right. On this account, do you remember being  
9 interviewed by John Pollock?

10 A. Yes, sir.

11 Q. Who was he?

12 A. I believe he was an investigator for the State  
13 Police Department.

14 Q. Was that the same person to whom you just referred  
15 when Mr. Boatwright questioned you?

16 A. Yes, sir.

17 Q. Is that the same person that interviewed you?

18 A. Yes, sir.

19 Q. Was there anyone else that interviewed you that  
20 day besides Mr. Pollock?

21 A. No, sir.

22 Q. When you heard Mr. Gibson say they had dreadlocks,  
23 could you hear all right then?

24 A. Yes, sir.

25 MR. GAVIN: I don't have anything else,

1 Judge.

2 THE COURT: Any redirect?

3 MR. NOVAK: Just briefly.

4

5 REDIRECT EXAMINATION

6 BY MR. NOVAK:

7 Q. Let me just ask you this, Mr. Aldridge: Did you  
8 have your hearing problems back then?

9 A. Yes, I did have a hearing problem back then.

10 MR. NOVAK: I have no further questions.

11 THE COURT: May he be excused permanently?

12 MR. NOVAK: Please.

13 MR. BOATWRIGHT: Yes, sir.

14 THE COURT: Mr. Gavin?

15 MR. EVERHART: Yes, sir.

16 THE COURT: May he be excused permanently?

17 MR. GAVIN: Yes, sir.

18 THE COURT: Mr. Aldridge, thank you for

19 being with us. You're released to go about your

20 business.

21 THE WITNESS: Thank you.

22

23 (Witness stood down.)

24

25 THE COURT: Do you have a brief witness?

1 MR. NOVAK: Judge, actually I do have a  
2 brief witness I'd like to take out of order. I have a  
3 surgeon outside. It is out of order and may not make  
4 sense right now, but if I could, the surgeon is a  
5 little bit difficult.

6 THE COURT: All right.

7 MR. NOVAK: Dr. Rayudu.

8  
9 RAYUDU JUJJAVARAPU, a Witness, called by the  
10 Government, first being duly sworn, testified as  
11 follows:

12  
13 MR. NOVAK: May I proceed, Your Honor?

14 THE COURT: Yes, please.

15  
16 DIRECT EXAMINATION

17 BY MR. NOVAK:

18 Q. Sir, do you want to state your full name, spelling  
19 both your first and your last names?

20 A. My first name is Rayudu, R-A-Y-U-D-U. Last name  
21 is Jujjavarapu, J-U-J-J-A-V-A-R-A-P-U. But for my  
22 business, I just use J. Rayudu, the J letter as my  
23 first name and Rayudu as my last name because my last  
24 name is so long, I don't use that for business.

25 Q. Fortunately for us. So I'm going to call you

1 Dr. Rayudu, if that's okay?

2 A. That's fine.

3 Q. Dr. Rayudu, do you want to tell us what you do for  
4 a living?

5 A. I'm a surgeon practicing in the Petersburg area.

6 Q. How long have you been a surgeon?

7 A. Several years, actually. I finished my medical  
8 school in '78, '79 time, and then I had training for  
9 about 20 years, I think.

10 Q. I want to direct your attention back to April the  
11 25th of 1998. Were you working as a surgeon at the  
12 Southside Regional Hospital?

13 A. That's correct.

14 MR. NOVAK: Judge, if I could move to  
15 qualify the expert. The witness as an expert in  
16 surgery. I believe that there's a stipulation.

17 MR. HUYOUNG: We have no problems with that.

18 THE COURT: He's accepted as an expert in  
19 surgery.

20 BY MR. NOVAK:

21 Q. On April the 25th of 1998, did you have an  
22 occasion to treat Allen Gibson at the Southside  
23 Regional Hospital?

24 A. Yes.

25 MR. NOVAK: Judge, if I could show the

1 witness Exhibit HP-1, please?

2 BY MR. NOVAK:

3 Q. Dr. Rayudu, could you tell us if you recognize  
4 HP-1?

5 A. Yes.

6 Q. Is that the medical records reflecting the  
7 treatment of Officer Gibson there at the hospital?

8 A. Yes.

9 Q. You can actually take those out of the packet and  
10 refer to them, if you like.

11 MR. NOVAK: Judge, I move for the admission  
12 of HP-1, please.

13 THE COURT: Wait a minute.

14 MR. HUYOUNG: Could I review those for a  
15 second?

16 THE COURT: All right.

17 MR. NOVAK: Judge, for the record, we've  
18 already given them copies of the medical records.

19 MR. HUYOUNG: No objections, Your Honor.

20 THE COURT: It's admitted without objection.

21 (Government's Exhibit HP-1 is admitted into  
22 evidence.)

23

24

25 BY MR. NOVAK:

1 Q. Now, Dr. Rayudu, do you have occasion to be called  
2 into the emergency room and treat Officer Gibson?

3 A. Yes.

4 Q. Can you tell the ladies and gentlemen what the  
5 condition of Officer Gibson was when you found him?

6 A. He was unconscious, not responding to any verbal  
7 stimuli, and he was profoundly hypotensive. That  
8 means his pressure was very low. And he was intubated  
9 already, and that means he was ventricular dependent.

10 Q. Did you have an occasion to find a gunshot wound  
11 anywhere on his body?

12 A. Yes.

13 Q. Where was that gunshot wound located at?

14 A. There was an entrance wound located in the upper  
15 abdomen, about a couple of inches above the umbilicus.

16 Q. Which means -- for those of us who aren't doctors,  
17 what does that mean, the belly button?

18 A. Belly button, yes.

19 Q. So he's got a gunshot wound half an inch above his  
20 belly button; is that correct?

21 A. That's correct.

22 MR. NOVAK: If I could show the witness  
23 Government's Exhibit AP-13?

24 BY MR. NOVAK:

25 Q. Dr. Rayudu, do you recognize that exhibit



1 basically as just a general chart of the body's  
2 circulatory system?

3 A. Yes.

4 Q. Maybe using a pointer could you explain to the  
5 ladies and gentlemen what you found when you first  
6 started treating Officer Gibson?

7 A. The belly button would be around this area,  
8 approximately around this area. So his wound was  
9 about there (indicating).

10 Q. Could you tell us was it a wound that involved  
11 external bleeding or not?

12 A. There was very minimal bleeding from outside and  
13 from the wound itself.

14 Q. Could you tell us why that was?

15 A. Because once the tissue is penetrated, it seals  
16 off. There are a lot of layers of the abdomen. One  
17 is a skin. Underneath, there's a fatty layer, and  
18 underneath there's a muscle layer.

19 As soon as the bullet travels through that  
20 area, it seals off. So it wouldn't bleed that much  
21 outside.

22 Q. When you found the wound, did you have an occasion  
23 to perform any type of treatment on Officer Gibson? I  
24 gather he was still alive at that point; is that  
25 right?

1 A. Yeah, he was alive, but he was profoundly  
2 hypotensive. As I was saying, his blood pressure was  
3 very low, and he was tachycardic. That means his  
4 heart was beating very fast to compensate the blood  
5 loss he had.

6 Q. Can you tell us what you did then?

7 A. While we were checking his heart, he just  
8 arrested. His heart stopped. So we got to do an  
9 emergency thoracotomy. Number 1 is to make him stop  
10 bleed further. Number 2 is to pump his heart  
11 manually.

12 Q. At some point, did you have an occasion to make an  
13 incision into his belly?

14 A. We got to take him to the operating room for that,  
15 but first, initially what we did was a thoracotomy.  
16 That means we made a cut around his chest level where  
17 his heart is, and we opened that area and clamped his  
18 aorta.

19 See this big artery that comes from the  
20 heart? It's called an aorta. We cross-clamped that  
21 aorta and manually compressing his heart to make it  
22 beat, to help the heart to beat.

23 Q. Thereafter, you took him to the operating room?

24 A. Yeah, we rushed him to the operating room, and we  
25 made an incision on his abdomen from the top to the

1 bottom and just exposed that area.

2 Q. Can you tell us what it is -- when you made that  
3 incision, you opened up his stomach. Can you tell us  
4 what it is that you observed?

5 A. We initially found a lot of blood in there, just  
6 so much blood you couldn't see anything. Everything  
7 was full of blood.

8 Q. So all his bleeding was internal; is that correct?

9 A. Yes, that's correct.

10 Q. Can you tell us what else you did?

11 A. So we immediately packed that area with all the --  
12 what we call a lapse, a lot of cotton balls. We  
13 packed that area to control the bleeding.

14 Initially, we thought the bullet might have  
15 hit his abdominal aorta, which is like a big pipe that  
16 comes from the heart. This structure is called the  
17 aorta. The other big one is called a vena cava, that  
18 carries the un-oxygenated blood.

19 So we thought it hit either one of these two  
20 big vessels. So we exposed those vessels initially  
21 and didn't find anything bleeding from that. Then we  
22 started looking down.

23 And we found on the right side, this artery  
24 here, what we call is the iliac artery. There's a big  
25 artery there. That's the iliac artery. There's a

1 vein next to it.

2 Both of them were injured. There's a bullet  
3 we found there. We removed that bullet and repaired  
4 those blood vessels.

5 Q. So where on his body, then, was it that you found  
6 the bullet then?

7 A. This is around here. This is in the pelvis area.

8 Q. For the record, it's on the right side of his  
9 body; is that right?

10 A. Right.

11 Q. It's in his pelvic area; is that right?

12 A. That's right.

13 Q. And it severed a particular artery down there?

14 A. Yes, it's called the iliac artery and the iliac  
15 vein.

16 Q. At that time, you removed the bullet; is that  
17 right?

18 A. Yes.

19 Q. That bullet is later turned over to the police; is  
20 that correct?

21 A. Yes.

22 Q. Can you tell us, then, while you were trying to  
23 save his life what occurs?

24 A. Say that again.

25 Q. You were trying to save his life, right?

1 A. Right.

2 Q. Do you want to tell us what happened while you're  
3 trying to save his life?

4 A. Yes. While we were repairing the blood vessels to  
5 control it, we had a cardiac arrest again. The  
6 person's heart stopped again, beating, and then we got  
7 to revive, tried to do cardiac massage again, do  
8 medications to stimulate the heart.

9 And we worked very hard on that, but his  
10 heart at that time gave up. And we just couldn't  
11 revive him back.

12 Q. Is it fair to say he went into cardiac arrest at  
13 the hospital and he died?

14 A. Right.

15 MR. NOVAK: Judge, we have some stipulations  
16 as to the bullet that was recovered. The stipulation  
17 would be Exhibit FE-2. Can I could read the  
18 stipulations?

19 THE COURT: Yes.

20 MR. NOVAK: Stipulation No. 3 -- Judge, may  
21 I first ask the Court to explain to the ladies and  
22 gentlemen what a stipulation is?

23 THE COURT: Are you doing a fact or  
24 testimony? Stipulations of fact or testimony?

25 MR. NOVAK: These are stipulations of fact.

1 THE COURT: Ladies and gentlemen, the  
2 lawyers have reviewed the matters before trial. They  
3 have stipulated that certain things are true as a  
4 matter of fact.

5 And you may take those things as proven and  
6 established if you so choose. You do not have to, but  
7 you may. Mr. Novak is going to read to you what they  
8 have stipulated is a proven fact.

9 MR. NOVAK: Stipulation No. 3 reads as  
10 follows: The bullet recovered from Officer Gibson's  
11 body, which has been marked as Government's  
12 Exhibit FE-2, at the Southside Regional Hospital was  
13 turned over to Sergeant John Canaday of the Petersburg  
14 Police Department by the medical staff of the  
15 hospital.

16 Sergeant Canaday then turned over the  
17 bullet, Exhibit FE-2, to Virginia State Police Special  
18 Agent Bruce Williams, who in turn, turned over the  
19 bullet, Exhibit FE-2, to Sussex County Detective Tommy  
20 Cheeks, who then submitted the bullet to the Division  
21 of Forensic Science for the Commonwealth of Virginia  
22 for laboratory analyses.

23 The parties agree to the introduction into  
24 evidence of Exhibit FE-2 without any further  
25 foundation or authentication.

1           Stipulation No. 9 then reads as follows:  
2       The medical personnel from Southside Regional Hospital  
3       turned over Officer Gibson's uniform pants, underwear  
4       and socks, which had been marked as Exhibits GC-3 and  
5       GC-4, respectively, to the Virginia State Police  
6       Special Agent Bruce Williams, who in turn turned the  
7       items over to Sussex County Detective Tommy Cheeks.

8           The parties agree to the introduction into  
9       evidence of Exhibits GC-3 and GC-4 without any further  
10      foundation or authentication.

11           I move for admission, Judge, of  
12      Exhibits FE-2, GC-3 and GC-4 pursuant to the  
13      stipulations.

14           THE COURT: They're admitted.

15  
16           (Government's Exhibits FE-2, GC-3 and GC-4  
17      are admitted into evidence.)

18  
19           MR. NOVAK: I have no further questions of  
20      Dr. Rayudu.

21           MR. HUYOUNG: No questions, Your Honor.

22           MR. EVERHART: No questions.

23           THE COURT: Thank you. May he be excused  
24      permanently?

25           MR. NOVAK: Please.

1 THE COURT: Doctor, thank you for being with  
2 us and giving us your evidence. You're released to go  
3 about your business.

4 THE WITNESS: Thank you very much.

5

6 (Witness stood down.)

7

8 MR. NOVAK: Judge, may I read the  
9 stipulation that we orally agreed to during the break  
10 due to the sudden illness to Dr. Deborah Kay, the  
11 medical examiner?

12 THE COURT: All right. Is this testimony or  
13 fact?

14 MR. NOVAK: Yes.

15 THE COURT: Both?

16 MR. NOVAK: Testimony of fact. We're  
17 stipulating to the facts of her findings.

18 THE COURT: All right. There was a doctor  
19 who was going to be here to testify, and on the way  
20 down the hill, she slipped and broke her leg or ankle,  
21 and so the parties have stipulated to the facts that  
22 she would have testified to.

23 So this again was a stipulation of fact  
24 which you may consider and has been agreed to as  
25 proof, and you may accept it. As I said, you don't.



1 have to, but you are the jury.

2 MR. NOVAK: Dr. Deborah Kay is a medical  
3 examiner here in the City of Richmond. She performed  
4 an autopsy on Allen Gibson on April the 27th of 1998.

5 Exhibit AP-1 is the autopsy report for  
6 Officer Gibson that we would move into admission  
7 pursuant to the stipulation.

8 At the time, she found the victim, Officer  
9 Gibson, to be 25 years old, to have a height of 5'11"  
10 and a weight of 230 pounds.

11 She found a wound that was one-quarter inch  
12 round that lacked any abrasions, no stiffening or gun  
13 powder residue was found around the injury.

14 However, there was a purple contusion that  
15 surrounded the injury. She followed the bullet path  
16 from Officer Gibson's body -- within Officer Gibson's  
17 body, and the bullet path was front to back and left  
18 to right and downward in nature on his body.

19 As part of her testimony, the government has  
20 prepared a computer animation of her findings, which  
21 demonstrate the injuries to Officer Gibson.

22 And, Judge, if with the agreement of  
23 counsel, I'd like to play the animation at this time.  
24 And that's Exhibit AP-13.

25 THE COURT: All right.

1 MR. BOATWRIGHT: Judge, we also agree to  
2 stipulate Dr. Kay's qualifications as an expert in the  
3 area of forensic pathology.

4 THE COURT: All right. Thank you.

5 MR. NOVAK: Thank you. I'm sorry. I think  
6 it's AP-12, but if we could play the computer  
7 animation that Dr. Kay was going to testify to,  
8 reflecting the path of the bullet wound in Officer  
9 Gibson's body.

10  
11 (A computer animation is shown at this  
12 time.)

13  
14 MR. NOVAK: That's it, Judge.

15 In addition to those findings, Dr. Kay found  
16 that there were no injuries to Officer Gibson's hands.  
17 There was no visible powder residue on his hands.

18 And she performed what is known as a gunshot  
19 residue kit, which is marked as Government's Exhibit  
20 GR-4, she took from Officer Gibson, and she then  
21 turned that over to Detective Cheeks.

22 The government would move for admission of  
23 GR-4, Your Honor.

24 THE COURT: AP-1, AP-12 and GR-2 are  
25 admitted.

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(Government's Exhibits AP-1, AP-12 and GR-2 are admitted into evidence.)

MR. NOVAK: Judge, I think that would summarize the oral stipulation that we worked out when she was injured. Then I have another stipulation, if I could read it.

THE COURT: All right.

MR. NOVAK: Stipulation No. 1 is as follows: Allen W. Gibson, Jr., joined the Waverly Police Department in Waverly, Virginia, on February the 6th of 1998 as a patrol officer.

At the time of his death on April 25th, 1998, Officer Gibson was on duty and in uniform as a law enforcement officer with the Waverly Police Department and therefore was authorized by law to conduct or engage in prevention, investigation and arrest of those who committed criminal offenses, including narcotics offenses.

While on duty, Officer Gibson carried a Glock Model 21, caliber .45, semiautomatic pistol, which has been marked as Government Exhibit FE-1, as a service revolver. Officer Gibson was 25 years old at the time of his death.

1 THE COURT: All right.

2 MR. NOVAK: Judge, my next witness will be  
3 lengthy.

4 THE COURT: All right. Ladies and  
5 gentlemen, we're at the end of the day. We'll resume  
6 testimony in the morning at nine o'clock, and when you  
7 arrive, we'll have some coffee and bagels for you.

8 Our schedule will be to have a 20-minute  
9 break in the morning, either a lunch break of 45  
10 minutes if I send for lunch or an hour if you-all go  
11 out for it, and 20 minutes in the afternoon.

12 We'll stop again between five and 5:30,  
13 depending on what the testimony shows, and that is the  
14 schedule that we'll follow. Every once in a while, it  
15 becomes necessary to stay later.

16 And so you should park your car at some  
17 place that doesn't close at six o'clock just in case  
18 we run into a problem. I don't think we're going to  
19 have one. Then you don't have to worry about getting  
20 there.

21 And that's the schedule that we'll follow  
22 for the conclusion of the proceeding, unless I say  
23 otherwise. Now, please remember to guard yourself  
24 against exposure to media.

25 I imagine that there may be articles in the

1 newspaper tomorrow. So that means, first, have  
2 somebody look at the newspaper first, cut out anything  
3 about this case and then hand you the newspaper  
4 afterwards.

5 And there may be information on the  
6 television and the radio stations about what's  
7 happened today in court and other things. So please,  
8 if you happen to hear anything, just turn it off.

9 And if you are exposed to any media, please  
10 let me know, and make sure you don't bring your  
11 newspaper in here unread because if there's something  
12 in the paper that hadn't been cut out, then everybody  
13 has gotten exposed to it.

14 Finally, don't discuss the matter with  
15 anyone, and if your family members or friends want to  
16 talk about it, just blame it on me and tell them that  
17 I said you can't talk about it. And then you won't  
18 have to worry about it.

19 Write your names on your notepads so  
20 Mr. Neal can give them back to you tomorrow, and then  
21 give them to Mr. Neal as you go out of the courtroom.  
22 Have a nice evening. Drive carefully, and I'll see  
23 you in the morning. Thank you very much.

24

25

(Jury exited the courtroom at 5:35 p.m.)

1

2 THE COURT: You're not offering the  
3 testimony of Mr. Tyler tomorrow, are you?

4

MR. NOVAK: No, Judge. We're already behind  
5 schedule.

6

THE COURT: I know, but we're going to pick  
7 up. We're going to be ahead of schedule by tomorrow  
8 afternoon.

9

MR. NOVAK: We're trying. Obviously, we're  
10 trying.

11

THE COURT: I know. I've just gotten the  
12 briefs from Mr. Richardson's counsel on Tyler, and I  
13 didn't know when to take it up. I'll read it tonight  
14 and take it up tomorrow sometime.

15

MR. NOVAK: Can we do it tomorrow at the end  
16 of the day.

17

THE COURT: What are you going to write, a  
18 brief or what?

19

MR. NOVAK: A memorandum.

20

THE COURT: That's what I mean. Is it a  
21 summary of testimony? You're going to show how the  
22 foundation fits and why it comes in?

23

MR. NOVAK: I think I'm going to add to it  
24 as to, first of all, why I think it comes in as a  
25 coconspirator, but even absent that, if the Court is

1 inclined not to let that in, I strongly believe that  
2 under the Fourth Circuit case law, they may be  
3 redacted.

4 And we can do it in a fashion that does not  
5 implicate a complication clause in any fashion and we  
6 can instruct him to do that because that would be a  
7 significant piece of evidence the government would  
8 lose, the admission of Mr. Claiborne that he was  
9 present.

10 THE COURT: What, you're going to proffer a  
11 proposed redaction of the testimony?

12 MR. NOVAK: Yes, I'll do both, Judge.

13 THE COURT: Thank you. Anything else?

14 MR. BOATWRIGHT: No, sir.

15 THE COURT: We'll be in adjournment.

16 (The proceedings in this matter adjourned at  
17 6:00 p.m.)

18 I, Diane J. Daffron, certify that the  
19 foregoing transcript is a correct record of the  
20 proceedings taken and transcribed by me to the best of  
21 my ability.

22 ORIGINAL SIGNED

23 \_\_\_\_\_  
24 DIANE J. DAFFRON, RPR

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DATE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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UNITED STATES OF AMERICA,

v.

TERENCE JEROME RICHARDSON AND  
FERRONE CLAIBORNE,

Defendants.

Criminal No.  
3:00CR00383

June 5, 2001

VOLUME II

COMPLETE TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

DIANE J. DAFRON, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

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Counsel on behalf of Defendant Claiborne.

## I N D E X

	DIRECT	CROSS	REDIRECT	RECROSS	
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5	DOUGLAS DeGAETANO	150	--	--	--
6	ANN J. DAVIS	157	173/179	--	--
7	WILLIAM H. VAUGHAN	182	190	192	--
8	WILLIAM ELLSWORTH	196	204	217	--
9	JOSEPH JONES	218	229	233	--
10	HOPE P. WILKINS	235	243/248	--	--
11	ERIC L. GARRETT	251	262/263	--	--
12	EVETTE NEWBY	265	299/319	--	--
13	CARLISSA L. ELLIS	340	350	352	--
14	MICHAEL WINFIELD	354	364/365	--	--
15	JAMES A. HUDDLE	367	374	--	--
16	ROBERT B. RITCHIE, JR.	375	--	--	--

## E X H I B I T S

		Page
17		
18	GOVERNMENT EXHIBITS	
19	FE-3 Magazine and cartridges	63
20	CS-4 Photo of path	66
21	CS-5 Photo of wooded area	66
22	CS-6 Photo of wooded area	70
23	CS-15 Photo of uniform	72
24	GC-1 Officer Gibson's uniform shirt	73
25	GC-2 Officer Gibson's white T-shirt	74

	E X H I B I T S (cont.)	Page
1		
2	CS-16 Photo of Officer Gibson's gun belt	75
3	GC-7 Officer Gibson's gun belt/access.	75
4	CS-17 Photo of Gibson's uniform and gun belt	76
5	CS-18 Photo of vest lying in ground	76
6	CS-19 Close-up photo of bulletproof vest	77
7	CS-20 Photo of bulletproof vest	77
8	GC-6 Rear inside portion of vest	78
9	FE-4 Cartridge case	79
10	CS-22 Photograph of cartridge case	79
11	CS-23 Photograph of cartridge case	80
12	LB-1 Submission request form	80
13	CH-2 Crime scene diagram of apt. complex	88
14	P-3 (a) & (b) Photo of Ferrone Claiborne on 4/28/98.	93
15	ST-2 Guilty plea transcript of T. Richardson	96
16	ST-3 Guilty plea transcript of F. Claiborne	96
17	GR-1 Gunshot residue kit for E. Garrett	155
18	GR-2 Gunshot residue kit for T. Richardson	155
19	GR-3 Gunshot residue kit for D. Bailey	55
20	GR-4 Gunshot residue kit for Ofr. Gibson	55
21	FE-5 Lab report dated 9-10-98	159
22	FE-6 Lab report dated 99-14-98	159
23	RL-1 Radio log	185
24	RL-2 911 dispatch log	190
25	RS-1 White T-shirt	288

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E X H I B I T S (cont.)

Page

CH-4	Detailed map of City of Waverly	384
TV-1	Television listings for 4-25-98	393
DEFENDANTS EXHIBITS		
1	Sketch by Mr. Cheek	141

1 (The proceedings in this matter recommenced  
2 at 8:55 a.m.)

3  
4 MR. HUYOUNG: Good morning, Your Honor.

5 MR. EVERHART: Good morning.

6 THE CLERK: Criminal No. 3:00CR00383, the  
7 United States of America v. Terence Jerome Richardson  
8 and Ferrone Claiborne. Mr. David Novak represents the  
9 United States.

10 Mr. John B. Boatwright, III, and Mr. Michael  
11 Huyoung represent the defendant, Terence Jerome  
12 Richardson, and Mr. Jeffrey L. Everhart and  
13 Mr. Charles A. Gavin represent the defendant, Ferrone  
14 Claiborne.

15 Are counsel ready to proceed?

16 MR. NOVAK: We're ready, Judge.

17 MR. BOATWRIGHT: Ready on behalf of  
18 Mr. Richardson.

19 MR. EVERHART: Judge, Mr. Claiborne is  
20 ready. Mr. Gavin is not here yet, but we can proceed.

21 THE COURT: From now on be in the courthouse  
22 at 8:35 just in case something comes up, as there  
23 inevitably will. There has been yesterday and today.

24 MR. EVERHART: Yes, sir. I think we're in a  
25 position to proceed without him, if that's all right

1 THE COURT: All right. Are you ready for  
2 the witness?

3 MR. NOVAK: Judge --

4 MR. EVERHART: The defendants are not here  
5 yet. I'm sorry.

6 THE COURT: I suppose that the jury probably  
7 ought to go back to the jury room.

8 Will you-all just go back to the jury room  
9 for just a minute, please?

10  
11 (Jury exited the courtroom at 9:28 a.m.)

12  
13 THE COURT: Can we send for them now?

14 THE CLERK: Yes. I assume he's doing that.

15 THE COURT: Are we ready now?

16 MR. BOATWRIGHT: Yes, sir.

17 THE COURT: All right.

18  
19 (Jury entered the courtroom at 9:30 a.m.)

20  
21 THE COURT: All right. Thank you very much.  
22 I apologize. Everybody got notepads and so forth?  
23 How is the temperature in here for you?

24 THE JURY: Much better.

25 THE COURT: You need to keep an eye on it

1 just as well as we do. If it gets to be a problem,  
2 you let me know, and we'll see what we can do.

3 Next witness.

4 MR. NOVAK: Trooper Williams.

5  
6 T. JARRID WILLIAMS, a Witness, called by the  
7 Government, first being duly sworn, testified as  
8 follows:

9  
10 MR. NOVAK: Shall I proceed, Your Honor?

11 THE COURT: Yes, please.

12

13 DIRECT EXAMINATION

14 BY MR. NOVAK:

15 Q. Sir, do you want to introduce yourself to the  
16 ladies and gentlemen, please?

17 A. Trooper T.J. Williams with the Virginia State  
18 Police.

19 Q. Trooper Williams, do you go by the first name of  
20 Jarrid Williams?

21 A. I do.

22 Q. Can you tell the ladies and gentlemen by whom  
23 you're employed?

24 A. Virginia State Police.

25 Q. In what capacity?

1 A. Trooper.

2 Q. How long have you been a trooper with the state  
3 police?

4 A. Since October 1996.

5 Q. Where are you currently assigned to?

6 A. Sussex County, Waverly, Virginia.

7 Q. How long have you been assigned down there in  
8 Waverly?

9 A. I've been in Waverly since April 28th, 1997.

10 Q. Now, where did you grow up at?

11 A. Big Stone Gap, Virginia.

12 Q. Where is that, for those of us not familiar with  
13 Big Stone Gap?

14 A. Southwest Virginia, out in the southwestern part  
15 of the state.

16 Q. How far away is that from Waverly, approximately?

17 A. About 387, 390 miles.

18 Q. Have you ever served on the rescue squad?

19 A. I have.

20 Q. For how long have you served on the rescue squad?

21 A. Approximately six to seven years.

22 Q. What type of training have you received as a  
23 member of the rescue squad?

24 A. At one time, I was an emergency medical technician  
25 and shock trauma technician with basic trauma life



1 support.

2 MR. NOVAK: If I could show the witness  
3 Government's Exhibit P-1, please?

4 BY MR. NOVAK:

5 Q. Trooper Williams, I'm going to ask you to take a  
6 look at the Photograph P-1. Do you recognize the  
7 person depicted in that photograph?

8 A. Yes, sir.

9 Q. Who is that a photograph of?

10 A. Allen Gibson.

11 Q. Can you tell us how long you knew Officer Gibson?

12 A. Basically all through my elementary school years  
13 and high school years.

14 Q. How was it that that occurred? You-all grew up in  
15 the same town together?

16 A. Yes, sir.

17 Q. You-all went to high school together?

18 A. Yes, sir.

19 Q. Were you close friends back then?

20 A. We were acquaintances. We passed each other in  
21 the hallway.

22 Q. You didn't hang out together?

23 A. No, sir.

24 Q. But of course you went to the same school?

25 A. Yes, sir.

1 Q. So you knew each other.

2 You're familiar with the fact that in  
3 February of 1998, Allen Gibson joined the Waverly  
4 Police Department?

5 A. Yes, sir.

6 Q. At that time, you were working in Waverly as a  
7 state trooper; is that right?

8 A. Yes, sir.

9 Q. Did you become better friends once he, also being  
10 from the same small town you were from, moved to  
11 Waverly?

12 A. We did. I actually talked to him before he  
13 became -- before he was hired with Waverly, and he  
14 told me that he was trying to get a job in Waverly.

15 Q. After he moved to Waverly, would you regular see  
16 him?

17 A. Yes, sir.

18 Q. How often would you see him?

19 A. Every day that he and I worked together.

20 Sometimes if he was working and I was off -- my house  
21 was just down from the corporate limits -- he would  
22 come to my house, if he was working and I was off.

23 Q. So by the time of his death, you clearly had a  
24 strong personal relationship with Allen Gibson; is  
25 that correct?

1 A. Yes, sir.

2 Q. Now, I want to direct your attention to Saturday  
3 morning, April 25th, 1998. Were you on duty, in  
4 uniform as a state trooper on that day?

5 A. Yes, sir, I was.

6 Q. Do you recall -- first of all, at some point, you  
7 go to Waverly Village Apartments and attend to your  
8 friend at some point; is that right?

9 A. Yes, sir.

10 Q. But before we get to you going to the Waverly  
11 Village Apartments, earlier that day had you seen your  
12 friend, Allen Gibson?

13 A. I had just before -- just as he was coming on  
14 duty.

15 Q. Where did you see him at?

16 A. Near the Waverly P.D.

17 Q. Was that common for y'all to do that?

18 A. Yes, sir. We would always call each other on the  
19 radio and meet with each other and discuss lunch  
20 plans, such as that.

21 Q. Did you make some for that day?

22 A. Yes, sir, we did.

23 Q. Now, I want to direct your attention to  
24 approximately 11:14 a.m. and ask you if you had  
25 received a radio call of a shooting in the Waverly

1 Village Apartments?

2 A. Yes, sir, I did.

3 Q. Can you tell us where you were when you received  
4 the radio call?

5 A. I was in Wakefield.

6 Q. Which was approximately how far away from Waverly  
7 Village Apartments?

8 A. Six to seven miles.

9 Q. Can you tell us what the radio call indicated to  
10 you that you had to respond to?

11 A. I actually heard on my scanner Sussex County  
12 Sheriff's Department dispatch page out of the Waverly  
13 Rescue Squad for a rescue squad call of an officer  
14 being shot in the woods behind the Waverly Village  
15 Apartments.

16 Q. Where did you go then?

17 A. At that time I called Sussex then on my statewide  
18 radio and asked them if this was true, if there was an  
19 officer down. They advised me there was, and at that  
20 point I became en route to Waverly Village Apartments.

21 Q. At the time that you received this call, were you  
22 also in the company of another state trooper?

23 A. I was.

24 Q. Who was that state trooper?

25 A. Trooper E. L. Jones, Ed Jones.

1 Q. And he had his own cruiser; is that right?

2 A. Yes, sir, he did.

3 Q. You-all basically were meeting for lunch that day;  
4 is that right?

5 A. Yes, sir.

6 Q. Did you both break off, cancel your lunch and  
7 respond to the call?

8 A. Yes, sir.

9 Q. Could you tell us, did you going to the Waverly  
10 Village Apartments?

11 A. Yes, sir, we did.

12 MR. NOVAK: If I could show the witness  
13 Exhibit CS-3, which I think is...

14 BY MR. NOVAK:

15 Q. Can you take a look at your monitor? Do you  
16 recognize what's depicted on that monitor?

17 A. Yes, sir, that's Waverly Village Apartments.

18 Q. Does that fairly and accurately represent what it  
19 looked like back on that day?

20 A. Yes, sir.

21 Q. Can you tell us where it is that you entered into  
22 the Waverly Village Apartments?

23 A. I entered from the front, up near the office and  
24 came down the road toward the back of the apartments.

25 MR. NOVAK: Fortunately, Mr. Mack has found

1 that photograph. If you'd be kind enough, Judge, may  
2 the witness step down?

3 THE COURT: Sure.

4 BY MR. NOVAK:

5 Q. If you'd be kind enough, Trooper Williams, to use  
6 the pointer and the photograph to illustrate for the  
7 jury what exactly you did from the time you entered  
8 the Village Apartments and what you observed.

9 A. I came in from this way (indicating).

10 Q. Pointing to Amherst Lane?

11 A. Yes, sir. And came up the roadway here and parked  
12 my police car somewhere in this area (indicating).

13 Q. And you're indicating -- for the record, you're  
14 indicating where the dumpster is?

15 A. Yes, somewhere in this area.

16 Q. Now, when you arrived, can you tell us what it is  
17 that you observed?

18 A. There was a crowd of people in this area around  
19 this dumpster. It appeared to me that the whole  
20 parking lot was just full of people. I observed Chief  
21 Sturup standing in front of those people.

22 Q. Could you tell the ladies and gentlemen if you saw  
23 any weapons in Chief Sturup's hands at that time?

24 A. He had one weapon in his hand and one in his  
25 holster.

1 Q. Could you tell us what position -- the firearm  
2 that was in his hand, was it down at his side pointing  
3 to the ground, or was it in the old stick 'em up type  
4 of position?

5 A. Yes, sir, it was in this position (demonstrating),  
6 and he was waving it.

7 Q. Referencing his arms extended at the crowd, right?

8 A. Yes, sir, at a position like this (demonstrating).

9 Q. Could you tell us -- at that time, did you draw  
10 your weapon?

11 A. I did when I got out of the police car and saw him  
12 with a weapon in his hands.

13 Q. Can you tell us what, if anything, the chief was  
14 saying to the various people there?

15 A. Would you like for me to quote word for word?

16 Q. I'd like you to quote exactly what he was doing.

17 A. He was waving the gun, saying --

18 MR. HUYOUNG: I would object. I don't know  
19 what -- first, that's hearsay, and secondly, what's  
20 the relevancy of this?

21 THE COURT: What pertinence does what he  
22 said have to do with the case?

23 MR. NOVAK: Well, it goes to the fact that  
24 Eric Garrett is not the assailant in this case and how  
25 it is that he was gathering information and wrongly

1 got the wrong guy.

2           It's not being offered for the truth of the  
3 matter asserted. We're attempting to show how Chief  
4 Sturrupe acted completely inappropriately that day, and  
5 that's the reason why the fingerprints were removed  
6 off the gun, and the other things he did with relation  
7 to Eric Garrett.

8           MR. HUYOUNG: Your Honor, Chief Sturrupe is  
9 not on trial today. What he says has nothing to do  
10 with these defendants. Judge, I would just rule -- on  
11 a Rule 403, it just -- you know, the Court has to make  
12 a determination whether the probative value outweighs  
13 the prejudice.

14           THE COURT: I don't think what he said makes  
15 a difference. The fact is he took the gun. Unless  
16 you have a statement that shows where Sturrupe got the  
17 gun from, that he was waving it around, I don't think  
18 that that -- I think the objection is sustained.

19           MR. NOVAK: All right.

20 BY MR. NOVAK:

21 Q. In any event, after you observed the chief doing  
22 whatever he was doing with the firearm, what did you  
23 do next?

24 A. I asked him at that point, "Where is he?"

25 Q. Referring to the officer?



1 A. At that point, I saw him with a gun out, and I  
2 actually was referring to where is the assailant.

3 Q. Well, after you're done speaking to Chief Sturupp,  
4 where do you go?

5 A. He says, "It's Allen. He's back in the woods."  
6 And as soon as he said that, I went straight back to  
7 the woods.

8 Q. You knew at that point he was referring to Officer  
9 Gibson; is that correct?

10 A. Yes, sir.

11 Q. Can you indicate on the photograph where it is  
12 that you went to?

13 A. I ran back down the parking lot and around this  
14 area and back in behind the apartments. Actually, I  
15 started to go through the woods here, and I couldn't  
16 get through there. And I went around, and there was  
17 an opening right there, a berm. And I went over  
18 there.

19 Q. You're pointing, for the record, to where that  
20 path is that's indicated there?

21 A. Yes, sir, that's the path right there.

22 Q. Can you tell us what happened when you got to the  
23 berm? Where did you go?

24 A. I went up over the berm. I don't know  
25 approximately how many feet or whatever, but when I

1 got to the top of the berm, I could see Officer Gibson  
2 and Deputy Aldridge back in the woods.

3 Q. Can you tell us where is Trooper Jones at this  
4 point?

5 A. He had ran back there with me, also.

6 Q. Now, you can have a seat. Thank you.

7 When you got back into that wooded area,  
8 Trooper Williams, was the area -- was there thick  
9 growth, or could you see in the area around there?

10 A. Once I got back in the area, it was opened up.

11 MR. NOVAK: If I could show the witness,  
12 first of all, CS-6, please?

13 BY MR. NOVAK:

14 Q. Taking a look at the photograph that's been marked  
15 CS-6, does that photograph fairly and accurately  
16 depict the area, the wooded area that you went into?

17 A. Yes, sir.

18 Q. Thank you. Now, once you got -- once you observed  
19 Officer Gibson lying on the ground with Deputy  
20 Aldridge -- well, first of all, where was Deputy  
21 Aldridge, and what was he doing?

22 A. Deputy Aldridge was at his head, holding traction  
23 on his head, and Allen was laying on the ground.

24 Q. What did you do then? Did you go over to them?

25 A. I did go over to them, and I asked Allen what

1 happened.

2 Q. Now, was Officer Gibson conscious or not at that  
3 time?

4 A. He was conscious at that time.

5 Q. He was able to speak to you?

6 A. Yes, sir.

7 Q. Now, at that time, were you able to observe any  
8 type of injury on him?

9 A. I did observe one hole, bullet -- it appeared to  
10 be a bullet hole, approximately 1 to 2 inches above  
11 his -- in line with his navel.

12 Q. Was there any blood observed at that point?

13 A. No, sir.

14 Q. At that point, you indicated that you had asked  
15 Officer Gibson what had happened; is that correct?

16 A. Yes, sir.

17 Q. Can you tell us what it is -- can you tell us your  
18 conversation you had with Officer Gibson, then?

19 A. At that time, I didn't have a conversation.

20 Deputy Aldridge asked me to go back out front and see  
21 if we could find any witnesses.

22 Q. Did you do that?

23 A. I did go back out there, and it was chaos out  
24 there. And I felt like I should be back there with

25 Allen.

1 Q. Did you return to Officer Gibson?

2 A. I did.

3 Q. Could you tell us then did you have a conversation  
4 with Officer Gibson?

5 A. I did. I got down by his side. I said, "Allen,  
6 it's Jarrid."

7 Q. Did he recognize you?

8 A. He recognized me. He acknowledged me as Jarrid.

9 Q. What did you do next?

10 A. I asked him what happened, told him he was going  
11 to be all right, he was going to make it.

12 Q. Did you observe his -- how he looked at that time?

13 A. He was very gray and ashen.

14 Q. As somebody that performed on the rescue squad for  
15 so long, what did that indicate to you?

16 A. It indicated internal blood loss.

17 Q. I'm sorry. I was rude, and I cut you off.

18 What is the next thing that you asked him?

19 A. I asked him what happened, who did it to him.

20 Q. What did he tell you?

21 A. He told me that he chased a black male back into  
22 the woods. When he got back there, he got into a  
23 scuffle with two black males; one tall, skinny, with  
24 dreadlocks, with an old blue baseball cap on.

25 Q. Let me ask you, referring to the first black male

1 with the dreadlocks, did he indicate to you if the  
2 dreadlocks were pulled in any particular fashion?

3 A. In a ponytail.

4 Q. And the baseball cap was on top of his head?

5 A. Yes, sir.

6 Q. That's what Officer Gibson told you?

7 A. Yes, sir.

8 Q. What did he tell you about the other black male?

9 A. He was medium build with short maybe bald on top  
10 hair. Both of them were wearing white T-shirts with  
11 old blue jeans.

12 Q. Did he tell you what happened when he got in  
13 contact with those two black males?

14 A. He told me he got into a scuffle with them, that  
15 they were trying to get his gun, that he wrestled with  
16 them. They got his gun, and he tried to get it  
17 pointed away from him. But they shot him, and his  
18 quote was, "They shot me. They shot me with my own  
19 damn gun."

20 Q. Now, after he gave you the description -- by the  
21 way, are you handling the questioning in terms of like  
22 an actual interview with him at this point?

23 A. I'm just trying to talk to him and get any  
24 information that I can from him because I can see that  
25 his state is deteriorating.

1 Q. You believed he was dying?

2 A. Yes, sir, I did.

3 Q. At any point, did Officer Gibson tell you that he  
4 believed he was dying?

5 A. Yes, sir, he did.

6 Q. Did he do that repeatedly?

7 A. He did.

8 Q. Do you want to tell us what he said about that?

9 A. He said, "Jarriid, I'm dying."

10 And I said, "No, Allen, you're going to make  
11 it. You're going to be okay."

12 And he said that his legs was going numb and  
13 that he didn't want to be paralyzed because he wanted  
14 to still work.

15 Q. Did he start going out of consciousness again?

16 A. At that point, he was starting to lose  
17 consciousness.

18 Q. At any point, did he start having discussions  
19 about for you to deliver messages to his family and  
20 those type of things?

21 A. He told me to tell his family that he loved them.  
22 He also called out his girlfriend at the time's name  
23 and asked me to call her and tell her what happened.

24 Q. Did he give you her phone number?

25 A. He did.

1 Q. Did you before -- at some point, he starts passing  
2 out; is that right?

3 A. Yes, sir.

4 Q. As Officer Gibson starts passing out, does he  
5 again start mentioning any type of description?

6 A. He does.

7 Q. Can you tell the ladies and gentlemen what  
8 happened and what the description was?

9 A. He told me, "I'm going to pass out."

10 And I told him to stay with me, that he was  
11 going to be okay.

12 And at the time right before he passed out,  
13 he yelled out again, "Two black males, one tall and  
14 skinny with dreadlocks pulled into a ponytail, one  
15 medium build with short maybe bald on top hair, both  
16 of them wearing white T-shirts and blue jeans."

17 And then he passed out.

18 Q. Did he mention the baseball cap again?

19 A. Yes, sir, he did.

20 Q. As he was doing that, did he say on multiple  
21 occasions or just one occasion?

22 A. He said it just as he was passing out and then  
23 went into unconsciousness.

24 Q. What happened after that, then?

25 A. The rescue squad was working on him, and he

1 eventually regained consciousness again.

2 Q. After he regained consciousness, can you tell us  
3 what occurred then?

4 A. We repeatedly kept going over what happened, who  
5 it was, the descriptions of who it was.

6 Q. How many times do you think it was that Officer  
7 Gibson gave you that description which you now told  
8 twice to the jury?

9 A. I can remember three times.

10 Q. By the way, after this incident was over, you  
11 immediately went home and wrote everything down you  
12 could remember; is that right?

13 A. I did, yes, sir.

14 Q. When he regained consciousness again, at some  
15 point did Chief Sturup arrive?

16 A. Yes, sir, he did.

17 Q. Can you tell us whether Chief Sturup was alone or  
18 with somebody else at that time?

19 A. He was accompanying one tall black male who was  
20 handcuffed behind his back.

21 Q. Did you observe that black male?

22 A. Yes, sir, I did.

23 Q. Did he fit the description given by your fallen  
24 friend?

25 A. No, sir.



1 Q. Could you tell us what happened when Chief Sturru  
2 brought him back to Officer Gibson?

3 A. He brought him back, kind of grabbed him by the  
4 nape of the neck and put him down in front of Allen  
5 and said, "This is the guy. This is the guy that shot  
6 you, isn't it?"

7 And Allen said that his eyes was blurry and  
8 that he was having a hard time seeing but that he  
9 didn't think that was the guy.

10 And at that time, the guy spoke, who I also  
11 recognized as Eric Garrett because I had seen him  
12 before, and Eric said to him, "I talked to you  
13 earlier. Remember? I talked to you earlier." And I  
14 think they'd had a conversation earlier.

15 Q. And based upon that, then, did Officer Gibson  
16 indicate --

17 A. He indicated, "It's not him. That's not the guy."

18 Q. Then what did Chief Sturru then do with  
19 Mr. Garrett?

20 A. He left with him.

21 Q. All right. You don't know what he did?

22 A. I don't have any idea.

23 Q. After that, can you tell us what's the next thing  
24 that happened at the scene in relation to your friend,  
25 Allen Gibson?

1 A. Like I said, the rescue squad was working on him.  
2 They eventually got him packaged the way that they  
3 needed to have him packaged, placed him on a cot, and  
4 we took him to the ambulance.

5 Q. Are you talking to him as he's going to the  
6 ambulance?

7 A. I'm trying to, but at that point, he's in and out  
8 of consciousness.

9 Q. And do you then go with him to the -- where do you  
10 go then?

11 A. We go over to the Waverly P.D., in front of the  
12 Waverly Police Department where I had called for Med  
13 Flight, and that's where Med Flight was going to land  
14 to transport him.

15 Q. That did not occur?

16 A. No, sir.

17 Q. Why was that?

18 A. We were in the ambulance waiting for Med Flight,  
19 and the rescue squad was trying to get some  
20 information from him, such as how old he was. And I  
21 asked him, "How old are you?" And I said, "Are you  
22 25?"

23 And he said, "Yes."

24 Q. That's how old you are?

25 A. At the time, I was.

1 Q. Eventually, Officer Gibson was taken to the  
2 Southside Regional Hospital; is that right?

3 A. Yes, sir. Before that, we were still in the  
4 ambulance, and he said, "Jarrid, I'm dying."

5 And I said, "No, you're going to make it.  
6 You just need to stay strong."

7 He told me he loved me, and I told him I  
8 loved him, too. And he told me not to leave him, that  
9 he didn't want to die by himself.

10 Q. Did you stay with him?

11 A. I said, "I'll be with you. I won't leave you,  
12 Allen. I won't let you die by yourself."

13 Q. Did you go to Southside Regional Hospital, then?

14 A. Yes, sir.

15 Q. That's where Officer Gibson died?

16 A. He actually went into cardiac arrest in front of  
17 the Waverly P.D. Just as the helicopter landed on the  
18 ground, he went into cardiac arrest.

19 Q. So you stayed with him to the end; is that right?

20 A. Yes, sir.

21 Q. I want to direct your attention to the next day,  
22 Sunday, April the 26th of 1998, approximately 4:20 in  
23 the afternoon, and ask you if you were present at the  
24 time the defendant, Terence Richardson, was arrested?

25 A. Yes, sir, I was.

1 Q. Where was that at?

2 A. That was on Railroad Avenue in the Town of  
3 Waverly.

4 Q. You weren't the person who actually arrested him;  
5 is that right?

6 A. No, sir.

7 Q. Who arrested him?

8 A. As I recall, I think it was Moe, Officer Moe  
9 Cheeks with Sussex County.

10 Q. Was it Tommy Cheeks and Moe Williams?

11 A. Tommy Cheeks and Moe Williams. I'm sorry.

12 Q. They're investigators with Sussex County Deputy  
13 Sheriff's Office; is that right?

14 A. Yes, sir.

15 Q. At that time, did you have an occasion to observe  
16 the defendant as he looked back then?

17 A. Yes, sir.

18 MR. NOVAK: Your Honor, I'd like to show the  
19 witness Exhibits P-2A and P-2B on the screen.

20 BY MR. NOVAK:

21 Q. And ask if you recognize these photographs. Do  
22 you recognize the person depicted in Photograph P-2A?

23 A. Yes, sir, I do.

24 Q. Who's that a photograph of?

25 A. Terence Richardson.

1 Q. Is that the way he looked on the day he was  
2 arrested?

3 A. Yes, sir.

4 Q. And showing you Exhibit P-2B, do you recognize  
5 that person?

6 A. Yes, sir, I do.

7 Q. Who is that a photograph of?

8 A. Terence Richardson.

9 Q. Does that show the way he looked back then?

10 A. Yes, sir.

11 Q. So he had -- indicating his hair style back then,  
12 had cornrows pulled back?

13 A. Yes, sir.

14 MR. HUYOUNG: Judge, I think the photo  
15 speaks for itself. I don't think Mr. Novak needs to  
16 make any characteristics.

17 MR. NOVAK: That's fine, Judge.

18 THE COURT: Your objection is to the form of  
19 the question?

20 MR. HUYOUNG: Yes, Your Honor.

21 MR. NOVAK: I'll withdraw the question,  
22 Judge.

23 THE COURT: All right.

24 BY MR. NOVAK:

25 Q. Let me ask you this, Trooper Williams. You had an

1 occasion to personally see Terence Richardson the day  
2 after the murder; is that right?

3 A. Yes, sir.

4 Q. Did he meet the description of one of the  
5 assailants that was given to you by Officer Gibson?

6 A. Yes, sir, he did.

7 MR. HUYOUNG: Objection, Your Honor. It's a  
8 conclusion. The jury sees the photograph.

9 MR. NOVAK: Well, Judge, he saw him in  
10 person.

11 THE COURT: Just a minute.

12 MR. HUYOUNG: I would object to that as  
13 being a conclusion.

14 THE COURT: It's an opinion.

15 MR. HUYOUNG: An opinion, yes, Your Honor.

16 THE COURT: It's a layperson's opinion. It  
17 can be admitted if it's rationally based on fact and  
18 connected to and based on his own perception.

19 The jury will be instructed that they can  
20 test his opinion in that fashion. You may consider  
21 the opinion. I'll give you an instruction on it  
22 later.

23 All right. I don't really know whether the  
24 answer came to the jury or not, before.

25 BY MR. NOVAK:

1 Q. What is your answer, then, to the question?

2 A. Yes, sir, the person in that photograph fits the  
3 description that Officer Gibson gave me as he was  
4 dying.

5 Q. And that's all? I think my question was the  
6 person you saw -- obviously, you've already said  
7 that's how they looked in the photograph, but the  
8 person you saw the next day, did they fit the  
9 description -- Terence Richardson fit the description  
10 that your friend, Officer Gibson, had given you?

11 A. Yes, sir.

12 MR. NOVAK: Judge, I have no further  
13 questions.

14

15 CROSS-EXAMINATION

16 BY MR. HUYOUNG:

17 Q. Good morning, Trooper Williams.

18 A. Yes, sir.

19 Q. Basically, when you said it fits the description  
20 as the photo indicates, basically just black male,  
21 correct? And he had these little cornrows in the  
22 back. So that's what you're basing your description  
23 on?

24 A. The description he gave me was a black male, tall,  
25 skinny, with dreadlocks pulled into a ponytail, and he

1 fit the description.

2 Q. When you arrested him, were they pulled in a  
3 ponytail?

4 A. I don't recall, sir.

5 Q. That's the picture that you saw. That's the  
6 picture that they took, and that's how Mr. Richardson  
7 appeared; is that correct?

8 A. Yes, sir.

9 Q. Did you or anybody else try to pull those back in  
10 a ponytail?

11 A. No, sir.

12 Q. Of course, you're talking about these little  
13 things in the back?

14 A. Yes, sir.

15 Q. Nothing up here?

16 A. No, sir.

17 Q. And also, Mr. Richardson when you arrested him,  
18 did you take his height?

19 A. No, sir. I was just with the officers that  
20 arrested him. I was accompanying them. I didn't  
21 actually do the arrest.

22 Q. Do you know how tall he is?

23 A. No, sir.

24 Q. How tall are you, Trooper Williams?

25 A. Approximately 5'10".



1 Q. 5'10"?

2 A. Yes, sir.

3 Q. Mr. Richardson was shorter than you, was he not?

4 A. I don't know his exact height.

5 Q. Going back to the description that Officer Gibson  
6 gave to you, basically there are two black males?

7 A. Yes, sir.

8 Q. Not three, two?

9 A. Yes, sir.

10 Q. And one was tall and skinny?

11 A. Yes, sir.

12 Q. And one was short with medium build, correct?

13 A. Yes, sir.

14 Q. And you stated on direct examination twice that  
15 the individuals he said wore black T-shirts, correct?

16 A. No, sir, white T-shirts with blue jeans.

17 Q. You did not say black T-shirts?

18 A. No, sir.

19 Q. My error. I apologize.

20 Now, you made some notes that night after  
21 this incident?

22 A. Yes, sir.

23 Q. And do you have those notes with you?

24 A. I do.

25 Q. Could I ask that you refer to those notes, please,

1 your handwritten notes? Now, you took those that  
2 night, correct? So it was fresh in your mind?

3 A. When I returned from the hospital that day.

4 Q. And when you wrote these notes, you tried to be as  
5 accurate and as detailed as you could?

6 A. Yes, sir.

7 Q. And I ask that you go to the second page of your  
8 statement.

9 THE COURT: Is this a statement or notes?

10 MR. HUYOUNG: Notes, his written notes. I  
11 apologize, Judge.

12 BY MR. HUYOUNG:

13 Q. These are your handwriting?

14 A. Yes, sir.

15 Q. Could you look down on the third line when you  
16 were testifying about the struggling? When you have  
17 in quotations marks, that's basically you're trying to  
18 say that that's what he said?

19 A. That's exactly what he said.

20 Q. On the third line, is this correct? He said,  
21 "They were trying to get my gun, Jarrid, and I tried  
22 to stop them. But somehow they got it, and it just  
23 went off."

24 A. Yes, sir.

25 Q. Is that what Officer Gibson said?

1 A. Yes, sir.

2 Q. And then further down as you're describing the  
3 description of -- as he's describing the description  
4 of these two assailants, you indicate, in quotation  
5 marks again, "two black males, one with dreadlocks  
6 pulled into a ponytail and an old blue cap on, one  
7 short, bald hair"; is that correct?

8 A. Yes, sir.

9 Q. Trooper Williams, when you went back into the  
10 woods there -- and the government showed a photograph  
11 of the woods, that photograph is taken inside the  
12 woods -- is that correct -- when you say it opened up?

13 A. It appeared to be, yes, sir.

14 Q. When you were coming up that berm, you couldn't  
15 see through those woods because it's pretty thick,  
16 isn't it?

17 A. As I was coming up the berm, I couldn't see  
18 through the woods because the berm was in front of it,  
19 but once you get to the top of the berm, you can see.

20 Q. Once you get into the woods, it opens up?

21 THE COURT: He said once he got to the top  
22 of the berm you could see.

23 BY MR. HUYOUNG:

24 Q. This little path there?

25 A. Yes, sir.

1 Q. So that path, this little path there is about the  
2 size of this podium?

3 A. To the best of my recollection, maybe a little  
4 wider. It was wide enough to get an ambulance cot  
5 through and people on both sides.

6 Q. So when you're standing on top of this berm on the  
7 path, you could see through?

8 A. Yes, sir, you could see through the woods.

9 Q. Did you notice this area where Officer Gibson was  
10 lying? Did you notice any torn white T-shirt sleeve?

11 A. No, sir. I was concerned about Allen.

12 Q. I understand.

13 Did Officer Gibson indicate to you that he  
14 knew any of these individuals?

15 A. No, sir.

16 Q. Did he say anything to you about he had earlier  
17 talked to these individuals?

18 A. No, sir.

19 Q. You stated that you were friends with Officer  
20 Gibson?

21 A. Yes, sir.

22 Q. Was Officer Gibson taller or shorter than you? Do  
23 you know?

24 A. To the best of my recollection, he was about the  
25 same height, maybe a little bit taller than me in

1 uniform.

2 MR. HUYOUNG: All right. No further  
3 questions.

4  
5 CROSS-EXAMINATION

6 BY MR. EVERHART:

7 Q. Trooper Williams, good morning. My name is Jeff  
8 Everhart. I represent Ferrone Claiborne, seated  
9 behind me.

10 Correct me if I'm wrong. I thought I  
11 understood you to say when you first spoke with  
12 Officer Gibson, that he told you he had chased a black  
13 male into the woods?

14 A. Yes, sir.

15 Q. Did he at any time tell you whether that was the  
16 tall, skinny one or the short, medium built one?

17 A. To my recollection, it was the tall, skinny one.

18 Q. So he said he chased a -- pardon me, chased a  
19 tall, skinny one into the woods. He at no time told  
20 you that he saw three black males?

21 A. No, sir.

22 Q. He told you that the tall, skinny one had  
23 dreadlocks pulled into a ponytail and an old blue ball  
24 cap?

25 A. Yes, sir.

1 Q. He told you that the other individual was a black  
2 male, medium build, short medium build, balding on top  
3 or bald head?

4 A. Yes, sir.

5 Q. Also wearing a white T-shirt, both wearing blue  
6 jeans? Both wearing white T-shirts, both wearing blue  
7 jeans?

8 A. Yes.

9 MR. EVERHART: That's all I have. Thank  
10 you, Your Honor. Thank you, Trooper.

11 MR. NOVAK: Just very briefly, Judge.

12

13

REDIRECT EXAMINATION

14 BY MR. NOVAK:

15 Q. Anything about what Officer Gibson said to you  
16 that indicated that there was an accidental firing of  
17 the gun?

18 MR. HUYOUNG: Objection.

19 MR. EVERHART: Objection.

20 THE COURT: Sustained.

21 BY MR. NOVAK:

22 Q. Let me ask you this. Mr. Huyoung was asking you  
23 about the statement about the gun went off. Can you  
24 explain the context within which he was telling you  
25 that?

1 A. He told me that they were trying to get his gun,  
2 the tall, skinny one had it and that he tried to get  
3 it away from them. He tried to get it pointed away  
4 from him, and then the gun went off.

5 Q. And that's it; is that correct?

6 A. Yes, sir.

7 MR. NOVAK: Thank you. I have no further  
8 questions.

9 MR. HUYOUNG: No questions.

10 THE COURT: Can he be excused permanently?

11 MR. NOVAK: Please.

12 THE COURT: The defendants? Can he be  
13 excused permanently?

14 MR. HUYOUNG: Yes, sir.

15 MR. EVERHART: Judge, could I think for one  
16 second? Not about the last question.

17 THE COURT: You want to ask a question?

18 MR. EVERHART: That's what I'm trying to  
19 consider, if you will allow me just a moment.

20 THE COURT: Just a minute, please, Officer.

21 MR. EVERHART: Could I have one second to  
22 confer with Mr. Gavin?

23 Thank you, Your Honor, for the time. No  
24 further questions, and we have no objection to him  
25 being released.

1 MR. HUYOUNG: Same, Your Honor.

2 THE COURT: All right. Thank you very much.

3 Officer Williams, thank you for being with  
4 us. You're excused and released to go about your  
5 business.

6 THE WITNESS: Yes, sir.

7 THE COURT: Next witness?

8 MR. NOVAK: Deputy Cheeks, Tommy Cheeks.

9  
10 TOMMY J. CHEEK, a Witness, called by the  
11 Government, first being duly sworn, testified as  
12 follows:

13  
14 MR. NOVAK: May I proceed, Your Honor?

15 THE COURT: Please.

16  
17 DIRECT EXAMINATION

18 BY MR. NOVAK:

19 Q. Sir, you want to introduce yourself to the ladies  
20 and gentlemen of the jury?

21 A. Tommy Jerry Cheek.

22 Q. Mr. Cheek, can you tell the ladies and gentlemen  
23 by whom you're employed?

24 A. I was at the time of the offense employed full  
25 time with the Sussex County Sheriff's Office as



1 Detective Sergeant, and I'm currently retired and  
2 working part time for the sheriff's office.

3 Q. How long did you work for the Sussex County  
4 Sheriff's Department?

5 A. Twenty years.

6 Q. After that, did you go for a brief time out to  
7 Washington County in the western part of the state?

8 A. Yes, sir.

9 Q. And retired out of there; is that right?

10 A. Yes, sir.

11 Q. Before you were at Sussex County for 20 years, can  
12 you tell us if you were at any other law enforcement  
13 employment before then?

14 A. My career began in 1970 with Washington D.C.  
15 Metropolitan Police. I then went to Chesterfield  
16 County, worked for the Chesterfield County for eight  
17 years before going to Sussex County.

18 Q. So it would be fair to say you worked  
19 approximately 30 years as a law enforcement officer  
20 before retiring, and now you're still working part  
21 time; is that right?

22 A. Yes, sir, that's correct.

23 Q. I want to direct your attention back to Saturday,  
24 April 25th, 1998, and ask you if you were employed  
25 back then with the Sussex County Sheriff's Department.

1 A. Yes, sir, I was.

2 Q. I think you told us the capacity. Why don't you  
3 tell us again?

4 A. Detective Sergeant.

5 Q. Did you have occasion to respond to the Waverly  
6 Village Apartments approximately 11:20 a.m. on that  
7 Saturday?

8 A. Yes, sir, I did.

9 Q. Did you serve as the primary investigator, then,  
10 investigating the murder of Officer Allen Gibson?

11 A. Yes, sir, I did.

12 Q. Did you have an opportunity to serve as the person  
13 collecting the crime scene evidence and such?

14 A. Yes, sir.

15 Q. Now, could you tell us when you arrived --  
16 actually, let me step back and ask you --

17 MR. NOVAK: If we can refer to CH-1, please?  
18 I think Mr. Mack is hiding it from me over there. I'm  
19 hoping he is. That's it. Thank you.

20 BY MR. NOVAK:

21 Q. Now, Deputy Cheek, first of all, do you recognize  
22 the item that's been marked CH-1?

23 A. Yes, sir, I do.

24 Q. Can you tell us does that fairly and accurately  
25 depict the Waverly Village Apartments back on that

1 day?

2 A. Yes, it does.

3 Q. Can you tell us where it is when you responded at  
4 11:21, where it is that you went to, using the chart?

5 A. May I --

6 Q. Please.

7 A. -- get up?

8 THE COURT: There's a pointer over there if  
9 you want it.

10 THE WITNESS: When I arrived at the Waverly  
11 Village Apartments, I came in down Amherst Lane and  
12 parked in the parking area, which is the parking lot  
13 here, exited my vehicle, and spoke with the sheriff  
14 briefly, and continued on around this building and  
15 into the wooded area by way of a pathway right here to  
16 where the victim was lying (indicating).

17 BY MR. NOVAK:

18 Q. Approximately how far away from the apartment  
19 complex was the victim, from the apartment building?

20 A. From the building, the victim would have been  
21 approximately 140 feet.

22 Q. Now, indicated on CH-1, the brown line next to  
23 where the victim was located, does that refer to a  
24 path that's in that area?

25 A. Yes, sir, that is the pathway leading down to the

1 woods.

2 Q. A well-traveled path?

3 A. Yes.

4 Q. Where that path begins, is there a berm?

5 A. Yes, sir, there's a berm that runs all along this  
6 area and also runs down this side.

7 Q. Could you tell us approximately how far the berm  
8 was from the apartment building?

9 A. From the building to the top of the berm was  
10 approximately 86 feet.

11 Q. Now, when you arrived at the scene, was Officer  
12 Gibson still there?

13 A. Yes.

14 Q. He was being treated; is that right?

15 A. That's correct.

16 Q. Obviously, you weren't in a position at that time  
17 to collect evidence because you were trying to save  
18 his life; is that right?

19 A. The paramedics and rescue squad and firefighters  
20 were attending to Officer Gibson, and our primary  
21 concern was taking care of him and getting him out for  
22 medical treatment.

23 Q. At some point, did you observe Chief Sturupp  
24 arrive?

25 A. Yes, sir, I did.

1 Q. Chief Sturupp didn't work for your outfit, right?  
2 He worked for a different police department?

3 A. That's correct. He was Waverly Police.

4 Q. Did you see him bring Eric Garrett back there?

5 A. I saw him bring a gentleman in. At that  
6 particular time, I was not aware of who it was, but  
7 later learned that it was Eric Garrett.

8 Q. At some point, Eric Garrett was released; is that  
9 correct?

10 A. Yes, sir.

11 Q. At some point, did Chief Sturupp turn over to you  
12 Officer Gibson's firearm?

13 A. Yes, sir, he did.

14 MR. NOVAK: If I could show the witness  
15 Government's Exhibit FE-1, please?

16 BY MR. NOVAK:

17 Q. Do you recognize that item?

18 A. Yes, sir.

19 Q. Actually, you know, Deputy Cheek, you could  
20 actually sit down. I don't want to wear you out  
21 standing up.

22 Where do you recognize that item from?

23 A. This is the weapon that I retrieved from Chief  
24 Sturupp.

25 Q. And at that time, did he also -- did that weapon

1 also have a magazine and cartridges?

2 A. Yes, it did.

3 MR. NOVAK: If I could show the witness  
4 FE-3, please?

5 BY MR. NOVAK:

6 Q. You do you recognize those items?

7 A. Yes, sir.

8 Q. Could you tell us what those items are?

9 A. This is the magazine that was -- that I removed  
10 from the weapon. As well, I removed a cartridge from  
11 the chamber of the weapon. I packaged these items to  
12 be submitted to the lab.

13 Q. And you did do that?

14 A. Yes, I did.

15 MR. NOVAK: Judge, I move for admission of  
16 FE-3. I think FE-1 is already in evidence, as I  
17 recall.

18 THE COURT: It's admitted.

19  
20 (Government's Exhibit FE-3 is admitted into  
21 evidence.)

22  
23 MR. NOVAK: Judge, if I might read  
24 Stipulation No. 2 that the parties have entered into?  
25 Stipulation No. 2 reads as follows, ladies

1 and gentlemen: Sussex County Deputy Tommy Cheek  
2 submitted Officer Gibson's firearm, which has been  
3 marked Government's Exhibit FE-1, to the Division of  
4 Forensic Science to the Commonwealth of Virginia to  
5 determine whether any latent fingerprints could be  
6 recovered from the firearm.

7 Mahlon P. Jones, a properly trained and  
8 certified scientist, examined the firearm, which is  
9 Government's Exhibit FE-1, and determined that no  
10 latent prints of value for identification purposes  
11 could be recovered from the firearm.

12 BY MR. NOVAK:

13 Q. Let me just ask you this, Deputy Cheek. Before  
14 you submitted the firearm to the lab, once the gun had  
15 come in to your possession, did you try to the best of  
16 your ability to keep it in the same condition it was  
17 when you got it from Chief Sturup?

18 A. Absolutely.

19 Q. You have no idea what Chief Sturup did to the gun  
20 before he gave it to you; is that right?

21 A. No, sir, I do not.

22 Q. After Officer Gibson was removed from the scene,  
23 did you then set about taking pictures and collecting  
24 evidence?

25 A. Yes, sir, I did.

1 Q. Would it be accurate to say that you took  
2 photographs before you collected the evidence so that  
3 some day you could show a jury exactly where everybody  
4 was positioned?

5 A. Yes, sir.

6 Q. I want to start with Photographs CS-4 and CS-5,  
7 and before we put them on the screen, I'm going to ask  
8 you -- if I could hold these for a second.

9 MR. NOVAK: May I approach the witness for a  
10 second?

11 BY MR. NOVAK:

12 Q. Deputy Cheek, do you recognize, first of all, CS-4  
13 and CS-5?

14 A. Yes, sir, I do.

15 Q. Where do you recognize those items from?

16 A. This is photographs that I took and had enlarged  
17 that were taken from a window in the apartment  
18 building as looking over the berm and into the woods.

19 Q. Who was the resident of the apartment that -- from  
20 which you took the photos?

21 A. Evette Newby.

22 Q. Were those photos taken that day?

23 A. No, sir.

24 Q. When were they taken?

25 A. They were taken the following morning at



1 approximately the same time that the offense occurred.

2 Q. So do those photographs fairly and accurately  
3 depict the area back there?

4 A. Yes, sir, they do.

5 MR. NOVAK: Judge, I move for the admission  
6 of CS-4 and CS-5.

7 MR. EVERHART: Could I just take a look at  
8 them for one moment?

9 MR. BOATWRIGHT: I'd like to see them as  
10 well.

11 MR. EVERHART: I don't have any objection.  
12 I just want to take a look at them.

13 THE COURT: They're admitted.

14  
15 (Government's Exhibits CS-4 and CS-5 are  
16 admitted into evidence.)

17  
18 MR. NOVAK: May I approach the witness  
19 again, Judge?

20 BY MR. NOVAK:

21 Q. Deputy Cheek, what I was going to ask you is this:  
22 Do these photographs of the wooded area go together in  
23 some fashion? Is there some kind of relationship  
24 between the two?

25 A. Yes, sir.

1 Q. Could you tell us what it is and hold them  
2 together and try to explain what it is that you tried  
3 to accomplish by taking those photographs?

4 A. Yes, sir.

5 Q. If you could hold it up to the jury so they can  
6 see?

7 THE COURT: You can stand up if you'd like  
8 to.

9 THE WITNESS: Yes, sir.

10 The camera lens that I was using would not  
11 do a wide angle. I took two shots from the window,  
12 this being the furthest away, this shot depicting the  
13 path going into the wooded area.

14 The location of Officer Gibson when I  
15 arrived was in the wooded area on this photograph.  
16 However, the access was gained through this path. The  
17 photos would join together in this manner  
18 (demonstrating).

19 MR. NOVAK: Judge, may I approach? Maybe I  
20 can help him to explain this for the record, just so  
21 we're clear, Judge.

22 BY MR. NOVAK:

23 Q. The photograph on what would be my left, Tommy  
24 Cheek, Detective Cheek, what we're referring to is  
25 CS-4, and to the right is CS-5. So if you could refer

1 to those exhibit numbers.

2 A. CS-4 is the pathway going over the berm into the  
3 wooded area. CS-5 would be the area where Officer  
4 Gibson was located when I arrived on the scene. All  
5 the entry was gained by myself and most of the  
6 deputies going through CS-4 path across the berm and  
7 then would transfer over into the CS-5 area.

8 MR. NOVAK: Judge, if I could just put them  
9 on the monitor so the jury can see them.

10 THE COURT: Just one moment. While you've  
11 got those photographs there, CS-4 and CS-5 you have  
12 overlapped. How much overlap is there on CS-4 over  
13 CS-5? Just look at the back of it and approximately  
14 how much of the photograph is overlapped?

15 THE WITNESS: Approximately 2 inches, Your  
16 Honor.

17 THE COURT: All right. If you were to tape  
18 those together at that point where they're being held  
19 up now, then you would have a picture of what the  
20 entire view looked like from that window? Is that  
21 your statement?

22 THE WITNESS: That is correct.

23 THE COURT: All right.

24 MR. NOVAK: Judge, I'm going to use the  
25 photos individually. That's the reason why we didn't

1 tape them together at this point. May I proceed to  
2 show the jury the photographs individually on the  
3 monitor? I ask the jury to be shown CS-4 first.

4 BY MR. NOVAK:

5 Q. Again Deputy Cheek, is that the photograph and the  
6 berm area we're speaking of?

7 A. Yes, sir, it is.

8 Q. And I'll show the other photograph, and I'll come  
9 back to CS-4 in a second.

10 That's the area to the left of the berm; is  
11 that correct?

12 A. That's correct.

13 Q. You're looking out the apartment window?

14 A. Yes, sir.

15 Q. If we could go back to CS-4. At this point  
16 you're -- at what level are you taking this  
17 photograph, from a first floor or second floor  
18 apartment?

19 A. This is a second floor apartment window.

20 Q. Obviously, we can see a number of leaves on the  
21 trees at that time; is that correct?

22 A. Yes, sir.

23 Q. Could you see from the area that you were standing  
24 into the wooded area where the officer was?

25 A. Yes, sir, you could see it was not -- at this

1 point, you could see a very clear opening into -- over  
2 the berm at the path. Into each side was some leaves,  
3 but you could still see into the wooded area through  
4 gaps in the foliage.

5 Q. Would it be fair to say it was partially  
6 obstructed?

7 A. Yes, sir.

8 Q. If I could show you Exhibit CS-6, then. Now, can  
9 you tell us what it is that we're looking at there in  
10 Exhibit CS-6?

11 A. Yes, sir, that was a photograph that I took from  
12 behind the location where the officer was located  
13 looking out toward the berm and the building.

14 Q. Let me ask you, first of all, does that fairly and  
15 accurately depict that area?

16 A. Yes, it does.

17 MR. NOVAK: Judge, I move for the admission  
18 of CS-6.

19 THE COURT: It's admitted.

20

21 (Government's Exhibit CS-6 is admitted into  
22 evidence.)

23

24 BY MR. NOVAK:

25 Q. Within the photograph, there is an officer

1 standing; is that correct?

2 A. That's correct.

3 Q. Could you tell us is that the location where the  
4 body would have been of Officer Gibson?

5 A. No, sir. Officer Gibson would have been a little  
6 bit between myself and that officer and to the right a  
7 short distance.

8 Q. Now, if we go to the top of that photograph a  
9 little bit.

10 A. Yes, sir.

11 Q. We see a wooded -- or a white building there; is  
12 that correct?

13 A. That's correct.

14 Q. Could you tell us what's depicted there?

15 A. That is the rear of the apartment building.

16 Q. So that's as if you're standing in the woods  
17 looking back at the apartment; is that correct?

18 A. That's correct.

19 Q. Is that the same apartment building that Evette  
20 Newby lived in?

21 A. Yes, sir, it is.

22 Q. Thank you. Now, you had an occasion to take  
23 various photographs of Deputy Aldridge; is that  
24 correct?

25 A. That's correct.

1 Q. I don't want to waste time since we already showed  
2 the photographs, but Deputy Aldridge posed for you --  
3 is that correct -- before you started collecting  
4 evidence?

5 A. I requested of Deputy Aldridge to show me the  
6 position and the location of the officer.

7 Q. Thereafter, after he posed -- we've already been  
8 through that -- did you then start collecting the  
9 evidence that was at the scene?

10 A. Yes, sir, I did.

11 Q. First of all, I want to show you photograph CS-15.  
12 Do you recognize this item?

13 A. That is the uniform shirt.

14 Q. Did you seize that item?

15 A. Yes, I did.

16 MR. NOVAK: If I could show the witness  
17 Exhibit GC-1? In the meantime, I move for the  
18 admission of CS-15.

19 THE COURT: It's admitted.

20

21 (Government's Exhibit CS-15 is admitted into  
22 evidence.)

23

24 BY MR. NOVAK:

25 Q. Do you recognize that item?

1 A. Yes, sir.

2 Q. Could you remove it for me, please? You can just  
3 hold it up. You don't have to take it out of the bag.

4 A. (Witness complies.)

5 Q. Was that the uniform shirt that you recovered that  
6 belonged to Officer Gibson at the scene?

7 A. Yes, sir, it is.

8 MR. NOVAK: Judge, I move for the admission  
9 of GC-1.

10 THE COURT: Admitted.

11

12 (Government's Exhibit GC-1 is admitted into  
13 evidence.)

14

15 BY MR. NOVAK:

16 Q. Let me ask you this before you put that back,  
17 Deputy Cheek. Was there any blood on the outside of  
18 that uniform?

19 A. Not that I could locate.

20 Q. Showing you GC-2, do you recognize that item?

21 A. Yes, sir.

22 Q. What is that item?

23 A. This is the T-shirt that I recovered at the scene  
24 that was worn by the officer.

25 MR. NOVAK: Judge, I move for the admission



1 of GC-2 as well.

2 THE COURT: It's admitted.

3

4 (Government's Exhibit GC-2 is admitted into  
5 evidence.)

6

7 BY MR. NOVAK:

8 Q. Deputy Cheek, do you know if there was any blood  
9 on the T-shirt? Do you recall?

10 A. I recall a very, very slight amount of what  
11 appeared to be blood.

12 Q. It would be whatever it is that's on the T-shirt  
13 itself; is that correct?

14 A. Yes, on the T-shirt.

15 Q. Showing you CS-16, do you recognize that item?

16 A. Yes, sir, that is the duty belt, as we refer to  
17 it, the web belt of the officer.

18 Q. You did not move the items before you photographed  
19 them; is that right?

20 A. No, sir. Those items were removed by emergency  
21 medical people, and I photographed them where they  
22 were when I arrived.

23 MR. NOVAK: I move for admission of CS-16,  
24 and I ask to show the witness GC-7.

25 THE COURT: It's admitted.

1

2

(Government's Exhibit CS-16 is admitted into evidence.)

3

4

5 BY MR. NOVAK:

6

Q. Do you recognize the item in GC-7?

7

A. Yes, sir.

8

Q. What is that?

9

A. This is the duty belt that I recovered.

10

MR. NOVAK: I move for admission of GC-7.

11

THE COURT: Admitted.

12

13

(Government's Exhibit GC-7 is admitted into evidence.)

14

15

16

MR. NOVAK: I'd like to show the witness

17

Exhibit CS-17, if I could, on the monitor.

18

BY MR. NOVAK:

19

Q. Deputy Cheek, I'm going to ask what's depicted

20

there in that photograph?

21

A. This is the items that have just been entered

22

lying on the ground as they were when I arrived.

23

MR. NOVAK: I move for admission of CS-17,

24

Your Honor.

25

THE COURT: Admitted.

1

2

(Government's Exhibit CS-17 is admitted into evidence.)

3

4

5 BY MR. NOVAK:

6

Q. Now, did you also have an occasion to seize the bulletproof vest that belonged to the officer and take pictures?

7

8

A. Yes, sir, I did.

9

Q. If we could show you on the monitor CS-18, 19 and 20, one after the other, and you tell us exactly what each of those items are as they are shown to you.

10

11

12

A. That is what we refer to as a mid-range photograph of the vest lying on the ground.

13

14

15

MR. NOVAK: Judge, I move for admission of

16

CS-18.

17

THE COURT: It's admitted.

18

19

(Government's Exhibit CS-18 is admitted into evidence.)

20

21

22

22 BY MR. NOVAK:

23

Q. I show you 19. Do you recognize that item?

24

25

A. Yes, sir, this is a close-up view of the lower portion of the bulletproof vest with the pen depicting

1 the hole in the vest.

2 MR. NOVAK: Judge, I move for the admission  
3 of CS-19.

4 THE COURT: Admitted.

5

6 (Government's Exhibit CS-19 is admitted into  
7 evidence.)

8

9 BY MR. NOVAK:

10 Q. Showing you No. 20, Deputy Cheek, do you recognize  
11 that item?

12 A. Yes, sir, that is the outside panel of the  
13 bulletproof vest.

14 MR. NOVAK: I move for the admission of  
15 CS-20 as well.

16 THE COURT: Admitted.

17

18 (Government's Exhibit CS-20 is admitted into  
19 evidence.)

20

21 MR. NOVAK: I'd like to show the witness  
22 GC-6, if I could, Mr. Mack.

23 And I would ask the witness be allowed to  
24 step down and hold the vest up and explain to the  
25 jury, first of all, what a bulletproof vest is and how

1 it works and what he observed on the vest.

2 THE COURT: All right.

3 THE WITNESS: This is the bulletproof vest  
4 or body armor that police officers wear. This is the  
5 back portion. This being the front portion.

6 This particular vest, the one that I  
7 recovered, has a hole at the lower portion where the  
8 seam is sewn together, where the panels come together.

9 This is the rear inside portion of the vest  
10 where the exit of the item that caused the hole in the  
11 front came out in the rear.

12 BY MR. NOVAK:

13 Q. Could you tell if the bullet at all nicked the  
14 bottom of the Kevlar that is inside?

15 A. Yes. It apparently hit the lower portion and  
16 appears to have just gone right around the seam and  
17 continued on.

18 MR. NOVAK: Thank you. I move for admission  
19 of that exhibit as well, Your Honor.

20 THE COURT: It's admitted.

21

22 (Government's Exhibit GC-6 is admitted into  
23 evidence.)

24

25 BY MR. NOVAK:

1 Q. Now, Deputy Cheek, did you have an occasion to  
2 recover a cartridge case at the scene?

3 A. Yes, sir, I did.

4 MR. NOVAK: If I could show the witness  
5 FE-4, please, at the same time while we're putting on  
6 the monitor Photograph CS-22 and CS-23?

7 BY MR. NOVAK:

8 Q. If you could tell us, first of all, what FE-4 is?

9 A. Yes, sir, that is the mid-range photograph of a  
10 shell casing lying on the ground.

11 Q. Is FE-4 that shell casing?

12 A. Yes, sir, it is.

13 Q. And CS-23, then, please? Is that a close-up of  
14 where the cartridge case was?

15 A. That's correct. That is a close-up of this case.

16 Q. And that's FE-4; is that right?

17 A. Yes, sir.

18 MR. NOVAK: Now, Judge, I move for the  
19 admission of FE-4, CS-22 and CS-23 if I could.

20 THE COURT: Admitted.

21

22 (Government's Exhibits FE-4, CS-22 and CS-23  
23 are admitted into evidence.)

24

25 BY MR. NOVAK:

1 Q. Now, could you tell us, Deputy Cheek, what did you  
2 do with FE-4?

3 A. I packaged it and submitted it to the state lab.

4 Q. You're trying to preserve this stuff for evidence  
5 to be tested by the scientists; is that right?

6 A. Yes, sir.

7 MR. NOVAK: If I could show the witness  
8 LB-1, please?

9 BY MR. NOVAK:

10 Q. Do you recognize LB-1?

11 A. Yes, sir.

12 Q. Can you tell us what LB-1 is, please?

13 A. This is the submission form where I submitted the  
14 evidence to the laboratory.

15 MR. NOVAK: Judge, I move for the admission  
16 of LB-1, please.

17 THE COURT: Admitted.

18  
19 (Government's Exhibit LB-1 is admitted into  
20 evidence.)

21

22 BY MR. NOVAK:

23 Q. Deputy Cheek, you also had an occasion to review a  
24 number of photographs that were taken that day by the  
25 Virginia State Police; is that correct?

1 A. Yes, sir.

2 MR. NOVAK: Judge, if I might, we have a  
3 series of photographs of the Waverly Village  
4 Apartments taken from basically every conceivable  
5 angle.

6 There's no objection to these photographs.  
7 If I could just go one after the other for expediency  
8 purposes and just ask Deputy Cheek to explain the  
9 position of the photograph when it was taken, I think  
10 that would be the fastest way to do it, if I might.

11 THE COURT: All right. If there are no  
12 objections.

13 BY MR. NOVAK:

14 Q. If we could start with CS-26.

15 A. That's an aerial view of the Waverly Village  
16 Apartments.

17 Q. CS-27, please? If we could just zoom in a little  
18 bit, could you tell us what that is?

19 A. This is an additional aerial view of the  
20 apartments.

21 Q. Now, the victim was found in the bottom left-hand  
22 corner; is that correct?

23 A. That's correct.

24 Q. CS-28, could you tell us what that is a photograph  
25 of?



1 A. This is an additional aerial view of the Waverly  
2 Village Apartments.

3 Q. And the officer would have been found in the woods  
4 to the left, off the side of the photograph?

5 A. To the left side of the mid portion.

6 Q. Let me just ask you before we move on, is there a  
7 dumpster that's located in that photograph? Do you  
8 see that?

9 A. Yes, sir, it is.

10 Q. Is there also a playground area to the upper  
11 right-hand corner on that photograph?

12 A. Yes, sir.

13 Q. For the use of the apartment complex residents?

14 A. Yes, sir.

15 Q. Where would the office be, then?

16 A. The office would be to the far, upper right-hand  
17 corner off of the photo.

18 MR. NOVAK: Could you show us Exhibit CS-29,  
19 please?

20 BY MR. NOVAK:

21 Q. Do you recognize that item?

22 A. Yes, sir. That's another aerial view of the  
23 apartment complex.

24 Q. Can you tell us, does that show Evette Newby's  
25 apartment anywhere?

1 A. Yes, sir.

2 Q. Where would Evette Newby's apartment be?

3 A. It would be the second window on the top from  
4 the -- going to the left of the very rear building.

5 Q. Of the building that would be closest in the  
6 picture, is that correct?

7 A. Closest in the photo, yes, sir.

8 Q. On the second floor, is that right?

9 A. Yes, sir.

10 THE COURT: So there's no doubt about it,  
11 get down and point it out.

12 BY MR. NOVAK:

13 Q. Is that it?

14 A. That is the window, the upper portion there.

15 MR. NOVAK: Thank you. Thirty, please.

16 BY MR. NOVAK:

17 Q. Could you tell us what that item is?

18 A. Yes, sir, this is the front view of the building.

19 THE COURT: What building?

20 THE WITNESS: The building of Evette Newby  
21 and also the very rear building of the apartment  
22 complex.

23 BY MR. NOVAK:

24 Q. Does that show the entrance to Evette Newby's  
25 apartment complex?

1 A. Yes, it does.

2 Q. Can you tell us where exactly it was that -- you  
3 observed Officer Gibson's car there; is that correct?

4 A. Yes, sir.

5 Q. Where would Officer Gibson's car have been at that  
6 time?

7 A. Officer Gibson's car, to the best of my  
8 recollection, was in the second parking space.  
9 Looking at the van parked directly in front of the  
10 building, it would have been three spaces to the left.

11 Q. (Indicating).

12 A. That's correct.

13 MR. NOVAK: Judge, if I could just have one  
14 moment. Excuse me. The next photograph, please,  
15 which would be CS-31.

16 BY MR. NOVAK:

17 Q. Could you tell us what that photograph is showing?

18 A. This photograph shows the corner of the rear  
19 building in which Ms. Newby lived. It also shows a  
20 path going across into the wooded area, a  
21 well-traveled path.

22 Q. Is that the path that goes to the berm?

23 A. That's correct.

24 Q. Is there a path to the left of that that's  
25 indicated there in the corner?

1 A. Yes, sir, there is. That's a less-used path which  
2 travels along the outer edge berm going around and  
3 back toward the back street area.

4 BY MR. NOVAK:

5 Q. CS-32, please, what is that a photograph of?

6 A. This is a photograph of the rear building in which  
7 Ms. Newby lived and the parking area to the front.

8 Q. CS-33, please?

9 A. That's an aerial photo from the side looking back  
10 the opposite direction and shows the wooded area and  
11 Ms. Newby's building, rear building.

12 Q. Next one, please?

13 A. And this shot is the same building showing the  
14 rearward and wooded area behind the building.

15 Q. The next number is CS-35.

16 A. This is a shot from the side of the building  
17 showing the rear building in which Ms. Newby lived and  
18 the wooded area which Officer Gibson was located.

19 MR. NOVAK: Before we remove that, just so  
20 we're clear, if we could have CH-1 put on the easel  
21 for a second.

22 BY MR. NOVAK:

23 Q. Just so we're all on the same page where it is in  
24 relation to the chart, where on CH-1 would Ms. Newby's  
25 apartment have been in this?

1 A. Ms. Newby's apartment would have been this area  
2 right here (indicating).

3 Q. And that is a photograph taken as if you were  
4 standing on the other side of that chart; is that  
5 correct?

6 A. That's correct.

7 Q. Looking sideways?

8 A. Looking sideways.

9 Q. With the woods to the left, is that right?

10 A. That's correct.

11 Q. CS-36, please. Is that another rear photograph of  
12 the -- of that apartment building?

13 A. Yes, sir, this is the rear photograph showing the  
14 rear building and the wooded area.

15 Q. CS-37, please. Another vantage point but standing  
16 on this side of the chart now?

17 A. Another vantage point, same building, same wooded  
18 area.

19 Q. CS-38.

20 A. This is a shot of the rear apartment building  
21 looking from the -- over top the parking area, shows  
22 the path going across the berm and wooded area and top  
23 of the rear building.

24 Q. Let me ask you this: As we look at that, Deputy  
25 Cheek, would it be fair to say the foliage was

1 principally on the top of the trees?

2 A. Yes, sir.

3 Q. But under the bottom it was cleared out, as you  
4 showed before in CS-6; is that correct?

5 A. Yes, there was gaps in the lower portion.

6 Q. The next photograph, CS-39, is that another  
7 photograph of the wooded area?

8 A. Yes, sir.

9 Q. Could we see the path in the bottom left-hand  
10 corner?

11 A. Yes, sir.

12 Q. CS-40, please?

13 A. This is an aerial photograph from the front of the  
14 apartment complex looking toward the rear. It shows  
15 Locust Street to the right running up to the top.

16 Q. Where would that be? Could you indicate where  
17 that...

18 A. Locust Street would be this street coming through  
19 here (indicating).

20 MR. NOVAK: If we can go to CH-2. Do you

21 have CH-2?

22 BY MR. NOVAK:

23 Q. Deputy Cheek, do you recognize that item?

24 A. Yes, sir.

25 Q. Is that a chart of the area that is surrounding

1 the Waverly Village Apartments?

2 A. Yes, it is.

3 Q. Does that fairly and accurately represent the area  
4 of that section of Waverly?

5 A. Yes, sir, it does.

6 MR. NOVAK: Judge, I move for the admission  
7 of CH-2 at this time.

8 THE COURT: Admitted.

9  
10 (Government's Exhibit CH-2 is admitted into  
11 evidence.)  
12

13 BY MR. NOVAK:

14 Q. Could you show us on that chart, Deputy, where the  
15 Waverly Village Apartments would be?

16 A. The apartments are right here, wooded area in this  
17 area, and the paths and the location of the officer  
18 depicted (indicating).

19 Q. Where is the apartments on there -- or the  
20 apartment office on that chart?

21 A. The apartment office would be right here  
22 (indicating).

23 Q. If you look at your monitor for that and the  
24 photograph that's on all the monitors, is that  
25 photograph looking at the office area as if you're

1 looking towards the Waverly Village Apartments?

2 A. Yes, sir, it is.

3 Q. What is the street that runs into Amherst Lane  
4 there in front of the apartments?

5 A. This is Middle Street.

6 Q. That's what we're looking at; is that correct?

7 A. That's correct.

8 Q. Immediately to our front, is that right?

9 A. The photograph is Middle Street here and  
10 intersecting with Locust Street to the right-hand side  
11 of the monitor (indicating).

12 Q. Is that the road that's on the right-hand side of  
13 the monitor?

14 A. That's on the right-hand side, yes, sir.

15 Q. That's Locust Street, is the first street. What's  
16 the next street after that?

17 A. Coming back this way, it's Dogwood Street.

18 Q. If you take Dogwood Street and go towards the top  
19 of that chart -- which I gather would be northbound;  
20 is that correct?

21 A. Basically north, yes, sir.

22 Q. What road does that run into?

23 A. That runs into Railroad Avenue.

24 Q. Are you familiar the store known as Dobie's?

25 A. Yes, sir.



1 Q. Is Dobie's on Railroad Avenue?

2 A. Yes, sir, it is.

3 Q. In fact, is there an indication on that chart  
4 where Dobie's would be?

5 A. Yes, sir, Dobie's Store would be here  
6 (indicating).

7 Q. Is there also a Peace Funeral Home that is located  
8 on that chart?

9 A. Yes, sir.

10 Q. It didn't make it on the chart, but --

11 A. Peace Funeral Home is on the corner here  
12 (indicating).

13 Q. Thank you, Deputy. You can have a seat.

14 Then the next photograph is CS-41, I  
15 believe. I'm sorry, strike that.

16 Now, Mr. Richardson was arrested on April  
17 the 26th of 1998; is that right?

18 A. That's correct.

19 Q. You weren't present at the time he was arrested;  
20 is that right?

21 A. No, sir, I was not.

22 Q. Were you present when Mr. Claiborne was arrested?

23 A. Yes, sir, I was.

24 Q. On what date was that?

25 A. That was -- the warrant was served on the 29th.

1 He was picked up for an interview late in the evening  
2 of the 28th.

3 Q. Where was he apprehended at that time?

4 A. He was at an uncle's residence at the Covington  
5 Court Apartments, which was --

6 MR. NOVAK: If we could show the witness the  
7 big chart here, CH-4, Mr. Mack?

8 BY MR. NOVAK:

9 Q. Do you recognize the exhibit that's been marked  
10 CH-4?

11 A. Yes, sir, I do.

12 Q. Do you recognize that as the Town of Waverly?

13 A. Yes, sir.

14 Q. Now, could you indicate -- there's a photograph of  
15 the Covington Court Apartments; is that correct?

16 A. Yes, sir, there is.

17 Q. Where is that located at?

18 A. Covington Court Apartments are located here, which  
19 would be right here (indicating).

20 Q. That's off of a road called Beaver Dam Road?

21 A. Yes, sir, it is.

22 Q. Does Beaver Dam Road intersect Main Street there  
23 in Waverly?

24 A. Yes, sir.

25 Q. We see the same small version of the Waverly

1 Village Apartments in the right-hand corner of that  
2 chart; is that right?

3 A. That's correct.

4 Q. Could you indicate where on that map where the  
5 Waverly Village Apartments would be in relation to  
6 Beaver Dam Road?

7 A. Waverly Village Apartments are located here, and  
8 the Covington Court Apartments are here on Beaver Dam  
9 Road (indicating).

10 Q. Does Beaver Dam Road go all the way south in the  
11 direction of the Waverly Village Apartments?

12 A. Yes.

13 Q. It actually follows right down along; is that  
14 correct?

15 A. Yes, sir.

16 Q. You picked him up about 10:14 in the evening; is  
17 that correct?

18 A. Yes, sir.

19 Q. Later on, he was turned over to somebody from the  
20 state police to talk to; is that correct?

21 A. Yes, that's correct.

22 Q. You can have a seat again, sir.

23 Now, at the time that you were there when he  
24 was arrested, did you have an occasion to observe the  
25 defendant, Ferrone Claiborne?

1 A. Yes, sir, I did.

2 Q. Did you see what he looked like?

3 A. Yes, sir.

4 MR. NOVAK: If I could show the witness P-3A  
5 and P-3B?

6 BY MR. NOVAK:

7 Q. I ask if you recognize the person depicted in that  
8 photograph.

9 A. Yes, sir, that's Mr. Claiborne.

10 Q. Is that the way he looked back when he was  
11 apprehended on April 28th?

12 A. Yes, sir.

13 Q. And Exhibit P-3B, please. Is that the way -- who  
14 is that a photograph of?

15 A. Mr. Claiborne.

16 Q. Is that, again, the way he looked back on that  
17 date?

18 A. Yes.

19 MR. NOVAK: Judge, the government would move  
20 for admission of P-3A and B at this time.

21 THE COURT: Admitted.

22

23 (Government's Exhibits P-3A and P-3B are  
24 admitted into evidence.)

25

1 BY MR. NOVAK:

2 Q. Now, state charges were instituted against both of  
3 these defendants in the Circuit Court for Sussex  
4 County; is that correct?

5 A. That's correct.

6 Q. And they were both charged with capital murder; is  
7 that right?

8 A. That's correct.

9 Q. Did you have an occasion to go to the courtroom of  
10 Judge Luke in the Circuit Court for Sussex County on  
11 December the 8th of 1999?

12 A. Yes, sir, I did.

13 Q. At that time, did you have an occasion to witness  
14 the defendants plead guilty?

15 A. Yes, sir, I did.

16 Q. Now, could you tell us if the defendants were in  
17 the courtroom at the same time that they entered their  
18 guilty pleas?

19 A. Yes, sir.

20 Q. Were they both seated -- did they go to the front  
21 of the courtroom at the same time?

22 A. To the best of my recollection, they were all  
23 seated at the table at the front of the courtroom with  
24 the attorneys.

25 Q. Was Mr. Richardson's case called first?

1 A. Yes, sir.

2 Q. He entered his guilty plea; is that right?

3 A. Correct.

4 Q. Thereafter Mr. Claiborne?

5 A. Mr. Claiborne, yes, sir.

6 MR. NOVAK: Judge, we have a stipulation --  
7 I'm sorry, before I get to the stipulation.

8 BY MR. NOVAK:

9 Q. Mr. Richardson, was he represented by Mr. Boone,  
10 David Boone?

11 A. Yes, sir.

12 Q. And who was Mr. Claiborne represented by?

13 A. Mr. Morchower.

14 MR. NOVAK: Judge, we have a stipulation, if  
15 I could read the stipulation at this time?

16 THE COURT: All right.

17 MR. NOVAK: Stipulation No. 14 is as  
18 follows: Exhibit ST-2 is the transcript of the guilty  
19 plea hearing for Terence Richardson in the Circuit  
20 Court for Sussex County on December the 8th of 1999.

21 Exhibit ST-3 is the transcript of the guilty  
22 plea hearing for Ferrone Claiborne in the Circuit  
23 Court for Sussex County on December the 8th of 1999.

24 The parties agree to the introduction into  
25 evidence of Exhibits ST-2 and ST-3 without any further

1 foundation or authentication.

2 THE COURT: They're admitted.

3  
4 (Government's Exhibits ST-2 and ST-3 are  
5 admitted into evidence.)

6  
7 MR. NOVAK: Judge, pursuant to that  
8 stipulation, I would like to read the relevant parts  
9 of the transcript for each of the guilty pleas to the  
10 jury, if I could.

11 THE COURT: All right.

12 MR. NOVAK: Beginning with Exhibit ST-2,  
13 page 2, line 1, The Court --

14 THE COURT: Well, what defendant is this?

15 MR. NOVAK: It's going to say "Terence  
16 Richardson."

17 BY MR. NOVAK:

18 Q. "THE COURT: Let the record show the defendant,  
19 Terence Jerome Richardson, is present and accompanied  
20 by his attorney, Mr. Boone.

21 Is the defendant ready to be arraigned,  
22 Mr. Boone?"

23 Mr. Boone answers, "Yes, Judge."

24 "THE COURT: Mr. Chapel?

25 "MR. CHAPEL: Yes, sir. Judge, we would

1 proffer to the Court an amended indictment which I  
2 would proffer to the Clerk. It's my understanding  
3 that the defendant is prepared to plead guilty to that  
4 amended indictment."

5 BY MR. NOVAK:

6 Q. I'll just ask the witness, can you tell us who  
7 Mr. Chapel is?

8 A. Mr. Chapel was the Commonwealth Attorney in Sussex  
9 County.

10 Q. At that time?

11 A. Yes.

12 MR. NOVAK: The Court then said, "The Clerk  
13 will please arraign the defendant on the amended  
14 indictment."

15 The defendant, Terence Jerome Richardson,  
16 was arraigned on an indictment charging that on or  
17 about the 25th day of April, 1998, in the County of  
18 Sussex, he did unlawfully and feloniously kill Allen  
19 W. Gibson, Jr., by committing involuntary manslaughter  
20 on the said Allen W. Gibson, Jr.

21 The Clerk says, "What say you, guilty or not  
22 guilty, to the indictment as amended?"

23 The defendant answered, "Guilty."

24 The Clerk said, "To involuntary  
25 manslaughter?"



1 The defendant said, "Guilty."

2 The Court said, "Before accepting your  
3 plea -- that's the only charge, isn't it?"

4 Mr. Boone replied, "Yes, Judge."

5 The Court said, "Before accepting your plea,  
6 the Court must ask some questions of you. You may  
7 have a seat.

8 What is your full name?"

9 "THE DEFENDANT: Terence Jerome Richardson.

10 "THE COURT: And your date of birth?

11 "THE DEFENDANT: [REDACTED] -- [REDACTED], '71.

12 "THE COURT: What was the last grade of  
13 school that you completed?

14 "THE DEFENDANT: Twelfth.

15 "THE COURT: Are you the person charged in  
16 the indictment which the Clerk just read?

17 "THE DEFENDANT: Yes.

18 "THE COURT: Do you understand that charge?

19 "THE DEFENDANT: Yes.

20 "THE COURT: Have you discussed with  
21 Mr. Boone what must be proven in order for you to be  
22 found guilty?

23 "THE DEFENDANT: Yes.

24 "THE COURT: Have you discussed with him  
25 whether you should plead guilty or not guilty?

1 "THE DEFENDANT: Yes.

2 "THE COURT: After that discussion, was it  
3 your decision that you plead guilty?

4 "THE DEFENDANT: Yes.

5 "THE COURT: Are you entering that plea  
6 freely and voluntarily?

7 "THE DEFENDANT: Yes.

8 "THE COURT: Because you are in fact guilty?

9 "THE DEFENDANT: Yes.

10 "THE COURT: Do you understand that when you  
11 plead guilty, you waive your right to a trial by jury?

12 "THE DEFENDANT: Yes.

13 "THE COURT: You waive your right to  
14 confront any witnesses who may testify against you?

15 "THE DEFENDANT: Yes.

16 "THE COURT: Will remain silent?

17 "THE DEFENDANT: Yes.

18 "THE COURT: Has anyone connected with your  
19 arrest and prosecution, such as the Commonwealth's  
20 Attorney or the police, forced you in any way to enter  
21 this plea of guilty?

22 "THE DEFENDANT: No.

23 "THE COURT: Have you discussed with  
24 Mr. Boone what the maximum punishment for this crime  
25 is?"

1 The answer from the defendant is "Yes, sir."  
2 "THE COURT: Are you entirely satisfied with  
3 his services?"

4 The defendant answered, "Yes, sir."

5 "THE COURT: Do you understand that by  
6 entering this plea you may waive your right to appeal  
7 the decision of the Court?"

8 "THE DEFENDANT: Yes, sir."

9 "THE COURT: Do you understand all the  
10 questions I have asked of you?"

11 "THE DEFENDANT: Yes, sir."

12 "THE COURT: May I have the Statement of  
13 Facts, Mr. Chapel?"

14 "MR. CHAPEL: Yes, Your Honor. This matter  
15 occurred on April 25th, 1998..."

16 MR. BOATWRIGHT: Judge, I'm sorry to  
17 interrupt Mr. Novak. I think for purpose of the  
18 record I need to renew our objection to that portion  
19 of the reading based on the Court's earlier ruling.

20 THE COURT: For the same ground?

21 MR. BOATWRIGHT: Yes, sir.

22 THE COURT: Overruled.

23 MR. BOATWRIGHT: Thank you, sir.

24 MR. NOVAK: May I proceed, Your Honor?

25 THE COURT: Yes.

1 MR. NOVAK: Mr. Chapel said, "Yes, Your  
2 Honor. This matter occurred on April the 25th, 1998,  
3 in the County of Sussex, a Saturday morning. It  
4 involved Officer Allen Gibson, who was an officer with  
5 the Waverly Police Department. At the time, he was  
6 patrolling in the Waverly Village Apartments area of  
7 Waverly.

8 Judge, the Commonwealth's evidence would  
9 come from several sources. The initial witness, Shawn  
10 Wooden, the Commonwealth would have called. Shawn  
11 Wooden would have indicated to the Court that Terence  
12 Richardson was staying with him at the time of the  
13 offense.

14 Terence Richardson indicated to Shawn Wooden  
15 that morning that he was going to get some dope with  
16 Ferrone Claiborne, a co-defendant, and for Shawn  
17 Wooden to come along with them. They in fact did  
18 that, went to the Waverly Village Apartments.

19 Terence Richardson and Ferrone Claiborne  
20 went to the back of the apartment complex.  
21 Furthermore, Shawn Wooden's testimony would be that he  
22 was instructed to be a lookout if he saw anything that  
23 occurred.

24 In fact, Officer Gibson pulled up at that  
25 general time frame. At that particular time frame,

1 Terence Richardson, after he got the signal, an  
2 audible signal from Shawn Wooden in fact, did run  
3 behind the complex into a wooded area behind the  
4 apartment complex, as did the co-defendant, Ferrone  
5 Claiborne.

6 Several minutes went by, and Shawn Wooden  
7 will testify he heard what he thought was a shot ring  
8 out. Upon hearing that shot, Shawn Wooden left on his  
9 bicycle, left the area and went back to his house in  
10 another part of Waverly.

11 Approximately about 15 minutes later, Shawn  
12 Wooden would testify to the Court that Terence  
13 Richardson came back to the house looking out of  
14 breath, nervous and concerned.

15 After some period of time, at that point,  
16 Shawn Wooden would indicate to the Court that Terence  
17 Richardson took him outside and indicated that Terence  
18 Richardson had shot -- accidentally shot the cop.

19 Judge, we would also produce a witness from  
20 the Commonwealth's perspective Jovanna Jones, who is  
21 the girlfriend of Shawn Wooden, who would corroborate  
22 in many respects the testimony of Shawn Wooden.

23 Your Honor, the Commonwealth's next series  
24 of witnesses would have been two law enforcement  
25 officers who arrived at the scene very shortly after

1 Officer Gibson was shot. It would be in the nature of  
2 dying declarations.

3 The initial statement would be from Corporal  
4 Rick Aldridge who came to the apartment complex about  
5 11:30 a.m. that morning and got the message that an  
6 officer was down. When he reached the area in the  
7 back of the complex, he saw Officer Gibson lying on  
8 the ground.

9 He would testify to the Court that he was in  
10 and out of consciousness. Deputy -- excuse me,  
11 Corporal Aldridge would testify that they observed the  
12 wound in the abdomen area of Officer Gibson around his  
13 navel.

14 Officer Gibson was able to give Corporal  
15 Aldridge a description of his assailant/assailants,  
16 indicating that they were wearing blue jeans and white  
17 shirts, and one had dreadlocks.

18 Further, Officer Gibson told Corporal  
19 Aldridge that the tall thin one wrestled with him over  
20 his gun and the gun went off.

21 Next, the Commonwealth would have produced  
22 Trooper Jarrid Williams who also came to the scene  
23 shortly after Officer Gibson was shot and after  
24 Corporal Aldridge got there. Again, this is around  
25 11:30 a.m. on the morning in question.

1 He also noticed a hole, a bullet hole about  
2 one inch above Officer Gibson's navel. Officer Gibson  
3 told Trooper Williams that he believed he was dying  
4 and proceeded to give him other identifying  
5 information on his assailants.

6 Officer Gibson told Trooper Williams that he  
7 chased a black male into the woods, got into a scuffle  
8 with two black males who were attempting to get his  
9 gun. He described to Trooper Williams one was tall  
10 and skinny with dreadlocks, and the other was short  
11 with bald on the top hair.

12 Trooper Williams will further testify that  
13 Officer Gibson told him he was fighting with the tall,  
14 skinny one. The tall, skinny one got the gun..."

15 THE COURT: Slow down, Mr. Novak.

16 MR. NOVAK: Oh, I'm sorry. She warned me  
17 this morning, too.

18 "The tall, skinny one got the gun, and the  
19 gun just went off. Officer Gibson died at  
20 approximately 2:30 p.m., and the cause of death was a  
21 gunshot wound to his abdomen.

22 "Judge, at this point, I'd like to introduce  
23 the autopsy report to establish the death, and that's  
24 in the Court's file. Mr. Boone had no objections,  
25 Your Honor.

1 "THE COURT: Be admitted as Commonwealth's  
2 Exhibit 1."

3 Mr. Chapel then again stated, "Judge, the  
4 Commonwealth would have also called forensic scientist  
5 Ann Jones, which a certificate analysis is also on  
6 file, Judge, I believe at the front of the file. I  
7 pulled it out. I would ask that that be admitted.

8 "The crux of that, Your Honor, is that  
9 Ms. Jones would testify that the bullet involved was  
10 from Officer Gibson's duty service revolver, that only  
11 one shot was fired.

12 "There were other bullets from that firearm  
13 that were not fired. Ms. Jones, through examination  
14 of a hole in the front panel of Officer Gibson's shirt  
15 and the gunshot residue, was able to determine that  
16 the muzzle of the firearm was not in contact. It  
17 would not have been in contact. It was up to 18  
18 inches, the muzzle of the firearm, from Officer  
19 Gibson's shirt or the wound.

20 "So in other words, the distance of the  
21 pistol to Officer Gibson's body was less than an arm's  
22 length. Ms. Jones would testify it could have been  
23 close to three inches from Officer Gibson's body.  
24 More likely, it was between 6 and 12 inches from his  
25 body.



1 "Judge, I'd also introduce as certificate of  
2 analysis, which I believe has been pulled for the  
3 Court.

4 "MR. BOONE: No objection.

5 "MR. CHAPEL: It will be admitted as  
6 Commonwealth's Exhibit No. 2. Judge, I would also  
7 move for introduction of preliminary hearing  
8 transcript, which was also -- has some additional  
9 details. I believe that that's without objection."

10 This is Mr. Boone, "Again, no objection."

11 "THE COURT: I think that's already a part  
12 of the record, but it will be admitted as Exhibit  
13 No. 3.

14 "MR. CHAPEL: Thank you, Your Honor.

15 "THE COURT: Yes, sir. Mr. Boone, would you  
16 agree that if tried the recitation that Mr. Chapel..."

17 THE COURT: No, that's the Court.

18 MR. NOVAK: The Court, yes.

19 THE COURT: You said Mr. Boone.

20 MR. NOVAK: No, the Court is speaking to  
21 Mr. Boone.

22 THE COURT: I know, but it wasn't clear.

23 MR. NOVAK: I'm sorry.

24 "THE COURT: Mr. Boone, would you agree that  
25 if tried the recitation of Mr. Chapel would be the

1 Commonwealth's evidence?

2 "MR. BOONE: Yes, Judge.

3 "THE COURT: Thank you. The Court finds the  
4 plea of guilty to be freely, intelligently and  
5 voluntarily entered with an understanding of the plea  
6 and it's consequences and accepts the plea at this  
7 time, finding the defendant guilty as charged in the  
8 indictment."

9 I think the rest of the transcript is not --

10 THE COURT: Ladies and gentlemen, that  
11 transcript consisted of two parts. The first part was  
12 where the judge was asking questions.

13 The defendant was arraigned, and the judge  
14 was asking questions of the witness such as, are you  
15 pleading guilty, do you understand what your rights  
16 are.

17 Then the second part was a Statement of  
18 Facts that was offered by the prosecutor in support of  
19 the plea.

20 I instruct you that the first part, that's  
21 the colloquy between the judge and the defendant  
22 Richardson can be considered by you as evidence in  
23 this case, and you may consider it for any purpose.

24 I instruct you further that the evidence of  
25 the Statement of Facts, which was read, which was the

1 long part, was an admission by the attorney,  
2 Mr. Boone, who was representing Mr. Richardson at the  
3 time and authorized to make the admission only that  
4 that's what the evidence the Commonwealth would put in  
5 would be.

6 And it is admissible here only to show what  
7 Mr. Richardson's state of mind was when he entered the  
8 guilty plea in that he knew or had been told that this  
9 is what the Commonwealth's evidence against him would  
10 be.

11 It is not evidence that he agrees that all  
12 of that evidence actually would have been right if  
13 introduced.

14 Is that a correct instruction, gentlemen?

15 MR. NOVAK: That's fine with the government.

16 MR. BOATWRIGHT: Absolutely.

17 MR. EVERHART: Yes, Judge.

18 THE COURT: And you're going to get into the  
19 same kind of situation with Mr. Claiborne, right?

20 MR. NOVAK: I'm now next going to read  
21 Exhibit ST-3 for the defendant, Ferrone Claiborne.

22 THE COURT: The same instruction applies as  
23 to Mr. Claiborne. The part about where the judge and  
24 Mr. Claiborne have an instruction is evidence that you  
25 can consider for any purpose.

1           However, the part about the Statement of  
2 Facts is an admission which is made through his lawyer  
3 that says that's what the evidence would have been if  
4 the case had gone to trial, and that is admitted only  
5 to show Mr. Claiborne's state of mind.

6           It does not constitute an admission that he  
7 thinks all of that evidence is right, if it had been  
8 proven.

9           Is that a satisfactory instruction on behalf  
10 of Mr. Claiborne?

11           MR. EVERHART: Yes, sir, it is. Thank you.

12           MR. NOVAK: May I proceed, Your Honor.

13           THE COURT: In making that instruction,  
14 neither one of them -- I mean an agreement to the  
15 limiting instruction, neither one of you waive any of  
16 the objections you previously made, so the record is  
17 clear on that.

18           MR. EVERHART: Thank you.

19           MR. HUYOUNG: Thank you, Your Honor.

20           THE COURT: All right, Mr. Novak.

21           MR. NOVAK: Beginning on page 2, line 1:

22           "MR. CHAPEL: The Commonwealth v. Ferrone

23 Claiborne.

24           "THE COURT: Let the record show the  
25 defendant, Ferrone Claiborne, is present, accompanied

1 by his attorney, Mr. Morchower.

2 "MR. MORCHOWER: We're prepared, Your Honor.

3 "MR. CHAPEL: Judge, it would also be a plea  
4 in this matter to an amended charge. I would proffer  
5 that to the Clerk.

6 "THE COURT: Is the defendant ready to be  
7 arraigned on the amended charge?

8 "MR. MORCHOWER: Yes, Your Honor.

9 "The defendant, Ferrone Claiborne, was  
10 arraigned on an indictment charging that on or about  
11 the 25th day of April, 1998, in the County of Sussex,  
12 he did unlawfully participate as an accessory after  
13 the fact to the killing of Officer Allen W. Gibson,  
14 Jr., by involuntary manslaughter.

15 "THE CLERK: What say you, guilty or not  
16 guilty, to the indictment as amended?

17 "THE DEFENDANT: Guilty."

18 Judge, there are non-relevant colloquy, and  
19 I would like to pick it back up on page 4, line 7.

20 "THE COURT: Before accepting your plea, the  
21 Court must ask some questions of you beginning with  
22 your full name.

23 "THE DEFENDANT: Ferrone Claiborne.

24 "THE COURT: And your date of birth?

25 "THE DEFENDANT: [REDACTED]/76.

1 "THE COURT: What was the last grade of  
2 school that you completed?

3 "THE DEFENDANT: The 11th.

4 "THE COURT: Are you the person charged in  
5 the indictment which the Clerk just read?

6 "THE DEFENDANT: Yes.

7 "THE COURT: Do you understand that charge?

8 "THE DEFENDANT: Yes.

9 "THE COURT: Have you discussed with  
10 Mr. Morchower what must be proven in order for you to  
11 be found guilty?

12 "THE DEFENDANT: Yes.

13 "THE COURT: Have you discussed with him  
14 whether you have any defenses to the charge?

15 "THE DEFENDANT: Yes.

16 "THE COURT: Have you discussed with him  
17 whether you should plead guilty or not guilty?

18 "THE DEFENDANT: Yes.

19 "THE COURT: After that discussion, was it  
20 your decision that you plead guilty?

21 "THE DEFENDANT: Yes.

22 "THE COURT: Are you entering that plea  
23 freely and voluntarily?

24 "THE DEFENDANT: (Nods head.)

25 "THE COURT: Because you are, in fact,

1 guilty? Please answer. I see your nods, but this  
2 lady has to take down what you say.

3 "THE DEFENDANT: Yes.

4 "THE COURT: Thank you. Has anyone  
5 connected with your arrest or prosecution such as the  
6 Commonwealth's Attorney or the police forced you in  
7 any way to enter this plea of guilty?

8 "THE DEFENDANT: No.

9 "THE COURT: Do you understand that when you  
10 plead guilty you waive your right to trial by jury?

11 "THE DEFENDANT: Yes.

12 "THE COURT: And you waive your right to  
13 remain silent or confront any witnesses who may  
14 testify?

15 "THE DEFENDANT: Yes.

16 "THE COURT: Are you entirely satisfied with  
17 the services of Mr. Morchower?

18 "THE DEFENDANT: Yes.

19 "THE COURT: Discuss with him what the  
20 maximum punishment for this crime is?

21 "THE DEFENDANT: Yes.

22 "THE COURT: Do you understand that when  
23 you've pled guilty, you may have waived your right to  
24 appeal the decision of the Court?

25 "THE DEFENDANT: Yes.

1 "THE COURT: Do you understand all the  
2 questions I've asked of you?

3 "THE DEFENDANT: Yes.

4 "THE COURT: May I have a Statement of Facts  
5 in this, please?

6 "MR. CHAPEL: Yes, sir. Judge, if it  
7 pleases the Court and counsel, I'd like to adopt the  
8 previous Statement of Facts as a Statement of Facts  
9 for this matter as well with one exception. If that's  
10 not agreeable --

11 "MR. MORCHOWER: That's agreeable.

12 "MR. CHAPEL: Judge, in addition to the  
13 other matters which the Court has incorporated into  
14 this case, the Commonwealth would have presented  
15 evidence from Corporal Ernest Giles and Deputy Eric  
16 Johnson who would have testified that about 12:30 or  
17 1:00 p.m. on the day of April 25th, 1998, after  
18 Officer Gibson had been shot in Waverly, Corporal  
19 Giles is going down Butler Street in the Town of  
20 Waverly, which is in rather close proximity from the  
21 Waverly Village Apartments.

22 "At that point, the defendant, Ferrone  
23 Claiborne, flagged down both of the officers and asked  
24 what had happened around there. Testimony from  
25 Corporal Giles will be that he said, 'Something very



1 bad.'

2 "In response, Ferrone Claiborne said, 'I  
3 heard a police officer was shot.'

4 "Corporal Giles would then testify that he  
5 reported, 'If you know or hear anything, let someone  
6 know.' Corporal Giles had indicated that there was no  
7 clues or anyone's name had been associated with the  
8 homicide at that point.

9 "Ferrone Claiborne did not follow up in any  
10 respect. He continued on his way, and the perpetrator  
11 or the principal, Terence Richardson, remained at  
12 large for another day and a half before he was  
13 apprehended.

14 "THE COURT: Mr. Morchower, would you agree  
15 that if tried that what we just heard would be the  
16 Commonwealth's evidence?

17 "MR. MORCHOWER: Yes, accessory after the  
18 fact, yes, sir.

19 "THE COURT: The Court finds the plea of  
20 guilty to be freely, intelligently and voluntarily  
21 entered with an understanding of the plea and its  
22 consequences, accepts the plea at this time finding  
23 the defendant guilty as charged in the amended  
24 indictment."

25 The rest of that transcript, Your Honor,

1 again, Judge, is irrelevant and immaterial.

2 THE COURT: All right.

3 MR. NOVAK: I have no further questions of  
4 Deputy Cheek.

5 THE COURT: Cross-examination?

6

7 CROSS-EXAMINATION

8 BY MR. BOATWRIGHT:

9 Q. Good morning, Mr. Cheek.

10 A. Good morning, sir.

11 Q. Since we just ended on this topic, let me ask you  
12 some questions about those court cases.

13 THE COURT: Let me ask you a question. How  
14 long do you think your examination is going to be?

15 MR. BOATWRIGHT: Probably long enough that  
16 you could contemplate taking a break now.

17 THE COURT: The morning break probably is  
18 appropriate to take at this time.

19 MR. BOATWRIGHT: All right.

20 THE COURT: All right. Ladies and  
21 gentlemen, we'll take the morning break. If you'll  
22 take your pads with you, we appreciate it, and we'll  
23 take a break for 20 minutes.

24

25 (Jury exited the courtroom at 11:00 a.m.)

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THE COURT: All right. Anything that we need to deal with?

MR. BOATWRIGHT: Not at this time.

THE COURT: We'll take the morning recess for 20 minutes. We'll go by that clock.

(Recess taken.)

THE COURT: All right. Juror No. 78 has informed Mr. Mack that he has looked out to the audience and noticed that his cousin is sitting with Officer Gibson's family. I don't know who -- Juror No. 78 is Mr. Worley.

MR. NOVAK: Judge, I actually was going to inform the Court about this when we came back. The person that he's referring to used to be the victim witness coordinator down at Sussex at the time.

She came over to be with the family this morning, and they just reported that to me at the break. And I asked her to leave and don't come back.

She said she had no communications with her cousin about this case at all. She said she had no idea, of course, her cousin was on the jury, but I asked her to leave so there can be no --

1 THE COURT: Has she left?

2 MR. NOVAK: I asked her to leave, Your  
3 Honor. I don't know if she's physically in the  
4 building or not, but I asked her to leave so there  
5 would be no --

6 THE COURT: I didn't know whether anybody  
7 needed to question her. All right. So you just found  
8 out the same information we found out?

9 MR. NOVAK: Yes, and I was actually about to  
10 tell the Court. I didn't know what you were going to  
11 say first, but in order to cure it, I don't think  
12 there's anything to cure.

13 Quite frankly, she's just somebody who came  
14 in the courtroom and sat with the family. So that  
15 nobody can say there's anything improper going on, I  
16 said please leave. So she's not going to be here.

17 THE COURT: Gentlemen, what, if anything, do  
18 you believe needs to be done?

19 MR. BOATWRIGHT: It would seem to me, sir,  
20 perhaps asking Mr. Worley if that has caused --  
21 affected him in any way about the case. I expect he  
22 would reassure us that it didn't.

23 But it might be appropriate to find out if  
24 it caused him any concern beyond just the fact he knew  
25 he had to report it. That's my only suggestion, sir.

1 MR. EVERHART: Judge, I would share in that.  
2 I agree.

3 THE COURT: All right. Would you ask  
4 Mr. Worley to come in, please?

5 MR. EVERHART: Judge, does the Court think  
6 it might be appropriate not question with Mr. Novak in  
7 any way, just to ask him if, in fact, anything had  
8 been said to him by his cousin in the past given the  
9 fact she was the victim/witness coordinator back at  
10 that time.

11 THE COURT: Sure. Does anybody know the  
12 name of the cousin?

13 MR. EVERHART: I'm sorry?

14 THE COURT: Does anybody know the name of  
15 the cousin?

16 MR. EVERHART: I'm sorry, Judge, I do not.

17 MR. NOVAK: It's Karen Thomas.

18

19 (Mr. Worley entered the courtroom.)

20

21 THE COURT: Mr. Worley, we're going to bring  
22 the rest of the jury in in a minute. You can just go  
23 ahead and sit in the jury box.

24 A JUROR: Okay.

25 THE COURT: Is your notepad back there?

1 A JUROR: Yes.

2 THE COURT: I'll let you go in a minute.  
3 Just have a seat over there. Thank you very much for  
4 passing that information along to us. Your cousin's  
5 name is Karen Thomas, and as I understand it, you saw  
6 her sitting in the audience this morning and reported  
7 that.

8 A JUROR: Right.

9 THE COURT: And we appreciate your having  
10 done that. Have you ever had any discussion with  
11 Ms. Thomas about this case at all?

12 A JUROR: No.

13 THE COURT: I know you haven't since you  
14 started serving as a juror but before then?

15 A JUROR: No, sir.

16 THE COURT: All right. Would the fact that  
17 your cousin was sitting for whatever reason she was  
18 sitting over there with Mr. Gibson's family, would  
19 that in any way affect your ability to give a fair  
20 trial to these parties?

21 A JUROR: No, sir.

22 THE COURT: Would it affect your ability to  
23 consider the evidence and to make a judgment based on  
24 the evidence and the law as I instruct you?

25 A JUROR: No, sir.

1 THE COURT: Would it in any way tend to bias  
2 you in favor of the United States in this case?

3 A JUROR: No, sir.

4 THE COURT: Would it in any way tend to bias  
5 you against either or both of the defendants?

6 A JUROR: No, sir.

7 THE COURT: Anything else either counsel  
8 would like to ask?

9 MR. EVERHART: No, sir.

10 MR. BOATWRIGHT: I think that's sufficient,  
11 sir.

12 THE COURT: You need to go back and get your  
13 notepad anyway. Thank you, Mr. Worley. We appreciate  
14 it very much. Please don't mention this to the other  
15 jurors.

16 A JUROR: Okay.

17 THE COURT: Is there anything anybody needs  
18 to do?

19 MR. BOATWRIGHT: No, sir.

20 THE COURT: Are we ready for the jury and  
21 the witness?

22 MR. BOATWRIGHT: Yes, sir.

23 THE COURT: All right. We're ready for the  
24 jury. Have the witness go ahead and take the stand.  
25 I believe it's Deputy Cheek.

1 (Jury entered the courtroom at 11:30 a.m.)

2  
3 THE COURT: All right.

4 MR. BOATWRIGHT: Thank you, Judge.

5 BY MR. BOATWRIGHT:

6 Q. Good morning, Mr. Cheek.

7 A. Good morning.

8 Q. As I said, I wanted to first focus on the last  
9 area of your testimony which was -- concerned the  
10 state court cases against, in this case,  
11 Mr. Richardson.

12 Sir, you were the person who actually  
13 obtained the two warrants of arrest for  
14 Mr. Richardson; is that correct?

15 A. That's correct.

16 Q. And for the benefit of the jurors who may not know  
17 this, in order to do that you have to appear in front  
18 of a magistrate and make certain representations under  
19 oath to obtain those warrants; is that right?

20 A. That's correct.

21 Q. What were the two charges that you lodged against  
22 Mr. Richardson initially, sir?

23 A. I would have to review the paperwork.

24 Q. Perhaps I can refresh your memory. One was  
25 capital murder, correct?



1 A. I believe so, yes, sir.

2 Q. For the killing of a police officer while in  
3 performance of his duties, correct?

4 A. That's correct.

5 Q. The other one was use of a firearm in commission  
6 of that murder, correct?

7 A. That's correct.

8 Q. Now, the first charge, the capital murder charge,  
9 you know from your experience carries, if convicted,  
10 two potential penalties, correct?

11 A. That's correct.

12 Q. You can receive the death penalty or you could  
13 receive life in prison without parole. Is that fair  
14 to say, sir?

15 A. Yes, sir.

16 Q. For the firearm charges, there's a mandatory  
17 three-year penitentiary sentence if convicted; is that  
18 right?

19 A. Yes, sir.

20 Q. Now, when you obtain an arrest warrant, there's  
21 certain personal information that accompanies -- it's  
22 not just limited, in essence, to the person's name; is  
23 that right?

24 A. That's correct.

25 Q. And you supply that information to the magistrate,

1 do you not?

2 A. Yes, sir.

3 Q. Do you recall supplying the height and weight of  
4 Mr. Richardson to the magistrate?

5 A. I do not recall what it was, no, sir.

6 Q. But you know you had to do that; isn't that right?

7 A. You do not have to, no, sir.

8 Q. I'm going to show you a document here so you can  
9 refresh your memory --

10 A JUROR: I can't hear.

11 THE COURT: Just a minute. You can't hear?  
12 Do we have the sound on? Let's see if we can  
13 permanently place it over there. We don't need to do  
14 it now.

15 Okay. Now let's try it.

16 MR. BOATWRIGHT: I need to know if I need to  
17 reask anything that couldn't be heard.

18 THE COURT: The last question, I think.

19 BY MR. BOATWRIGHT:

20 Q. All right. You know you have to supply  
21 identifying information if available to the  
22 magistrate, correct?

23 A. If it's available, yes, sir.

24 Q. I want to show you this document and see if it  
25 refreshes your memory as to the height and weight

1 aspects of the information that you provided to the  
2 magistrate when you obtained warrants against  
3 Mr. Richardson.

4 A. I can refer to the height and weight that was on  
5 the warrant.

6 Q. What does it show, the information that you  
7 provided as being?

8 A. The height and weight that is typed in here is  
9 5'8", 150 pounds.

10 Q. Thank you. You can hand that back to Mr. Mack, if  
11 you don't mind.

12 Do you in providing information to the  
13 magistrate try to be as accurate as possible?

14 A. Try to be, yes, sir.

15 Q. Is that consistent with your recollection that --  
16 at least in terms of the height of Mr. Richardson when  
17 he was arrested and incarcerated?

18 A. I would have to -- there's been so many people  
19 before and after Mr. Richardson that I really can't  
20 recollect his height.

21 Q. If you can't, say you can't say.

22 A. I can't say.

23 Q. All right. Do you recall at the time of the  
24 hearing in Sussex County Circuit Court on

25 December 8th, 1999, whether Mr. Richardson was on bond

1 when he came to court that day?

2 A. I believe he was on bond.

3 Q. He was not on bond when the day ended, correct?

4 A. That's correct.

5 Q. Do you recall what the maximum penalty is for  
6 involuntary manslaughter in Virginia?

7 A. No, sir, I do not.

8 Q. Is 10 years accurate?

9 A. I don't recall.

10 MR. NOVAK: We'll stipulate to that. We'll  
11 stipulate to whatever Mr. Boatwright says is the  
12 maximum penalty. Ten years in prison, I believe.

13 MR. BOATWRIGHT: Yes, sir. I'll be glad to  
14 accept that stipulation.

15 THE COURT: All right.

16 BY MR. BOATWRIGHT:

17 Q. Were you actually present when Mr. Richardson was  
18 arrested?

19 A. No, sir.

20 Q. So that was done by someone other than you?

21 A. That's correct.

22 Q. So if anyone said you were present, they would  
23 have to be mistaken?

24 A. Yes, sir.

25 Q. Now, I'm going to ask you to take a look at what

1 has already been introduced as CS-30.

2 Now, this is the photograph of the end of  
3 the rearmost building in Waverly Village Apartments  
4 and area immediately to the left of it; is that right,  
5 sir?

6 A. That's correct.

7 Q. Now, which of those doors depicted in that  
8 photograph -- I believe you can see three; is that  
9 right?

10 A. Yes, sir.

11 Q. Which one of those doors is the door to Evette  
12 Newby's apartment?

13 A. That would be the second door.

14 Q. Second from the left?

15 A. Second from the left.

16 Q. It would be the middle of the three?

17 A. Right.

18 THE COURT: Can you point to that, please,  
19 so that the jury can see what we're talking about? Is  
20 that what you're talking about, sir?

21 THE WITNESS: That is correct, sir.

22 MR. BOATWRIGHT: Thank you, Judge, and thank  
23 you, ma'am.

24 BY MR. BOATWRIGHT:

25 Q. Now, when you took the other photographs from the

1 window of Ms. Newby's apartment -- I think it's CS-4  
2 and CS-5 that you had to overlap to show the ladies  
3 and gentlemen of the jury?

4 A. Yes, sir.

5 Q. When you took those photographs, did you have  
6 someone go stand in the woods where Officer  
7 Gibson's -- where he was laying when he was found?

8 A. No, sir.

9 Q. Did it occur to you to do that?

10 A. No, sir, it didn't, and I was alone at that  
11 particular time.

12 Q. You could have gotten somebody else to assist you,  
13 couldn't you?

14 A. I could have arranged for someone.

15 Q. Officer Gibson's entire uniform was a dark blue  
16 color. Is that fair to say?

17 A. Medium blue.

18 Q. Excuse me, sir, just one moment, please.

19 Did you say that you were in charge of the  
20 collection of evidence at the crime scene?

21 A. Yes, sir.

22 Q. And would it be fair to say, sir, that if you saw  
23 something out there that you were unsure about in  
24 terms of its evidentiary value, that you would take it  
25 into your custody anyway to be on the safe side?

1 A. Yes, sir.

2 Q. Did you see anything such as portions of a torn  
3 T-shirt, for example?

4 A. No, sir.

5 Q. So you collected nothing of that variety?

6 A. No, sir.

7 MR. BOATWRIGHT: If I could have just one  
8 moment, please. Thank you, Mr. Cheek.

9

10 CROSS-EXAMINATION

11 BY MR. GAVIN:

12 Q. Good morning, Mr. Aldridge.

13 MR. NOVAK: Objection. It's Deputy Cheek.

14 BY MR. GAVIN:

15 Q. Deputy Cheek, I'm sorry.

16 A. Good morning.

17 Q. You were head of this investigation for how long?

18 A. Through the entirety of it.

19 Q. Through December?

20 A. Yes, sir.

21 Q. On the day -- on the day of the shooting, did you  
22 take any statements?

23 A. Yes, sir. I took witness statements from numerous  
24 people.

25 Q. Did you take a statement from Evette Newby?

1 A. Yes, sir, I did.

2 Q. On that day?

3 A. Yes, sir.

4 Q. Was that reduced to writing?

5 A. Yes, sir.

6 Q. Do you recall what she said on that day?

7 MR. NOVAK: Objection. It's hearsay.

8 MR. GAVIN: Judge, I think I'm on cross, and  
9 he asserted himself as the investigator of the case.  
10 I think he can say what she said as part of his  
11 investigation.

12 THE COURT: It's still hearsay. It's  
13 possible that it may become something that can be  
14 brought out later in the trial. I don't know that.

15 But just to have him recite what she said, I  
16 don't know, during the investigation, at this juncture  
17 doesn't fall within any exception of the hearsay rule  
18 that I know of. Is there any that you can point to?

19 MR. GAVIN: Judge, I'll move on.

20 THE COURT: If you wish to recall the  
21 witness in the event it is necessary, the witness will  
22 be made available.

23 MR. GAVIN: Yes, sir. Thank you.

24 BY MR. GAVIN:

25 Q. On the next day, did you take a statement? That



1 would have been the 26th of April.

2 A. Jointly with another investigator, yes, sir. I  
3 was not involved for the entire statement.

4 Q. At that time, did she identify three  
5 individuals --

6 MR. NOVAK: Judge, I object.

7 MR. GAVIN: I'm not asking what she said,  
8 Judge.

9 MR. NOVAK: Yes, he is.

10 THE COURT: Just a minute. Let me hear the  
11 objection before we proceed further. What's the  
12 objection?

13 MR. NOVAK: Hearsay.

14 MR. GAVIN: I'm not asking him to say what  
15 she said.

16 THE COURT: You can hardly say how many  
17 without him saying indirectly what she said. So I  
18 think the objection is sustained.

19 Again, should it become appropriate to  
20 recall the witness to say what she said, we'll deal  
21 with that at the time.

22 MR. GAVIN: All right, Judge. I'll try it  
23 another way.

24 BY MR. GAVIN:

25 Q. Based on her statement to you on April the 26th,

1 did you arrest immediately Ferrone Claiborne?

2 A. No, sir.

3 Q. All right. Did you take any statement from Tony  
4 White that day?

5 A. Not that I recall.

6 Q. He was living with Evette Newby; is that correct?

7 A. That's correct.

8 Q. Is there any reason why you didn't take his  
9 statement?

10 A. He wasn't present.

11 Q. He wasn't present in the apartment?

12 A. We were not in the apartment.

13 Q. Did you know at that time --

14 THE COURT: He wasn't present at the time  
15 you were taking statements. Is that what you're  
16 saying?

17 THE WITNESS: That's correct, Your Honor.

18 BY MR. GAVIN:

19 Q. Were you able to determine whether or not he lived  
20 in the apartment?

21 A. Yes, sir.

22 Q. When were you able to determine that?

23 A. On the 25th.

24 Q. When were you taking the statement of Evette  
25 Newby? What time?

1 A. Which statement, sir?

2 Q. The first statement on the 25th.

3 A. That was in the afternoon of the 25th, and it was  
4 setting in front of the apartment buildings in my  
5 vehicle.

6 Q. So Tony White wasn't there at that time?

7 A. No, sir.

8 Q. And when did you actually end up interviewing him?

9 A. It was sometime later. The best of my  
10 recollection without referring to notes, there may  
11 have been two statements from Mr. White.

12 Q. Was it much later, in October or in November?

13 A. The one statement was quite a bit later, and the  
14 initial statement was either the 25th or somewhere  
15 close to the 25th.

16 Q. So based on -- it would be fair to say, then, that  
17 based on what Evette Newby told you, you didn't find  
18 it important to immediately interview Tony White?

19 MR. NOVAK: Judge, I object to that question  
20 being argumentative. It's still referencing hearsay.

21 MR. GAVIN: I didn't ask what she said, and  
22 I don't think it's argumentative at all. I'm just  
23 asking if based on what he was told by Evette Newby  
24 did it give him cause as an investigator to take  
25 immediately the interview of another witness who may

1 have been at the scene. I think the jury is entitled  
2 to hear that.

3 THE COURT: I don't think it's  
4 argumentative, and I don't think it elicits hearsay.  
5 I question it's relevance.

6 MR. GAVIN: Judge, I think it's relevant to  
7 where they were focusing their investigation and  
8 whether or not because --

9 THE COURT: All right. Overruled.

10 THE WITNESS: Sir, there was numerous people  
11 that were potential witnesses, and we were  
12 interviewing them as rapidly as possible. And I  
13 interviewed as many people as I could, as quick as I  
14 could, and this continued on basically through the  
15 night.

16 BY MR. GAVIN:

17 Q. Okay.

18 A. Over several days through the late evening hours.

19 Q. Did you try to interview any of the other  
20 residents along that back row of apartment buildings?

21 A. Yes, sir, myself and other officers who were  
22 assisting with the interviews interviewed as many as  
23 we could locate, understanding that several people  
24 that may have been there at the time of the offense,  
25 by the time we got everything organized and started

1 the interviews may not have been there at that time.  
2 We had to locate them for a day or so or more.

3 Q. Did you talk to Corporal Aldridge about anything  
4 he may have seen or heard?

5 A. I talked to him, yes, sir, immediately after  
6 the --

7 Q. Do you recall whether or not you reduced any of  
8 that to writing?

9 A. Whether I did?

10 Q. Yes, sir.

11 A. He reduced his statement to writing.

12 Q. But you didn't take any statement?

13 A. I did not interview Corporal Aldridge for a  
14 statement of fact at that time, no, sir. He was  
15 interviewed but not by myself.

16 Q. Let me move along to Officer Gibson's location and  
17 what his condition was. Did you see any tears in his  
18 uniform shirt?

19 A. Yes, sir. Well, not a tear. I saw the hole in  
20 it.

21 Q. The hole? Did you see anything else that was  
22 wrong? Were there any patches torn?

23 A. I would have to -- I don't recall anything.

24 Q. It had patches on it, didn't it?

25 A. It had shoulder patches.

1 Q. The standard patches?

2 A. Yes, sir.

3 Q. Any collars torn that you saw?

4 A. I don't recall any.

5 Q. I assume you looked at it carefully?

6 A. Yes, sir.

7 Q. What about the T-shirt. Did you see any tears in  
8 the T-shirt?

9 A. No tears. I saw a hole, again, in the T-shirt.

10 Q. Same basic location?

11 A. Yes, sir.

12 Q. But the sleeves, were they torn, or could you see  
13 that they were stretched in any capacity?

14 A. I don't recall seeing that, and again, as I  
15 testified earlier, I was not present when those items  
16 were removed.

17 Q. That T-shirt was just a plain old white cotton  
18 T-shirt, right?

19 A. Yes, sir.

20 Q. All right. I'd like you to take a look at  
21 Government's Exhibit CH-1. It's the big green one.

22 THE COURT: Do you want it up on the easel?

23 MR. GAVIN: Yes, sir. It would probably be  
24 easier.

25 THE COURT: He wants it up on the easel, I

1 think.

2 MR. NOVAK: It's upside down.

3 BY MR. GAVIN:

4 Q. Mr. Cheek, if you would point to that middle path  
5 that runs behind the apartment complex?

6 A. (Witness complies.)

7 Q. That's the main path; is that correct?

8 A. That's correct.

9 Q. Based on the diagram that's there, did you help in  
10 assisting to prepare that diagram?

11 A. No, sir.

12 Q. Do you think it's a fair representation of the  
13 direction in which that path runs?

14 A. Yes, sir.

15 Q. So what is the direction of that path once you  
16 cross the berm, Mr. Cheek?

17 A. The path would come over the berm to the bottom of  
18 the hill, and then it would begin to taper off to the  
19 left if walking down the path. And it kind of zigzags  
20 a little bit in the woods.

21 Q. Back to the corner, is that fair to say?

22 A. No, sir, it doesn't actually go to the corner.

23 The corner would be more over here (indicating).

24 Q. Bit close to the corner?

25 A. Within a relative distance to the corner.

1 Q. And that path that's on the right of that one,  
2 does that one go all the way through? It indicates  
3 there that it stops.

4 A. This path goes pretty much through along the berm  
5 and comes out -- goes over to Bank Street.

6 Q. All right. You can take your seat.

7 I'd like to show you CS-4 and CS-5. I'm  
8 going to hold CS-4 and CS-5. It looks to be the way  
9 they should be. Is that about right?

10 A. Yes, sir, that's about right.

11 Q. All right. So this is the middle path?

12 A. Yes, sir.

13 Q. And this path once it gets in the woods goes to  
14 the left?

15 A. Slightly to the left.

16 Q. This back here would be sort of towards the corner  
17 or back in here somewhere; is that correct?

18 A. That's correct.

19 Q. So if it doesn't go right towards the corner, then  
20 that path would sort of end up somewhere right in  
21 there, wouldn't it?

22 A. It would end up somewhere in this area.

23 Q. Somewhere back here?

24 A. Back here.

25 Q. This was taken from Evette Newby's window; is that



1 correct?

2 A. That's correct.

3 Q. Is the middle path shown in that opening?

4 THE COURT: Can you see, ladies and  
5 gentlemen?

6 THE JURY: Not really.

7 THE COURT: I don't think they can see what  
8 you're talking about.

9 THE WITNESS: The middle path is not shown  
10 in those photos.

11 BY MR. GAVIN:

12 Q. As it goes back through the woods?

13 A. Correct.

14 Q. Let me back up because I thought these were on the  
15 monitor. I'm sorry.

16 That's the middle path?

17 A. That's the middle path, yes, sir.

18 Q. The left path would be over here?

19 A. Would be over there.

20 Q. And your testimony is that middle path would  
21 branch off and go back here; is that correct?

22 A. It would go down the hill, a little to the left  
23 and back right along in here.

24 Q. The path not shown in that opening right there?

25 A. No, sir.

1 Q. Do you know where exactly on this picture the body  
2 was located?

3 A. The body would have been located in this area.

4 Q. Back in here?

5 A. Yes, sir.

6 Q. Now, is that to the left or to the right of Evette  
7 Newby's window?

8 A. That would be -- looking from her window towards  
9 the woods, it would have been slightly towards the  
10 left.

11 Q. So she would have been looking a little to the  
12 left out of her window?

13 A. Just a little bit.

14 Q. Back somewhere in there?

15 A. Yes, sir.

16 THE COURT: Those pictures CS-4 and 5 were  
17 taken from Ms. Newby's window?

18 THE WITNESS: That's correct, Your Honor.

19 BY MR. GAVIN:

20 Q. I'm going to hand you something else and see if  
21 you can identify this. Is this something you can  
22 identify, Mr. Cheek?

23 A. Yes, sir, this is a sketch that I prepared.

24 Q. What does that sketch show?

25 A. This sketch shows the rear of the apartment

1 building. It shows the wooded area blocked off.

2 Q. Does that show exactly the location of the body  
3 and where it was found?

4 A. Yes, sir, it does.

5 Q. It also shows the measurements on there, does it  
6 not?

7 A. Yes, sir.

8 Q. And you took those measurements?

9 A. Yes, sir, I did.

10 Q. Did you use any particular bearings to make sure  
11 you were in the right location when you took those  
12 measurements? Any reference points, the building, the  
13 apartment building?

14 A. I used the rear of the apartment building to the  
15 top center of the berm. I did another measurement  
16 over the berm to the bottom and then a measurement  
17 across where the body was located.

18 MR. GAVIN: Judge, I'd like to move that as  
19 Defense Claiborne's Exhibit No. 1.

20 THE COURT: Any objection?

21 MR. NOVAK: No, it's actually already  
22 marked, though, as another number.

23 THE WITNESS: CS-1.

24 MR. GAVIN: It's marked as CS-1, if you want  
25 to use joint exhibits, that's fine.

1 MR. NOVAK: The only reason I say that is we  
2 have the larger one for Mr. Gavin to use.

3 THE COURT: Which one do you want, that one?

4 MR. GAVIN: That one.

5 THE COURT: It's Defense Exhibit 1. It's  
6 admitted without objection. That is a sketch by  
7 Mr. Cheek.

8  
9 (Defendant's Exhibit 1 is admitted into  
10 evidence.)

11  
12 MR. GAVIN: Could I see CS-38, please?

13 BY MR. GAVIN:

14 Q. Mr. Cheek, you testified that there were a lot of  
15 gaps in the trees. Do you see your monitor?

16 A. Yes.

17 Q. What does that show?

18 A. That is an aerial view of the roof of Ms. Newby's  
19 apartment and a downward shot of the close-by wooded  
20 area, the center path and the left-hand path.

21 Q. Are you saying there are a lot of gaps in between  
22 these trees right here?

23 A. There are gaps in those trees, yes, sir. Now  
24 remember, this is an aerial shot looking down.

25 Q. Does the berm run back here?

1 A. The berm runs pretty much straight across from  
2 where your hand is, and also, it runs back along the  
3 left-hand area.

4 Q. Is there underbrush growing on the berm?

5 A. Some underbrush, yes, sir.

6 Q. Are you saying that the gaps are in the underbrush  
7 growing on the berm, or are the gaps in the underbrush  
8 going further back in here?

9 A. Well, the best photo to show the gaps, sir, would  
10 be the one taken from inside the woods looking back  
11 toward the rear of the apartment building. That would  
12 depict the gaps much plainer than this photo.

13 Q. All right. Wouldn't CS-4 and CS-5 also show the  
14 gaps you're talking about?

15 A. CS-4 and 5 would show the gaps, but you have to  
16 remember that the foliage is all green. And when you  
17 see a darker area, it may not be foliage. It may be a  
18 gap in it.

19 Q. All right.

20 A. The photo from inside looking out would depict the  
21 lighter building, which would show the gaps much  
22 plainer than looking into an all one-colored area.

23 MR. GAVIN: Okay. Let me have No. 40, I  
24 think it was.

25 BY MR. GAVIN:

1 Q. Can you describe that?

2 A. That's another aerial photo which depicts Locust  
3 Street, Middle Street and the apartment complex on the  
4 left-hand center at the top portion of the photograph.

5 Q. Evette Newby's apartment is where on that picture,  
6 Mr. Cheek?

7 A. It would be in the upper left-hand corner, would  
8 be her building.

9 Q. Right there (indicating)?

10 A. That's correct.

11 Q. Where's the playground in this picture?

12 A. The playground would be to the right side and  
13 actually right now the lower center bottom.

14 Q. (Indicating).

15 A. No, sir.

16 Q. Right there?

17 A. Right there. That's one of the playground areas,  
18 and then there's a grassy area if you come up to the  
19 left center.

20 Q. Right in there?

21 A. No, toward top.

22 Q. Right there?

23 A. No, sir.

24 Q. Right there?

25 A. Back where her fingernail was. Right there.

1 Q. There?

2 A. That's the grassy area that does not have  
3 playground equipment in it, but children do play in  
4 that area.

5 Q. Is there a utility box somewhere on this premises?

6 A. There's -- I believe there are several utility  
7 boxes on it.

8 Q. Are you aware of a utility box close to the  
9 playground?

10 A. There is one close to the playground. In this  
11 photo as it is right now, it can't be seen.

12 Q. Would it be further to the ditch side, or would it  
13 be further to the parking lot side?

14 A. I don't recall off the top of my head.

15 Q. Okay. So this right here is the view to Evette  
16 Newby's apartment?

17 A. Yes, sir.

18 Q. That's all the questions I have on that.

19 You-all use tracking dogs; is that correct?

20 A. Yes, sir, tracking dogs were brought in, yes.

21 Q. How many?

22 A. I believe there was two bloodhounds.

23 Q. And did you-all scent them on anything or just  
24 send them on their way?

25 A. They were scented on an item. I'm not sure

1 exactly what item. At that time, I was more involved  
2 in the crime scene, in protecting it, than I was  
3 working with the dogs.

4 Q. Did they take out in a particular direction?

5 A. Yes, sir, they went through the wooded area toward  
6 the back, but again, I didn't go with them. And I  
7 wasn't really paying that much attention to how they  
8 were travelling.

9 Q. Did you ever become aware of them pursuing a  
10 particular path?

11 A. I was told that they did but not to my personal  
12 knowledge. I was in that wooded area. I did not go  
13 with the dogs or follow them at all.

14 Q. Was there water back there in that ditch?

15 A. Yes, sir, there was a small amount of water there.

16 Q. Last couple of things with regard to  
17 Mr. Claiborne's plea.

18 You were in court on that day, which I  
19 believe is December 8th; is that correct?

20 A. I believe so, yes, sir.

21 Q. What's the maximum fine -- or excuse me. What's  
22 the maximum term of incarceration for a misdemeanor in  
23 Virginia?

24 A. I believe it's 12 months.

25 Q. Twelve months?



1 A. I believe.

2 Q. And you arrested Mr. Claiborne when? You arrested  
3 Mr. Claiborne when?

4 A. Yes. I believe the warrant was the 29th of April.

5 Q. Did he make bond?

6 A. Yes, sir, he was bonded sometime after his arrest.

7 Q. So you don't recall him being incarcerated up  
8 until the time of his plea hearing on December 8th?

9 A. I believe that he was bonded.

10 Q. All right.

11 A. I'm not positive on whether he was or not, but my  
12 recollection is he did get bond.

13 Q. During the course of your investigations, are you  
14 aware of how much time a prisoner in Sussex County  
15 General District Jail would do if he gets served for a  
16 misdemeanor, how much credit he gets for a day served?

17 A. No, sir, not to my knowledge. I didn't deal with  
18 the jail portion.

19 Q. You're not aware as an investigator that an inmate  
20 gets a day for a day or have credit off his sentence  
21 in misdemeanor time?

22 A. They get some good time. As to what it is, I do  
23 not know.

24 Q. Are you aware whether or not Mr. Claiborne went  
25 home on the day of his sentencing on December 8th,

1 1999?

2 A. I believe he did.

3 Q. The plea to which he entered or the plea which he  
4 entered was an accessory after the fact; is that  
5 correct?

6 A. That's correct.

7 Q. An accessory after the fact, as an investigator,  
8 even if he had talked to Mr. Richardson two days later  
9 about this and not reported to the police, that would  
10 be an accessory after the fact, wouldn't it?

11 A. Yes, sir.

12 Q. The questions that Judge Luke answered in the  
13 course of your experience, they get asked and answered  
14 in every particular case in front of a Circuit Court,  
15 don't they?

16 MR. NOVAK: Judge, I object to that.

17 THE COURT: Sustained.

18 MR. GAVIN: Judge, I guess if I could have  
19 CS-5 back.

20 BY MR. GAVIN:

21 Q. This is for clarification, Mr. Cheek. You had  
22 indicated before where exactly on this picture the  
23 body of Mr. Gibson was located.

24 And what I'd ask you to do, if you could,  
25 instead of just pointing to it, I'd ask you to put a

1 little mark on it, if you could, as to exactly where  
2 his body was located. Do you need CS-4 to help you  
3 out for a point of reference?

4 A. That would help, yes, sir.

5 Q. Is it marked?

6 A. It is. That's just like your gaps. You can't  
7 really see it.

8 Q. Where is it?

9 A. Right here (indicating).

10 MR. GAVIN: For the record, I'll put a  
11 circle around his mark. I don't have anything else.  
12 Thank you, Mr. Cheek.

13 THE COURT: Any redirect?

14 MR. NOVAK: Very briefly. CS-6, please.

15

16 REDIRECT EXAMINATION

17 BY MR. NOVAK:

18 Q. Detective Cheek, I think you were just saying you  
19 referred to -- explain the gaps with the shot through  
20 the woods. Is this the shot you were talking about?

21 A. Yes, sir, it is.

22 Q. Do you want to explain to the jury what you're  
23 talking about the gaps, I think that's what he asked  
24 you about?

25 A. In the upper portion of the photo, this light area

1 that looks mostly white, that is gaps in the foliage  
2 that you can see directly out or if outside could see  
3 directly in, looking at an object other than something  
4 green.

5 Q. The white background is the building?

6 A. Is the building, yes, sir.

7 Q. Can you see the same gaps if you're standing in  
8 the building looking back in?

9 A. Yes, you can see the gaps. Again, you would be  
10 looking at green. There would be another color, and  
11 you wouldn't pick it up. You wouldn't see it.

12 MR. NOVAK: I have no further questions,  
13 Judge.

14 THE COURT: Can he be excused permanently?

15 MR. NOVAK: Judge, I believe no is the  
16 answer. We'd ask that he remain under subpoena.

17 THE COURT: All right.

18 MR. NOVAK: I think the defense agrees.

19 MR. BOATWRIGHT: No, I think we do need to  
20 have him stay.

21 THE COURT: All right. Thank you very much,  
22 Mr. Cheek. You're not excused.

23 MR. EVERHART: Judge, just for  
24 clarification, I don't know that it's necessary that  
25 he stay. I think we agreed --

1 THE COURT: Why don't you-all work that out.

2 MR. NOVAK: He's going to be here as  
3 necessary for the Court.

4 THE COURT: All right.

5 MR. NOVAK: Mr. DeGaetano.

6 THE COURT: Who?

7 MR. NOVAK: Mr. DeGaetano.

8

9 DOUGLAS H. DEGAETANO, a Witness, called by the  
10 Government, first being duly sworn, testified as  
11 follows:

12

13 DIRECT EXAMINATION

14 BY MR. NOVAK:

15 Q. Sir, do you want to tell the ladies and gentlemen  
16 your name?

17 A. My name is Douglas Hall DeGaetano. The last name  
18 is spelled D-E, capital G, A-E-T-A-N-O.

19 Q. Sir, by whom are you employed?

20 A. I'm employed by the Commonwealth of Virginia  
21 Division of Forensic Science at the Central Laboratory  
22 here in Richmond, Virginia, where I analyze gunshot  
23 residue using a scanning electron microscope and  
24 energy dispersive x-ray system.

25 Q. How long have you been analyzing gunshot residue?

1 A. Approximately eleven years.

2 MR. NOVAK: Judge, I'm going to move that he  
3 be qualified as an expert in the analysis of gunshot  
4 residue, and I don't believe the defense -- that's  
5 what we were speaking of -- has any objection to his  
6 qualifications as an expert in that area.

7 MR. BOATWRIGHT: We've previously agreed  
8 that he is an expert in that area.

9 MR. EVERHART: That's correct.

10 THE COURT: He's accepted as an expert  
11 witness in the area of gunshot residue.

12 BY MR. NOVAK:

13 Q. Mr. DeGaetano, would you be kind enough to explain  
14 to the jury what exactly is gunshot residue?

15 A. You can think of gunshot residue in broad terms as  
16 anything that's coming out of a barrel of a weapon as  
17 it's discharged. It would include bits of partially  
18 burned powder plates, bits of a bullet if the bullet  
19 is jacketed. It may include bits of copper, bits of  
20 lead.

21 Along with all that material, there's a  
22 component called primer residue. That's from the  
23 primer material that's shock sensitive in the back of  
24 the cartridge case.

25 It's what the hammer or firing pin is going

1 to strike and initiates the explosion in a cartridge  
2 case. That material is the material that I'm  
3 analyzing at the laboratory, primer residue.

4 Q. Let me step back and ask you, could you explain to  
5 the jury what a gunshot residue kit is?

6 A. A gunshot residue kit is something we supply law  
7 enforcement. It consists typically of two sampling  
8 devices. These are just spherical discs that have a  
9 special type of double-stick tape on them.

10 They come in a little capsule, looks kind of  
11 like a pill bottle. The officer would then take the  
12 top of that pill bottle off and expose this  
13 double-stick tape and dab the person's hand along the  
14 forefinger, web and the thumb area of the hand on both  
15 the back of the hand and the palm of the hand.

16 They would then reseal this. There's one  
17 for the right hand, one for the left hand, and then  
18 they would submit that to the laboratory for analysis.

19 Q. And you're the person who analyzes it; is that  
20 right?

21 A. That's correct.

22 Q. The purpose is to see if somebody has gunshot  
23 residue, like I have ink on my hands, to have gunshot  
24 residue on their hands; is that right?

25 A. Correct.

1 Q. Now, in order for that test to be effective for  
2 you to be able to see if somebody has gunshot residue  
3 on their hands, how long after the firing of the  
4 weapon must the kit be taken?

5 A. Typically we find that with a living individual  
6 you need to sample them within about four to six hours  
7 after the time the shooting takes place. After that  
8 amount of time, this material will simply fall off  
9 your hands from just normal activity.

10 Q. What, if any, impact would the washing of ones  
11 hands have on removal of gunshot residue from their  
12 hands?

13 A. If you wash your hands thoroughly with soap and  
14 water, you can remove this material immediately.

15 Q. So if this -- going back to your time difference,  
16 if this firearm was fired here approximately  
17 11:00 a.m. or shortly thereafter, the kit in this  
18 instance to be effective, to be reliable, would have  
19 to be taken not later than 5:00 p.m., at the latest  
20 six hours later?

21 A. That's correct. That's typically what we would  
22 see. It's possible to find gunshot residue particles  
23 longer than six hours, but that possibility becomes  
24 increasingly remote.

25 MR. NOVAK: Judge, we have a stipulation if



1 I could publish to the jury?

2 THE COURT: All right.

3 MR. NOVAK: This is Stipulation No. 10,  
4 ladies and gentlemen.

5 Stipulation No. 10 reads as follows:  
6 Virginia State Police Special Agent John Polak  
7 collected a gunshot residue kit, which has been marked  
8 as Exhibit GR-1, from Eric Garrett on April the 25th,  
9 1998, at 7:15 p.m.

10 Special Agent Polak collected a gunshot  
11 residue kit, which has been marked as Exhibit GR-3,  
12 from Derrick Bailey on April the 26th of 1998 at  
13 2:47 a.m.

14 Special Agent Polak collected a gunshot  
15 residue kit, which has been marked as Exhibit GR-2,  
16 from Terence Richardson on April the 26th, 1998, at  
17 11:57 p.m.

18 Special Agent Polak turned over Exhibits  
19 GR-1, GR-2 and GR-3 to Virginia State Police Special  
20 Agent Louis Dooley who then submitted these items to  
21 the Division of Forensic Science for the Commonwealth  
22 of Virginia for laboratory analysis.

23 Sussex County Detective Tommy Cheek  
24 collected a gunshot residue kit, which was been marked  
25 as Exhibit GR-4, from the body of Officer Gibson on

1 April the 27th of 1998 at the Medical Examiner's  
2 Office and then submitted Exhibit GR-4 to the Division  
3 of Forensic Science for the Commonwealth of Virginia  
4 for laboratory analysis.

5 The parties agree to the introduction into  
6 evidence of Exhibits GR-1, GR-2, GR-3, GR-4 without  
7 any further foundation or authentication.

8 THE COURT: They're admitted without  
9 objection.

10

11 (Government's Exhibits GR-1 through GR-4 are  
12 admitted into evidence.)

13

14 MR. NOVAK: May I show the witness Exhibit  
15 LB-4, please?

16 BY MR. NOVAK:

17 Q. Mr. DeGaetano, do you recognize Exhibit LB-4?

18 A. Yes, this is the certificate of analysis that I  
19 prepared in this case. I recognize it by the unique  
20 forensic science case number assigned to this case,  
21 which is C98-6156 and my signature at the bottom.

22 Q. And does that reveal the results of the analysis  
23 that you did on the gunshot residue kits that I just  
24 referenced in the stipulation?

25 A. Yes, it does.

1 Q. Did you come to any conclusion as to whether you  
2 found gunshot residue with any of those kits?

3 A. Yes, I did not find any primer residue particles  
4 on any of the samples submitted in the gunshot residue  
5 kits.

6 Q. The stipulation that I just read to the jury  
7 references the dates and times. All those were well  
8 beyond the six-hour time frame that you indicated; is  
9 that right?

10 A. That's correct.

11 Q. Mr. Richardson was actually taken over 36 hours  
12 from the time of the incident; is that right?

13 A. I would not expect to find primer residue on  
14 someone's hands that long after a shooting took place.

15 MR. NOVAK: Thank you. I have no further  
16 questions.

17 MR. BOATWRIGHT: We don't have any questions  
18 for the gentleman.

19 MR. EVERHART: Judge, we don't have any  
20 questions.

21 THE COURT: May he be excused permanently?

22 MR. NOVAK: Please.

23 MR. BOATWRIGHT: Yes, sir.

24 THE COURT: Thank you very much for being  
25 with us, Mr. DeGaetano. You're excused and released

1 from your subpoena.

2 THE WITNESS: Thank you, Your Honor.

3 MR. NOVAK: Ann Davis, please.

4

5 ANN J. DAVIS, a Witness, called by the  
6 Government, first being duly sworn, testified as  
7 follows:

8

9 DIRECT EXAMINATION

10 BY MR. NOVAK:

11 Q. Ma'am, do you want to state your full name for the  
12 ladies and gentlemen?

13 A. My name is Ann J. Davis.

14 Q. Ma'am, could you tell us by whom you're employed?

15 A. I'm employed with the Virginia Division of  
16 Forensic Science here in Richmond, Virginia, as a  
17 firearms and tool marks examiner.

18 Q. How long have you done that?

19 A. About 18 years.

20 MR. NOVAK: Judge, I would offer the witness  
21 as an expert in the area of firearm and tool mark  
22 identification, and I believe --

23 THE COURT: What's kind of mark?

24 MR. NOVAK: Tool mark identification.

25 THE COURT: Tool?

1 MR. NOVAK: Tool.

2 THE COURT: All right. Any objection?

3 MR. BOATWRIGHT: No, sir, I'm quite familiar  
4 with her qualifications.

5 MR. EVERHART: The same, Your Honor.

6 THE COURT: All right. She's accepted as an  
7 expert in firearms and tool mark identification.

8 BY MR. NOVAK:

9 Q. Ms. Davis, you performed a number of examinations  
10 in this case; is that right?

11 A. That's correct.

12 Q. That resulted in you filing two reports pertaining  
13 to your analysis; is that right?

14 A. Yes, sir.

15 MR. NOVAK: If I could show the witness  
16 Exhibits FE-5 and FE-6?

17 BY MR. NOVAK:

18 Q. Now, Ms. Davis, first of all, starting with  
19 Exhibit FE-5, is that a report dated September the  
20 10th of 1998?

21 A. Yes, sir, it is.

22 Q. And that reports your findings; is that correct?

23 A. Yes, it does.

24 Q. In Exhibit FE-6, that's a report dated September  
25 the 14th of 1998; is that right?

1 A. Yes, sir.

2 MR. NOVAK: Judge, I would move for the  
3 admission of both and be allowed to have her explain  
4 what she did.

5 THE COURT: There being no objections, it's  
6 admitted.

7

8 (Government's Exhibits FE-5 and FE-6 are  
9 admitted into evidence.)

10

11 BY MR. NOVAK:

12 Q. Now, you had occasion to see Officer Gibson's  
13 firearm in this instance; is that correct?

14 A. Yes, I did.

15 MR. NOVAK: If I could show the witness  
16 Exhibit FE-1, please?

17 BY MR. NOVAK:

18 Q. Ms. Davis, can you, first of all, explain to the  
19 ladies and gentlemen -- first of all; is that the  
20 Exhibit FE-1 that you analyzed?

21 A. Yes, sir, it is.

22 Q. Now, first of all, can you tell the ladies and  
23 gentlemen, first of all, what type of weapon that is?

24 A. It's a Glock Model 21, caliber .45, auto pistol.

25 Q. Can you tell us when you received that item did

1 you first examine to determine whether it was in  
2 normal functioning ability?

3 A. Yes, I did.

4 Q. So it was working well when you got it?

5 A. Yes, sir, it was.

6 Q. Did you have an occasion to determine if the  
7 safeties that are built into the firearm were operable  
8 at the time you first initially examined it?

9 A. During my examination process I did examine the  
10 safeties, and they are functioning properly.

11 Q. Now, in addition to the firearm, did you have an  
12 occasion to receive a magazine and cartridges that  
13 were within the magazine along with the firearm?

14 A. Yes, I did.

15 MR. NOVAK: If I could show the witness  
16 FE-3, please?

17 BY MR. NOVAK:

18 Q. Now, do you recognize that item?

19 A. Yes, sir, these are the magazines and the  
20 cartridges that we made for my examination prior to  
21 the examination.

22 Q. Can you tell us when you received the magazine how  
23 many -- first of all, how many shots can be fired out  
24 of Exhibit FE-1 that can be done? What's the  
25 cartridge capacity?

1 A. The magazine capacity is 13 cartridges in the  
2 magazine and one cartridge in the chamber, would make  
3 the total capacity of the firearm at 14 cartridges.

4 Q. Do you recall how many you received with the  
5 magazine and if any were loose in the bag?

6 A. I received 12 cartridges total.

7 Q. Now, did you have an occasion to test fire any of  
8 the cartridges in the firearm?

9 A. Yes, I did. I test fired eight of the cartridges  
10 that I received.

11 Q. Can you explain to the ladies and gentlemen if  
12 there's anything unique about what a firearm does when  
13 it expels a bullet from its barrel, what you look for  
14 in terms of comparing a bullet as well as a cartridge  
15 to a firearm?

16 A. Well, firearms such as this Glock pistol have a  
17 barrel that has rifling within the barrel that makes  
18 the bullet spin and be more accurate. And it's for  
19 accuracy is why a manufacturer would put rifling in  
20 the barrel. This particular firearm has got eight  
21 lanes and grooves inclined to the right.

22 Q. Can you tell the ladies and gentlemen what lanes  
23 and grooves are?

24 A. Within this particular firearm, they are swaged  
25 areas of the barrel, where there's a dip in the barrel



1 and then a raised portion, a dip and then a raised  
2 portion.

3 This particular barrel, Glock manufactures  
4 their barrel by swaging the rifling end of the barrel,  
5 which is a pressure type of manufacturing process, and  
6 the lanes and grooves in a Glock firearm are what we  
7 call polygonal.

8 They aren't really cut into the barrel.  
9 They are swaged or forced so they make hills and  
10 valleys rather than defined cut areas and raised areas  
11 as normal cut rifling would be in other firearms.

12 Then during this process, there are  
13 imperfections that are placed in the barrel during  
14 this swaging process. When the bullet goes down the  
15 barrel of a weapon, there's a force because the bullet  
16 has expanded to fill the bore of the weapon so that  
17 all the gunpowder and pressure is behind the bullet.

18 And because the metal is rubbing against the  
19 metal barrel, striae are performed on the bullet that  
20 are unique to that particular barrel and no other, and  
21 that striae comparison is what is done by the firearms  
22 examiner such as myself with a microscope to determine  
23 that that particular firearm would fire a particular  
24 bullet.

25 Q. We've already had a stipulation to Exhibit FE-2, a

1 bullet taken from Officer Gibson's body that was  
2 submitted to you for analysis.

3 If I could show you FE-2 and ask you,  
4 Ms. Davis, did you compare whether that bullet, the  
5 one that was taken from Allen Gibson's body, was fired  
6 from the firearm FE-1?

7 A. Yes, I did make an examination such as that.

8 Q. Was it fired from that gun?

9 A. It's my opinion it was, yes, sir.

10 Q. Now, did you also have an occasion to compare a  
11 cartridge case that was found at the scene, which has  
12 been stipulated to be -- I'm sorry, marked as FE-4 at  
13 this point.

14 Did you compare that also to see if that  
15 weapon's case was fired from that same gun?

16 A. Yes, I did compare a cartridge case.

17 Q. Did the exhibit -- your opinion is Exhibit FE-4,  
18 the cartridge cases found at the scene, was fired in  
19 from Officer Gibson's gun FE-1?

20 A. Yes, it was.

21 MR. NOVAK: Now, if we can just put those  
22 items aside, and if you could bring up the firearm  
23 FE-1. I don't know if we can get it in there. I  
24 can't see.

25 BY MR. NOVAK:

1 Q. Now, we started off this testimony, one of the  
2 things I asked you is if the safeties that were in  
3 that firearm were operable.

4 I would like you to explain to the ladies  
5 and gentlemen how much safeties are in the firearm and  
6 how each and every one of those safeties work, if you  
7 don't mind.

8 A. Okay. First of all, there's a safety that is  
9 essentially what's considered a disconnecter, which  
10 keeps the firearm from firing unless the slide, which  
11 is this portion here, is all the way forward, which  
12 would place the firearm in battery.

13 The term "in battery" means the slide is  
14 locked forward and that there's no air gap here  
15 between the barrel of the weapon and the breach of the  
16 weapon, which is the rear part that supports the head  
17 of the cartridge during the firing process.

18 So that one safety keeps the gun from firing  
19 even if you pull the trigger unless the slide is all  
20 the way forward.

21 Another safety is in the trigger of the  
22 weapon there's a little piece that is depressed in the  
23 center of the trigger. That prevents the gun from  
24 firing if you pull the side of the trigger without  
25 pulling the center of the trigger. If it's not pulled

1 all the way to the rearmost position, the gun will not  
2 fire.

3 Q. How much pressure needs to be applied directly to  
4 the center of that trigger mechanism that you just  
5 described in order for the gun to fire even if it is  
6 in battery?

7 A. This particular firearm, I measured the trigger  
8 pull to be approximately 7 1/2 pounds.

9 Q. How must that 7 1/2 pounds be applied in order for  
10 that gun to fire?

11 A. It needs to be pulled to the center of the trigger  
12 so that the very center of the trigger is pulled in  
13 the rearmost position with the force of 7 1/2 pounds.

14 Q. So there has to be a force of that weight directly  
15 on that trigger in order for that gun to fire; is that  
16 correct?

17 A. That's correct.

18 Q. Are there any other safeties?

19 A. The last safety is a firing pin safety, which is a  
20 block that prevents the firing pin from going forward  
21 unless the trigger is pulled to the rearmost position.

22 So the trigger has to be pulled in the  
23 center to the rearmost position in order to release  
24 the block on the firing pin to allow the firing pin to  
25 go forward in order to fire a cartridge.

1 Q. Therefore, based upon those -- are there any more  
2 safeties other than those three?

3 A. No, sir.

4 Q. Based upon those safeties, for example, if I'm  
5 walking along and I drop it on the ground, is it going  
6 to go off?

7 A. A firearm is a mechanical device. Any mechanical  
8 device can fail at a given time. I examined the  
9 firearm. I dropped the gun. I tried to make the  
10 safeties fail during my examination. I couldn't. So  
11 I would expect it not to fire if you dropped it.

12 Q. You can put that aside.

13 In addition to examining the firearm, you  
14 also had an occasion to examine Officer Gibson's shirt  
15 and T-shirt; is that right?

16 A. Yes, I did.

17 MR. NOVAK: If I could show the witness GC-1  
18 and GC-2?

19 BY MR. NOVAK:

20 Q. I'll start with GC-1, the shirt. Could you --  
21 first of all, do you recognize GC-1 as the shirt you  
22 analyzed?

23 I'm sorry. I've got it wrong. That's GC-2.  
24 Let's start with GC-1.

25 THE COURT: Which is that?

1 THE WITNESS: It's a bag. I can't see.

2 BY MR. NOVAK:

3 Q. Putting aside that for one second. We've already  
4 had evidence about what GC-1 is inside of that bag.

5 Tell us what you did in terms of testing  
6 Officer Gibson's shirt and his T-shirt. What were you  
7 looking for?

8 A. I was looking for the presence of holes that can  
9 be consistent with bullet holes, gunpowder particles  
10 and lead residues that would enable me to be able to  
11 make a determination of how far the muzzle of the  
12 weapon was from the garment at the time of firing.

13 Q. Tell us what you did in order to achieve that and  
14 what you ultimately concluded.

15 A. I visually examined the shirt and determined there  
16 to be a bullet hole between the second and third  
17 button from the bottom of the shirt.

18 I then examined it microscopically for the  
19 presence of gunpowder particles and found there to be  
20 a pattern of gunpowder particles around that hole in  
21 the shirt.

22 I then tested it chemically to determine --  
23 to look for the presence of lead residues around the  
24 hole, also.

25 And then I took the ammunition, six of the

1 cartridges that were submitted with the firearm and  
2 made test patterns at various distances, from contact  
3 to 36 inches to try to see if I could replicate that  
4 pattern of gunpowder particles and lead residues that  
5 were present on the shirt.

6           And then I was able to determine based on  
7 those tests that the pattern that was present on the  
8 shirt was consistent with the target distance that was  
9 greater than contact. It was -- contact was too close  
10 but less than approximately 18 inches from the muzzle  
11 of the firearm at the time of the shooting.

12 Q. Now, within those -- I gather what you did is you  
13 tested the gun at various increments to see if it had  
14 a similar pattern on the shirt; is that right?

15 A. Yes, I tested it at 6 inches, 12 inches,  
16 18 inches, 24 inches and 36 inches.

17 Q. From the point -- you said somewhere between  
18 contact the gun pressing up against the shirt versus  
19 18 inches away; is that right?

20 A. Yes, it was my determination that contact -- there  
21 was not contact to the shirt. That was too close.

22 Q. Did you try a contact on the shirt itself?

23 A. Yes, I did. Because the hole was at the  
24 intersection of two parts of fabric, I wanted to  
25 assure myself that because of the thickness of the

1 fabric at that area on the shirt, that if a gun was  
2 held at contact, it may not have torn the shirt, which  
3 is what one would expect to happen when a gun is held  
4 contact to a garment.

5 So to make sure that it would possibly tear  
6 if the gun was held contact, I test fired the gun  
7 between the fourth and fifth button at the upper  
8 portion of the shirt and marked it so on the shirt.

9 And the material did tear, and that would be  
10 consistent with contact. So I knew that the hole at  
11 the bottom of the shirt was not contact.

12 Q. First of all, that's why if we were to get that  
13 shirt out to go through that now, it would be two  
14 bullet holes in there instead of one because you put  
15 one in there in testing it; is that right?

16 A. That's correct.

17 Q. All right. In the range you say is greater than  
18 contact but less than 18, did you look at the  
19 increments 6 inches and 12 inches away to try to  
20 determine which was the most similar of those?

21 A. Yes, I did. I was able to determine that the  
22 distance at approximately 12 inches were most closely  
23 approximated the lead residue pattern on the shirt.

24 However, the gunpowder pattern was not as  
25 similar. So because the ammunition was behaving in



1 such a manner that there was very little difference  
2 between 6 inches and 12 inches but at 18 inches it  
3 was -- there was very little gunpowder and very little  
4 lead residue, I felt comfortable saying that I knew  
5 the contact was too close and 18 inches was too far  
6 away.

7           But between 6 inches and 12 inches, I really  
8 could not discriminate the difference between the  
9 patterns.

10 Q. By the way, you're talking about gunshot  
11 particles. We just had a fellow in here,  
12 Mr. DeGaetano. I guess you know him, right?

13 A. Yes, I do.

14 Q. He works with you over there, right?

15 A. Yes, he does.

16 Q. What does he do that's different than what you do?  
17 What's he looking for as opposed to what you're  
18 looking for?

19 A. What he's looking for are particles that you can't  
20 see with the eye. I can see gunpowder particles  
21 present on the shirt, and microscopically, I can  
22 determine the exact type of gunpowder particles. But  
23 I can look at a shirt and visually see gunpowder  
24 particles that are present.

25           He can't see his particles. What he does is

1 he looks at submicroscopic particles on a scanning  
2 electron microscope and the actual molten morphology  
3 of the particles as they burn together under the  
4 microscope.

5 He's looking at powers way greater than I  
6 what I would look at, probably a thousand times. I  
7 don't know the exact magnification.

8 Q. If you would be kind enough to hold up  
9 Exhibit FE-1 in the air for me for a second, the gun.

10 THE COURT: It's over here.

11 THE WITNESS: I think he took it.

12 BY MR. NOVAK:

13 Q. Hold it up. Would it be fair to say that you're  
14 focusing on gunshot particles that are being expelled  
15 from the end of the barrel?

16 A. Yes, for the most part, I am focusing on the  
17 gunpowder particles and all the gasses that are coming  
18 from the muzzle of the weapon.

19 Q. That's why you're looking at the shirt, to see  
20 what flew onto him as he was getting shot; is that  
21 right?

22 A. That's correct.

23 Q. Now, Mr. DeGaetano, on the other hand, is looking  
24 for particles that are expelled backwards, from the  
25 back of the gun -- is that right -- for those of us

1 not familiar with guns?

2 A. Typically, they would be coming from the ejection  
3 port area during the firing process.

4 Q. Now, with that in mind, in addition to examining,  
5 however, Officer Gibson's clothing, you also had  
6 occasion to examine a T-shirt that we have marked  
7 RS-1; is that right? If I could show you the T-shirt,  
8 a white T-shirt, with a marijuana symbol on it?

9 A. I did examine a T-shirt with what appeared to be a  
10 marijuana leaf on it.

11 Q. If I could show you RS-1, do you recognize that  
12 item?

13 A. Yes.

14 Q. Did you find any gunshot particles on there?

15 A. I examined it microscopically and chemically for  
16 the presence of gunpowder and lead residues, and I  
17 found none.

18 Q. If the person that shot the officer,  
19 hypothetically, was wearing that shirt, would you  
20 expect those items if they're holding the gun towards  
21 the officer?

22 A. I would not necessarily expect there to be  
23 residues on that shirt. No, sir, I wouldn't.

24 Q. Because the gunshot particles are being shot the  
25 other way, away from that shirt then; is that correct?

1 A. That's correct.

2 MR. NOVAK: Judge, I have no further  
3 questions of the witness.

4 THE COURT: Any questions?

5 MR. BOATWRIGHT: If she could hang on there  
6 to FE-1, the weapon, please?

7 THE COURT: All right.

8

9 CROSS-EXAMINATION

10 BY MR. BOATWRIGHT:

11 Q. Good afternoon, Ms. Davis.

12 A. Hi, how are you?

13 Q. You and I have discussed the question many times  
14 about things going backwards from guns, haven't we,  
15 residue?

16 A. Yes.

17 Q. And we know that that really doesn't happen pretty  
18 much, correct? The residues don't blow back on the  
19 person, correct?

20 A. Well, no. Some type of firearms, like revolvers,  
21 you would get some residues depending on the  
22 ammunition.

23 Q. That weapon is not a revolver, correct?

24 A. That's correct.

25 Q. It's a semiautomatic handgun; is that right?

1 A. That's correct.

2 Q. Describe it for the ladies and gentlemen of the  
3 jury who may not be as familiar as you and maybe me  
4 are with how they work. How does that particular  
5 weapon work?

6 A. Okay. This portion of the firearm here is called  
7 the magazine well, and the magazine that I had earlier  
8 would be loaded with ammunition and be placed into the  
9 butt of the weapon here.

10 The slide would be pulled rearward and  
11 allowed to go forward, which I can't do because of the  
12 lock, but it would be allowed to go forward. At that  
13 point in time, as the slide moves forward, it strips  
14 the uppermost cartridge from the magazine into the  
15 chamber of the weapon.

16 And at that point in time, the trigger would  
17 be forward, and when one would pull the trigger to the  
18 rearmost position, the gun would fire. The slide  
19 would move rearward. It would eject the cartridge  
20 case out of the weapon and then go forward again,  
21 loading the next cartridge from the magazine into the  
22 chamber of the weapon.

23 For each pull of the trigger and release of  
24 the trigger, pull and release of the trigger until the  
25 ammunition is depleted, this gun could be fired in

1 that manner.

2 Q. What you're saying essentially is once one puts  
3 the magazine into the well, pulls the slide back and  
4 let it come forward to chamber a round, all that needs  
5 to occur at that point in terms of firing the weapon  
6 is to satisfy the requirements regarding the trigger  
7 safety, correct?

8 A. Pull the trigger.

9 Q. All you have to do is pull the whole trigger  
10 completely rearward, correct?

11 A. That's correct.

12 Q. And that's all you need to do to fire successive  
13 shots, correct?

14 A. Pull and release the trigger each time.

15 Q. For each shot, all you have to do is pull the  
16 trigger, the whole trigger completely rearward,  
17 correct?

18 A. That's correct and release it in between each  
19 shot.

20 Q. Right. Let it come back forward?

21 A. Right.

22 Q. All right. And you can do that until the  
23 ammunition is exhausted, as you just said?

24 A. That's correct.

25 Q. In this case, you were given 12 unexpended rounds,

1 correct?

2 A. That's correct.

3 Q. And you were given one cartridge case and one  
4 bullet to examine in addition?

5 A. That's correct.

6 Q. Indicating to you that perhaps at one time there  
7 were 13 in the magazine, correct?

8 A. There were -- that's possible, or 12 could have  
9 been in the magazine and one in the chamber.

10 Q. If one is, for example, a law enforcement officer  
11 who may need the weapon at any moment, the way he  
12 would carry that weapon would be you would have to  
13 chamber a round by pulling the slide back and then  
14 letting it go forward, correct?

15 A. I'm sorry. I don't understand.

16 Q. If you were in a position where on patrol --

17 THE COURT: Do law enforcement officers in  
18 your experience usually carry the weapon with a  
19 chambered round? Isn't that what you want to know?

20 THE WITNESS: I honestly don't know the  
21 answer to that question.

22 THE COURT: Okay.

23 BY MR. BOATWRIGHT:

24 Q. But in order to be able to use it immediately and  
25 as quickly as possible, that would be the mode in

1 which you would have to carry it, correct?

2 A. That would be correct.

3 Q. Okay.

4 A. You would carry a round in the chamber, yes, sir.

5 Q. Now, you mentioned that it takes 7 1/2 pounds of  
6 force to pull the complete trigger rearward to cause  
7 the firing pin to fire, correct?

8 A. That's correct.

9 Q. Is that a particularly large amount of force as  
10 weapons go?

11 A. It's an average trigger pull for that particular  
12 firearm.

13 THE COURT: It's a what?

14 THE WITNESS: It's an average trigger pull  
15 for that particular firearm.

16 BY MR. BOATWRIGHT:

17 Q. That type of firearm?

18 A. That make and model, yes, sir.

19 Q. Is there any way that you can give the jurors an  
20 idea of the type of force that you're talking about  
21 when you say 7 1/2 pounds of force?

22 A. It would be a 5-pound bag of sugar plus another  
23 half of a 5-pound bag of sugar suspended to the bottom  
24 of the bag, suspended as if weighing it.

25 The way that I do trigger pulls is I have a



1 dead weight gauge, and I put a hanger on the trigger.  
2 And I add weights until the gun will fire, and I  
3 fine-tune it and make it exactly to the nearest  
4 quarter of a pound.

5           So if you hung a hanger and hung a bag of  
6 sugar and then took another bag of sugar and emptied  
7 part of it and hung that to that, that's how much  
8 force it would take to pull the trigger.

9 Q. Is this something that most people would -- type  
10 of force that most people are capable of exerting?

11 A. Oh, I believe so, unless you're disabled or some  
12 sort.

13 Q. Okay. You, for example, don't have any particular  
14 difficulty pulling the trigger on that weapon, do you?

15 A. No, sir.

16 Q. With reference to your estimates of the distance  
17 at which the weapon was fired with relation to the  
18 shirt that you examined, it's your best estimate that  
19 that occurred at 6 to 12 inches -- the weapon was  
20 fired 6 to 12 inches from that shirt; is that correct?

21 A. I believe the residue pattern most closely  
22 approximated approximately 12 inches. I believe  
23 6 inches was probably too close. Although, I can't  
24 scientifically determine it.

25 Q. So it's more likely the closer you get to 12, but

1 you can't rule out 6, in other words?

2 A. That's correct.

3 MR. BOATWRIGHT: I don't believe I have any  
4 more questions for you, ma'am. Thank you.

5

6 CROSS-EXAMINATION

7 BY MR. EVERHART:

8 Q. Good afternoon, ma'am.

9 A. Hi.

10 Q. This firearm doesn't have anywhere on it a  
11 mechanism -- on some handguns that I've seen there's a  
12 little lever that's a safe position and a fire  
13 position. Most people, I think, refer to that as a  
14 safety; is that right?

15 A. That's correct. This firearm does not have an  
16 external safety.

17 Q. So the internal -- the two mechanisms that you and  
18 Mr. Boatwright and Mr. Novak all talked about, in  
19 essence, the real safety is don't pull the trigger.  
20 If there's a chamber in the round -- pardon me.

21 If there's a round in the chamber, don't  
22 pull the trigger unless you want to fire it, right?

23 A. If it's loaded and cocked, it will fire if you  
24 pull the trigger.

25 Q. And by "cocked," we mean a round in the chamber?

1 A. Well, the slide would have to be -- to cock the  
2 weapon -- you couldn't partially pull the slide back  
3 and then slip a round in the chamber without pulling  
4 it all the way back to cock it.

5 So initially, it's got to be pulled all the  
6 way to the rear to cock the weapon and allow it to go  
7 forward.

8 Q. As Mr. Boatwright said, if an officer or any  
9 individual had chambered a round and then let the  
10 slide go back so it's completely closed, all that is  
11 necessary to shoot that weapon is to pull the trigger?

12 A. That's correct.

13 Q. As you said. You said you -- or you responded to  
14 Mr. Boatwright that you would have no trouble firing  
15 that weapon.

16 Can a child fire that weapon?

17 A. Gosh.

18 Q. Guess it depends on how strong the child is?

19 A. Yes, I imagine --

20 THE COURT: It would depend on the age of  
21 the child and the physical coordination and all kinds  
22 of things. I think that's getting a little far off  
23 base.

24 MR. EVERHART: Thank you, Your Honor.

25 THE COURT: Let's go ahead with something

1 else.

2 MR. EVERHART: Thank you, Your Honor.

3 BY MR. EVERHART:

4 Q. Obviously, ma'am, you weigh significantly less  
5 than 150 pounds. I don't want your weight, but you  
6 weigh a lot less.

7 MR. EVERHART: Thank you.

8 THE COURT: Was that testimony by you then?  
9 I'll assume you-all will stipulate that. All right.  
10 Thank you.

11 You need any redirect?

12 MR. NOVAK: No.

13 THE COURT: All right. Can she be excused?

14 MR. NOVAK: Please.

15 THE COURT: Ms. Davis, thank you very much.  
16 You're excused, and thank you for being with us.

17 THE WITNESS: Thank you.

18 MR. NOVAK: William Vaughan, please.

19

20

21

22

23

24

25

1 WILLIAM H. VAUGHAN, a Witness, called by the  
2 Government, first being duly sworn, testified as  
3 follows:  
4

5 DIRECT EXAMINATION

6 BY MR. NOVAK:

7 Q. Sir, you want to introduce yourself to the ladies  
8 and gentlemen, please?

9 A. I'm sorry?

10 Q. What's your name?

11 A. William Henry Vaughan, Sr.

12 Q. Mr. Vaughan, are you employed?

13 A. Yes, I am.

14 Q. Where do you work?

15 A. Waverly PD.

16 Q. How long have you worked down there?

17 A. About 25 years.

18 Q. What do you do down there for the Waverly Police  
19 Department, currently?

20 A. Dispatcher.

21 Q. What's a dispatcher do?

22 A. They send out -- when we have problems, they send  
23 a policeman to the problem spot, fire department, send  
24 the fire department or rescue squad.

25 Q. Do you have a radio contact with your officers out

1 in the field?

2 A. Absolutely, yes.

3 Q. Were you working back in April of 1998 as a  
4 dispatcher?

5 A. Yes.

6 Q. How long have you been a dispatcher?

7 A. About eleven years.

8 Q. What did you do before that?

9 A. I was policeman before then.

10 Q. Would it be fair to say Waverly back in 1998 did  
11 not have a very big police department?

12 A. It wasn't very large. It was about five of us.

13 Q. Five of you?

14 A. I think so, yes.

15 Q. Including you as a dispatcher?

16 A. At that time, I was.

17 Q. Who was chief back then?

18 A. Chief Sturup at the time.

19 Q. Do you know a fellow named Allen Gibson?

20 A. Yes, I do.

21 Q. Allen Gibson served since February '98 until his  
22 death as an officer down there; is that right?

23 A. Yes.

24 Q. What kind of officer was he?

25 A. Nice, one of a kind.

1 Q. Were you working on that Saturday, April 25th,  
2 1998, the day he died?

3 A. Yes, I was.

4 Q. In what capacity were you working on that day?

5 A. I was dispatcher that day.

6 Q. Did you come in about eight o'clock that morning?

7 A. Sir?

8 Q. Did you come in about eight o'clock that morning?

9 A. Yes, I did.

10 Q. Now, at the time that Officer Gibson -- Officer  
11 Gibson was on duty, working that day; is that right?

12 A. Yes.

13 Q. He was in uniform?

14 A. Yes.

15 Q. He has a marked police vehicle?

16 A. Yes, he does.

17 Q. Do you keep a log of the radio calls that you have  
18 on a daily basis?

19 A. Yes, I do.

20 Q. You've been kind enough to give us your radio log  
21 from back on April 25th, 1998; is that right?

22 A. Yes.

23 MR. NOVAK: May I show the witness

24 Exhibit RL-1, please?

25 BY MR. NOVAK:

1 Q. Mr. Vaughan, could you tell us do you recognize  
2 Exhibit RL-1?

3 A. I can't hear you, sir.

4 Q. Do you recognize Exhibit RL-1?

5 A. Yes.

6 Q. Is that a copy of your radio log from back then?

7 A. Yes, it is.

8 Q. Does that fairly and accurately report the --  
9 first of all, you made the notations; is that right?

10 A. Yes, sir.

11 Q. Would you make those notations as the calls are  
12 coming in and going out?

13 A. Yes, I do.

14 Q. Does that fairly and accurately represent what you  
15 wrote down on that day, on April the 25th, 1998?

16 A. That's my copy.

17 MR. NOVAK: Judge, I move for admission of  
18 RL-1, if I could.

19 THE COURT: Admitted.

20  
21 (Government's Exhibit RL-1 is admitted into  
22 evidence.)

23

24 BY MR. NOVAK:

25 Q. Do you recall, Mr. Vaughan, what unit number



1 Officer Gibson was?

2 A. Unit 5.

3 Q. Chief Sturup was unit what?

4 A. One.

5 Q. Now, referring to your log, does that indicate  
6 that 10:20 in the morning on that Saturday that  
7 Officer Gibson started his tour of duty?

8 A. That's right.

9 Q. What occurred at 10:46 on that log?

10 A. 10:46, he got out of his unit at Sussex Trace.

11 Q. Sussex Trace is another apartment complex in  
12 another part of Waverly; is that right?

13 A. Yes.

14 Q. It's different than the Waverly Village  
15 Apartments; is that right?

16 A. Yes, two different places.

17 Q. Did he get back in his car at 10:50 and report  
18 that to you?

19 A. Yes, he did.

20 Q. That's on the log; is that right?

21 A. Yes, it is.

22 Q. Now, at 10:57, can you tell us what it is that  
23 Officer Gibson reported to you?

24 A. He got out of his unit at Waverly Village.

25 Q. That's the apartment complex, right?

1 A. That's the other one, yeah.

2 Q. Do you recall when he called you on that occasion  
3 to tell you he was getting out of his vehicle, did he  
4 tell you if there was anything suspicious or anything  
5 like that?

6 A. No, he just said, "I'm out of the vehicle on  
7 foot."

8 Q. The next thing you got was 11:17 on there. It  
9 says that there's a call from the Waverly Village  
10 Apartments; is that right?

11 A. Right.

12 Q. What does it say, "1033"?

13 A. It says, "10:33, officer down." Immediately after  
14 that, I got a call from Sussex, almost at the same  
15 time.

16 Q. Let me ask you this: Does Waverly have its own  
17 radio band, separate than the Sussex County Sheriff's  
18 Department?

19 A. Yes.

20 Q. In order for a police officer from Waverly to  
21 communicate with a Sussex County deputy, is there a  
22 way they can do that through your radio?

23 A. Yes, sir, on SIRS.

24 Q. Surrey is the county adjacent to Sussex; is that  
25 right?

1 A. It reaches as far as it goes. We use the word  
2 Pony Express.

3 THE COURT: I think I'm having trouble  
4 hearing you. They can't understand you. Put the mike  
5 on the other. Start all over again.

6 MR. NOVAK: I think I can cut this down real  
7 quickly, Judge.

8 BY MR. NOVAK:

9 Q. There's another channel on the radio band that  
10 somebody from Sussex and Waverly can both turn on to?

11 A. Yes, it's SIRS. You can -- if you put it on SIRS,  
12 to No. 2, you can hear it and each county can hear  
13 exactly what I'm saying.

14 Q. Surrey is the county next to y'all, right?

15 A. Right. It's an open channel.

16 Q. It's a what?

17 A. Open channel.

18 Q. Open channel?

19 A. Yes.

20 Q. So if I'm a Sussex County deputy and I wanted to  
21 talk to a Waverly officer, I just click to that  
22 channel and vice versa for the Waverly guy?

23 A. Right.

24 Q. Y'all tape your transmissions?

25 A. Sir?

1 Q. Do y'all tape record your radio calls?

2 A. Not at that time.

3 Q. Now, at that time, was there any other Waverly  
4 officer that was out on patrol other than Officer  
5 Gibson?

6 A. Chief Sturupp was on that morning.

7 Q. He was working; is that right?

8 A. Yes.

9 Q. He was in the building, though; is that right?

10 A. Right, he was in the building.

11 Q. So he wasn't on patrol?

12 A. No, he wasn't.

13 MR. NOVAK: Judge, we have a stipulation, if  
14 I may read it. Stipulation No. 11 reads as follows:  
15 Exhibit RL-2 is a Sussex County rescue squad dispatch  
16 log for April the 25th of 1998. This log reflects  
17 that Kaneka Jackson of [REDACTED] Amherst Lane in Waverly  
18 reported the shooting of Police Officer Gibson at  
19 11:14 a.m.

20 Exhibit RL-3 is a Sussex County Sheriff's  
21 Office dispatcher's complaint sheet, and it also  
22 reflects that Kaneka Jackson of [REDACTED] Amherst Lane in  
23 Waverly reported the shooting of Police Officer Gibson  
24 at 11:14 a.m.

25 The parties agree to the introduction into

1 evidence of Exhibits RL-2 and RL-3 without any further  
2 foundation or authentication.

3 I'd offer those into evidence, Judge.

4 THE COURT: They're admitted.

5  
6 (Government's Exhibits RL-2 and RL-3 are  
7 admitted into evidence.)

8  
9 MR. NOVAK: I pass the witness.

10 THE COURT: Any questions?

11 MR. HUYOUNG: No, Your Honor.

12 THE COURT: Any questions?

13 MR. EVERHART: Yes, Judge. Thank you. Can  
14 I ask that he be shown the largest exhibit? Right  
15 there. Yes, please.

16  
17 CROSS-EXAMINATION

18 BY MR. EVERHART:

19 Q. Mr. Vaughan, if you could just look at that, as  
20 you can see on the bottom right-hand corner, there's a  
21 picture. It says "Waverly Village" and has an arrow  
22 drawn, and there's a circle?

23 A. Yes.

24 Q. Where is Sussex Village Apartments in relation to  
25 that, please, sir?

1 A. Sussex Trace?

2 Q. Sussex Trace, I'm sorry, yes.

3 A. Sussex Trace will be -- that's Waverly Village  
4 right there.

5 Q. Mr. Vaughan, there's no picture of it.

6 A. There's no picture.

7 Q. There's no picture of Sussex Trace Apartments.

8 A. This is -- Waverly Village is on one side of town.  
9 Sussex Trace is on the other side of town.

10 Q. Do me a favor, if you would. In the middle of  
11 that big chart is a map of the town of Waverly. It  
12 shows the different roads, like I see West Main Street  
13 and East Main Street, Beaver Dam, Locust, et cetera.

14 If you could just give me a general idea  
15 where Sussex Trace is, I'd appreciate it.

16 A. Okay. This is Route 40 right here. Sussex Trace  
17 is back up in here.

18 Q. Actually off the map?

19 A. West on 40.

20 MR. EVERHART: Thank you very much. Thank  
21 you, sir.

22 THE COURT: Is that all?

23 MR. EVERHART: Yes, thank you.

24 MR. NOVAK: Judge, I do have -- I think they  
25 have a mistake, Judge, I just want to pick up.

## 1 REDIRECT EXAMINATION

2 BY MR. NOVAK:

3 Q. The road you just pointed to is actually  
4 Route 460; is that right? You just pointed to  
5 Route 460 on that map; isn't that right?

6 A. (No response.)

7 Q. You haven't seen this map before, Mr. Vaughan,  
8 have you? Nobody showed this to you?

9 A. No, not this one here.

10 Q. You see where it says "Route 460" right there?

11 A. Yes.

12 Q. All right. So that's not Route 40, now, right?

13 A. Yes, that's right.

14 Q. So that's Route 460. Now, do you see Main Street  
15 going sideways?

16 A. Main Street.

17 Q. Does that help you?

18 A. I can't see with these glasses on. The lights are  
19 glaring.

20 Q. The short answer is you have no idea where Sussex  
21 Trace is on that map. Is that the short answer?

22 A. Yes.

23 Q. We're going to go easy on you and ask you no more  
24 questions.

25 MR. NOVAK: Judge, I have no further

1 questions.

2 MR. EVERHART: Nothing else, Judge.

3 THE COURT: All right. You can step down.

4 MR. NOVAK: I'd ask that he be permanently  
5 excused.

6 THE COURT: Thank you for being with us and  
7 giving us your evidence. You're excused.

8

9 (Witness stood down.)

10

11 MR. NOVAK: Go forward?

12 THE COURT: What's the length of time of the  
13 next witness?

14 MR. NOVAK: Relatively brief, Judge. I'm  
15 going to say 15 minutes.

16 THE COURT: I think we'll go ahead and take  
17 the lunch recess now, and we'll take an hour.

18 All right. Ladies and gentlemen, you can  
19 take your notepads with you, and we'll take our lunch  
20 recess.

21

22 (Jury exited the courtroom at 12:50 p.m.)

23

24 THE COURT: I'm not sure why any of that  
25 testimony was necessary since everybody stipulated



1 what the log said and what. I think the background is  
2 to get to the witnesses who know what the facts are.  
3 Okay? I think immediately after lunch that's what we  
4 ought to do. We'll be in recess.

5

6 (Recess taken.)

7 (Jury entered the courtroom at 1:50 p.m.)

8

9 THE COURT: All right. Temperature all  
10 right in here for you?

11 THE JURY: Yes.

12 MR. NOVAK: Judge, before we get started,  
13 the defense counsel and myself worked out a  
14 stipulation of testimony over the recess that if I  
15 could just read that to the jury.

16 THE COURT: It's a stipulation of expected  
17 testimony or what?

18 MR. NOVAK: Anticipated testimony as to  
19 Curtis Claiborne, the father of the defendant, Ferrone  
20 Claiborne.

21 THE COURT: Ladies and gentlemen, there's a  
22 stipulation of what Mr. Claiborne would say if he were  
23 called to testify. What's his name?

24 MR. NOVAK: Curtis Claiborne.

25 THE COURT: Curtis Claiborne is the father

1 of the defendant, Ferrone Claiborne. He would be  
2 subpoenaed, and he would testify just as any other  
3 witness sitting there. And you may consider his  
4 testimony just as you would that of any other witness  
5 who testified before you.

6 But unlike the previous stipulation, this  
7 isn't a stipulation of fact, that what he says is  
8 true. It's a stipulation of what he would say if he  
9 were here.

10 MR. NOVAK: Judge, he is going to be here.  
11 We're doing this so we can release him from the  
12 subpoena so he can attend the proceedings.

13 Mr. Curtis Claiborne, father of Ferrone  
14 Claiborne, would testify that his son has not had  
15 steady employment and that he's provided financial  
16 assistance to him over the years. And at most, the  
17 defendant has worked intermittent, odd jobs.

18 THE COURT: All right. Next witness.

19 MR. NOVAK: William Ellsworth.  
20  
21  
22  
23  
24  
25

1 WILLIAM ELLSWORTH, a Witness, called by the  
2 Government, first being duly sworn, testified as  
3 follows:

4  
5 MR. NOVAK: May I proceed, Your Honor?

6 THE COURT: Please.

7  
8 DIRECT EXAMINATION

9 BY MR. NOVAK:

10 Q. Sir, do you want to state your full name, spelling  
11 both your first and last names?

12 A. William Ellsworth.

13 Q. You want to spell your first and last name,  
14 please?

15 A. W-I-L-L-I-A-M, E-L-L-S-W-O-R-T-H.

16 Q. You're going to have to keep your voice up so the  
17 ladies and gentlemen can hear you, okay? Speak into  
18 the microphone. If you need to get closer, just pull  
19 it over to you, okay?

20 Mr. Ellsworth, how old are you?

21 A. Forty-three.

22 Q. You've been convicted in the past of a felony of  
23 abduction; is that right?

24 A. Yes, I have.

25 Q. And you've also been convicted of larceny as an

1 accessory after the fact back in 1991; is that right?

2 A. That's right.

3 Q. Now, you were arrested on April 18th of 1999 for a  
4 gun charge; is that right?

5 A. That's right.

6 Q. Being a convicted felon, you weren't allowed to  
7 have a gun; is that right?

8 A. True.

9 Q. And when you -- after you were arrested on April  
10 the 18th of 1999, did you agree to tell Sussex County  
11 investigators what you knew, if anything, about the  
12 murder of Officer Allen Gibson, which occurred about a  
13 year earlier?

14 A. Yes.

15 Q. Now, do you know the defendant, Terence  
16 Richardson?

17 A. Yes, I do.

18 Q. How do you know the defendant, Terence Richardson?

19 A. All of us grew up together.

20 Q. Are you related to him?

21 A. Yes.

22 Q. In what capacity?

23 A. Cousin.

24 Q. How exactly is that cousin relationship? Who's  
25 your father or mother related to?

1 A. On my mother's side.

2 Q. On your mother's side?

3 A. Right.

4 Q. Now, you obviously know that your cousin had been  
5 arrested for the murder of Allen Gibson in the state  
6 system shortly after the murder on April the 25th,  
7 1998; is that right?

8 A. (Nodded head affirmatively.)

9 Q. Did you know he was out on bond at some point?

10 A. The day of the funeral, yes, I saw him. He was at  
11 the funeral.

12 Q. Okay. We'll get to that in a second.

13 MR. NOVAK: Judge, before we go further,  
14 could I read two stipulations to the jury or actually  
15 one, first?

16 THE COURT: All right.

17 MR. NOVAK: Stipulation No. 13 reads as  
18 follows: Terence Richardson posted bond on January  
19 the 19th, 1999, as to his state charges in Sussex  
20 County and was released from custody on that date.  
21 Terence Richardson remained on bond until December the  
22 8th of 1999.

23 BY MR. NOVAK:

24 Q. Now, Mr. Ellsworth, do you know -- did you know a  
25 woman by the name of Theresa Richardson?

1 A. Yes, I did.

2 Q. Were you related to her?

3 A. Yes, I am.

4 Q. How are you related to her?

5 A. That's my aunt.

6 Q. Was she related to your cousin, Terence

7 Richardson?

8 A. That's his grandmother.

9 Q. Where did she live at before she passed on?

10 A. In Sussex County.

11 Q. Down in the town of Yale?

12 A. A town called Yale.

13 MR. NOVAK: Judge, may I publish Stipulation  
14 No. 12 at this point?

15 THE COURT: Yes.

16 MR. NOVAK: Exhibit OB-1 is an obituary  
17 notice from the *Petersburg Progress* -- pardon me. Let  
18 me read that again.

19 Exhibit OB-1 is an obituary notice from the  
20 *Petersburg Progress Index* reflecting that Theresa R.  
21 Richardson died on February the 1st of 1999. The  
22 parties agree to the introduction of evidence of OB-1  
23 without any further foundation or authentication.

24 BY MR. NOVAK:

25 Q. Now, after your aunt, Ms. Richardson, died, did

1 you have an occasion to go to the funeral?

2 A. Yes, I did.

3 Q. Where was that located at?

4 A. In Petersburg.

5 Q. Thereafter, did you have an occasion to go --  
6 where did you go after the funeral?

7 A. I rode down to Stony Creek where we had a little  
8 get-together there.

9 Q. At a family restaurant down there?

10 A. Yes.

11 Q. Did you have an occasion to see Terence Richardson  
12 at all at the funeral or afterwards at the  
13 get-together after the funeral?

14 A. After the funeral, yes, I seen him.

15 Q. Where did you have an occasion to see him at?

16 A. I saw him at the house, and then I guess it was  
17 leaving. We went by the store.

18 Q. You went to the funeral with who?

19 A. Me and my wife.

20 Q. Did you take any of your kids?

21 A. All my kids grown.

22 Q. So you went with your wife. And at some point,  
23 did you leave to go to the store? Did you leave the  
24 family residence to go to the store?

25 A. Yes.

1 Q. When you left the family residence, did you go to  
2 like a 7-Eleven or some kind of convenience store?

3 A. To a convenience store.

4 Q. Do you recall what the name of that was?

5 A. No, I don't.

6 Q. When you went over to the convenience store, did  
7 you have an occasion to see Terence Richardson?

8 A. Yeah, he was at the store.

9 Q. Was he alone, or was he with somebody else?

10 A. Him and a few of his friends, I guess they were.

11 Q. By "friends" are -- first of all, were they males  
12 or females?

13 A. Males.

14 Q. How many approximately?

15 A. With him, three.

16 Q. Three?

17 A. Him and two more guys.

18 Q. And the two other guys were both males, you  
19 indicated. Were they both white, black or one of  
20 each?

21 A. Black.

22 Q. Do you know their names?

23 A. No, I don't.

24 Q. When you saw them, what were they doing?

25 A. They were standing around beside the store.



1 Q. Did you have an occasion to speak to your cousin,  
2 Terence Richardson?

3 A. No, I didn't.

4 Q. Did you have an occasion to listen to what he was  
5 saying to the other individuals about the murder?

6 A. The only thing --

7 Q. You're going to have to keep your voice up. I  
8 know I can't hear you, so that means they can't hear  
9 you.

10 A. The only thing I heard, he said that he didn't  
11 mean to shot the officer, and if he could take it  
12 back, he would. If he could die in his place, he  
13 would.

14 Q. Now, did he say anything else about what he knew  
15 about the officer?

16 A. No, he didn't.

17 Q. Did he tell you -- did you hear him say anything  
18 else about whether there was a struggle or anything  
19 like that?

20 A. I seen that in the paper.

21 Q. Forget about what's in the newspaper. I'm asking  
22 you --

23 MR. NOVAK: I'm sorry, Judge. I didn't mean  
24 to be rude and cut you off.

25 THE COURT: I didn't hear what he said.

1 MR. NOVAK: He said he heard something in  
2 the newspaper.

3 THE COURT: You're not talking about the  
4 newspaper.

5 THE WITNESS: No, I didn't hear him say, you  
6 know, directly that they was fighting over the gun.

7 BY MR. NOVAK:

8 Q. All right. Just put that out. I'm only asking  
9 you what you heard that day from Mr. Richardson's  
10 mouth. What did you hear him say?

11 A. The only thing he said was that he didn't mean it.  
12 It was an accident. He didn't mean to kill the  
13 officer. He didn't mean to shoot the officer.

14 Q. Anything else that he said?

15 A. No.

16 Q. Then you told that to the Sussex County  
17 authorities, then, when you got arrested on the gun  
18 charge; is that right?

19 A. That came up later.

20 Q. How did that come up, that you notified the police  
21 that you heard him say that?

22 A. People was running their mouth, and then it came  
23 up in the process. And I went on and talked to them.

24 Q. You mean the police came to you then?

25 A. They came by my job.

1 Q. At some point, did the Sussex County prosecutor  
2 agree to dismiss the gun charges against you in return  
3 for you telling the truth?

4 A. They said that if I talked to y'all, that they  
5 would dismiss the gun charge, yes.

6 Q. And you then appeared in front of the grand jury;  
7 is that right?

8 A. True.

9 Q. At that time, I had occasion to instruct you, you  
10 had to tell the truth; is that right?

11 A. True.

12 Q. At any point, has anybody from the federal  
13 government told you that you'd be charged for any type  
14 of gun offense or anything like that?

15 A. No, they haven't.

16 Q. Anybody tell you to change your story or add  
17 anything or do anything?

18 A. No, they haven't.

19 Q. Has anybody told you to do anything other than  
20 tell the truth?

21 A. No, they haven't.

22 MR. NOVAK: Thank you. Judge, I have no  
23 further questions.

24

25

## 1 CROSS-EXAMINATION

2 BY MR. BOATWRIGHT:

3 Q. Mr. Ellsworth, when you were convicted of  
4 abduction, is that a felony conviction?

5 A. Yes, it was.

6 Q. And thereafter, it became illegal for you to own  
7 or possess a firearm, correct?

8 A. Correct.

9 Q. You went to the penitentiary as a result of that,  
10 did you not?

11 A. Yes, I did.

12 Q. And then in late 1991, you were convicted of  
13 another felony, weren't you?

14 A. No, I wasn't.

15 Q. Weren't you convicted in Petersburg Circuit Court  
16 of a felony hit and run charge?

17 A. Yeah, I pleaded guilty to that.

18 Q. All right. That means you were convicted, doesn't  
19 it?

20 A. Yes.

21 Q. And it was a felony hit and run charge that you  
22 were convicted of, correct?

23 A. Yeah, you can say that.

24 Q. I did say that.

25 THE COURT: All right. Wait a minute. He's

1 drawing a distinction between whether he was convicted  
2 and pled guilty. So just don't spar with him.

3 MR. BOATWRIGHT: Yes, sir.

4 THE COURT: Just get the facts out.

5 BY MR. BOATWRIGHT:

6 Q. In Petersburg, again, you say you were convicted  
7 of the misdemeanor of being an accessory after the  
8 fact to a theft, correct?

9 A. Correct.

10 Q. That conviction of the felony hit and run caused  
11 you to have a portion of your earlier suspended  
12 sentence revoked, didn't it?

13 A. Correct.

14 Q. You had to go back to the penitentiary, correct?

15 A. Correct.

16 Q. And that was for the original abduction charge,  
17 correct?

18 A. Correct.

19 Q. And then April 18th, 1999, you got charged with  
20 two felonies; isn't that correct?

21 A. Yes.

22 Q. One was habitual offender felony charge, correct?

23 A. Correct.

24 Q. That relates to the operation of a motor vehicle  
25 after having been told by a court not to, correct?

1 A. Correct.

2 Q. And then you also had the charge of possession or  
3 transportation of a firearm by a person who'd been  
4 convicted of a felony, agreed?

5 A. Agreed.

6 Q. All right. And you didn't want to go back to the  
7 penitentiary a third time, did you?

8 A. Did I want to go back?

9 Q. Right.

10 A. I ain't said I didn't want to go back. I didn't  
11 say anything about it.

12 Q. Well, let's put it this way --

13 THE COURT: The question is not whether you  
14 said anything about it. The question is whether you  
15 wanted to go.

16 You didn't want to go back to prison, did  
17 you?

18 THE WITNESS: No, I don't think nobody wants  
19 to go back to prison.

20 BY MR. BOATWRIGHT:

21 Q. The incident that we're talking about in terms of  
22 the death and funeral services for your aunt, the  
23 funeral services were on Saturday, February the 6th of  
24 1999; is that correct?

25 A. I don't know the exact date.

1 Q. Was it in February of 1999?

2 A. It was in February.

3 Q. The services went as follows: Correct me if I'm  
4 wrong. There was a service in the church in  
5 Petersburg first, right?

6 A. (Nodded head affirmatively.)

7 THE COURT: Is that right?

8 THE WITNESS: Yes, sir.

9 BY MR. BOATWRIGHT:

10 Q. There was a graveside service down in the Stony  
11 Creek area, correct?

12 A. Correct.

13 Q. You have to speak up so they can hear you now.

14 A. Correct.

15 Q. All right. And then there was a gathering of  
16 family and friends at a family member's house, again,  
17 in the Stony Creek area, true?

18 A. True.

19 Q. Now, did you go to these various places  
20 accompanied by your wife?

21 A. That's right.

22 Q. Were your children with you or not? I didn't  
23 quite catch your answer.

24 A. All my children is grown, and there are none at  
25 home.

1 Q. So your children did not travel with you?

2 A. No, they didn't.

3 Q. It was just you and your wife?

4 A. That's all.

5 Q. Okay. You stayed at the family gathering for a  
6 period of time; is that right?

7 A. Before I had to go to work.

8 Q. What time would you say you left? The best you  
9 can recall.

10 A. Somewhere between 9:00 and 9:30.

11 Q. At night?

12 A. Yeah.

13 Q. You say you stopped at a convenience store?

14 A. Went to a convenience store.

15 Q. Was it a 7-Eleven or not?

16 A. I don't recall the name of the store.

17 Q. Later in 1999, right almost at the end of 1999,  
18 you had to come to this building to testify in front  
19 of the federal grand jury; isn't that true?

20 A. That's true.

21 Q. That would be December 22nd, 1999, right before  
22 Christmas, correct? Do you remember that?

23 A. The date I came up here?

24 Q. Uh-huh.

25 A. No, I don't.



1 Q. All right. You do remember going in the grand  
2 jury room, don't you?

3 A. I remember that.

4 Q. Do you remember this gentleman here to my right,  
5 Mr. Novak, asking you questions about the events that  
6 you've already testified about?

7 A. Yeah.

8 Q. All right. Do you recall being asked this  
9 question and giving this response about where you went  
10 after the services and after the gathering? "When did  
11 you speak to him" -- this is page 7, line 6. "When  
12 did you speak to him?"

13 "ANSWER: After they buried his grandmother.  
14 I didn't speak to him after they buried his  
15 grandmother. We went to 7-Eleven, you know, because  
16 after a funeral, everybody gets a little drink."

17 That's a question you were asked and an  
18 answer you gave; isn't that true?

19 A. Yeah.

20 Q. So you did refer to it as a 7-Eleven when you  
21 talked in front of the grand jury, correct?

22 A. You know, Mini-Mart, 7-Eleven, you know.

23 Q. But you never called it anything other than that  
24 7-Eleven?

25 THE COURT: Mr. Boatwright, that isn't

1 impeaching. All he did was say he didn't remember the  
2 name. If you want to use it to help him refresh his  
3 recollection, there's a technique for doing that, but  
4 you can't do what you're trying to do now to impeach  
5 him when it doesn't impeach him.

6 MR. BOATWRIGHT: Yes, sir. I'll move on.

7 BY MR. BOATWRIGHT:

8 Q. Do you recall being asked this question on page 8,  
9 line 18 --

10 THE COURT: Are you refreshing his  
11 recollection or seeking to impeach?

12 MR. BOATWRIGHT: Seeking to impeach.

13 THE COURT: Then ask him whether or not at  
14 the grand jury he testified to whatever it was. If he  
15 answers yes, then whatever. We don't have a problem.  
16 If he answers no, then you go to that.

17 BY MR. BOATWRIGHT:

18 Q. Do you recall testifying in front of the grand  
19 jury and saying that --

20 THE COURT: No. Did you testify such and  
21 such, that's all.

22 BY MR. BOATWRIGHT:

23 Q. Did you give testimony in front of the grand jury  
24 to the effect that persons who were riding with you  
25 was you, your wife and your two girls?

1 A. No, I didn't.

2 Q. Do you recall, then, being asked this question and  
3 giving this answer? This is page 8, line 18.

4 "QUESTION: Who went to the 7-Eleven?

5 "ANSWER: Me and my wife and two girls were  
6 riding with me."

7 Do you recall that?

8 A. No, I don't.

9 Q. Is it possible that you said that, sir?

10 A. Maybe. I can't swear to it.

11 Q. I'm sorry?

12 A. I can't swear to it.

13 Q. All right. Did you know prior to going to the  
14 funeral services and the other things that took place  
15 that day that Terence Richardson was on bond for the  
16 charge relating to the death of the officer in  
17 Waverly?

18 A. Say that again.

19 Q. Before you went to the funeral services and the  
20 things that you did afterwards, did you know that  
21 Terence Richardson was on bond for the charges  
22 relating to the death of the officer in Waverly?

23 A. No, I didn't know he was on bond.

24 Q. Do you recall -- well, where is it you actually  
25 saw him at this convenience store? Was it inside the

1 store, in front of the store, on the side, the back,  
2 where?

3 A. On the side.

4 Q. Are you sure about that?

5 A. Yes, I am.

6 Q. Is that the testimony you gave to the grand jury?

7 A. They didn't ask me what I seen in the back. I  
8 don't recall them asking me that.

9 Q. In that case, on page 8, line 21, do you recall  
10 being asked this question and giving this answer?

11 "QUESTION: Did you see your cousin, Terence  
12 there?

13 "ANSWER: We went around behind the store,  
14 behind the 7-Eleven."

15 Is that the question that you were asked and  
16 the answer that you gave at that time?

17 A. Around behind the store?

18 Q. Right.

19 A. We went.

20 Q. Who's "we"?

21 A. Is that what you're saying?

22 Q. I'm just reading. Do you recall being asked that  
23 question and giving that answer?

24 A. No, I don't.

25 Q. Are you saying you didn't or you can't recall?

1 A. I can't recall. I'm an alcoholic. I'm an  
2 alcoholic. I have memory lapse.

3 Q. So it creates problems for you in terms of you --

4 A. I'm an --

5 THE COURT: Wait a minute. Let him ask the  
6 question, and then you answer it.

7 BY MR. BOATWRIGHT:

8 Q. So you have a problem with alcohol to the point  
9 where it creates problems with your memory?

10 A. No, I'm just saying back then I was drinking heavy  
11 because I was going through a few trials.

12 Q. Let me focus a little more narrow. At that time,  
13 you were consuming alcohol to the point where it  
14 created problems with your memory?

15 A. I wasn't drinking that day.

16 Q. I'm just trying to explain your answer about the  
17 alcohol use.

18 Did that create problems with your memory?

19 A. Alcohol?

20 Q. Uh-huh.

21 A. At one point.

22 Q. Was that point in the early part of 1999?

23 A. No, it wasn't.

24 Q. So alcohol has nothing to do with the problems you  
25 have recalling what happened then?

1 A. No.

2 Q. Were in fact the charges that you had down there  
3 in Sussex dismissed against you?

4 A. Yes, they were.

5 Q. The habitual offender and the possession of  
6 firearm charge, they were dropped, weren't they?

7 A. Yeah, the firearms charge was.

8 THE COURT: How about the habitual offender  
9 charge, was it dropped, too?

10 THE WITNESS: No, I got suspended time for  
11 that.

12 THE COURT: All right.

13 BY MR. BOATWRIGHT:

14 Q. Mr. Novak promised you that the federal government  
15 would not pursue the question of the gun charge as  
16 well, correct?

17 A. Correct.

18 Q. And it hasn't happened, has it?

19 A. No.

20 Q. Who, if anyone, other than -- did you see any  
21 family members with Terence at or around that  
22 convenience store that you've talked about?

23 A. No, I didn't.

24 Q. Did you see how he -- what car he was riding in?

25 A. No, I didn't.

1 Q. Did you see it any time during the day, the  
2 vehicle he was riding in to and from the various  
3 places?

4 A. No, I didn't.

5 Q. Do you know a gentleman named Malcolm Westbrook?

6 A. Who?

7 Q. Malcolm Westbrook?

8 A. I might know him by another name or by face.

9 Q. But the name doesn't mean anything to you?

10 A. No, it doesn't.

11 Q. Were you aware -- did you become aware at any  
12 point in time at all, any time on the time from the  
13 day forward of your aunt's funeral, Terence's  
14 grandmother's funeral, did you become aware at any  
15 time of any of the bond conditions that were placed on  
16 Terence while he was out awaiting trial in Sussex  
17 County?

18 A. No.

19 MR. BOATWRIGHT: Thank you.

20 MR. EVERHART: No questions, Your Honor.

21 Thank you.

22 MR. NOVAK: I just have a brief follow-up.

23

24

25

1 REDIRECT EXAMINATION

2 BY MR. NOVAK:

3 Q. Did you have anything to drink the day of the  
4 funeral?

5 A. The day of the funeral?

6 Q. Yes.

7 A. No.

8 Q. Do you have any problems remembering the day of  
9 the funeral?

10 A. No, I don't.

11 Q. Do you want to be here today?

12 A. No, I don't.

13 Q. You were subpoenaed; is that right?

14 A. That's right.

15 Q. Have I ever told you that you'd get the gun charge  
16 regardless of whatever you did?

17 A. No.

18 Q. All you did was come up and testify; is that  
19 right?

20 A. That's right.

21 MR. NOVAK: I have no further questions.

22 THE COURT: Can he be excused permanently?

23 MR. NOVAK: Please, Your Honor.

24 MR. BOATWRIGHT: Certainly.

25 THE COURT: You're released from your



1 subpoena. Thank you for giving us your evidence.  
2 You're excused.

3

4 (Witness stood down.)

5

6 THE COURT: Next witness.

7

MR. NOVAK: Joe Jones.

8

9 JOSEPH JONES, a Witness, called by the  
10 Government, first being duly sworn, testified as  
11 follows:

12

13 MR. NOVAK: May I proceed Your Honor?

14

THE COURT: Please.

15

16 DIRECT EXAMINATION

17 BY MR. NOVAK:

18 Q. Sir, do you want to tell us what your full name  
19 is?

20 A. My full name is Joseph Jones.

21 Q. You're going to have to speak as clearly as you  
22 possibly can for the ladies and gentlemen.

23 A. My full name is Joseph Jones.

24 Q. Mr. Jones, where do you live?

25 A. In Waverly.

1 Q. How long have you lived in Waverly?

2 A. All of my life.

3 Q. How old are you?

4 A. Forty years old.

5 Q. Do you work?

6 A. Yes, for the Town of Waverly.

7 Q. What do you do for the Town of Waverly?

8 A. Pipe fitting.

9 Q. Mr. Jones, you like to drink; is that right?

10 A. Yeah, I drink.

11 Q. You drink some beer; is that right?

12 A. Yeah.

13 Q. I want to direct your attention back to the day of  
14 the officer getting killed, Saturday, April 25th,  
15 1998.

16 Do you remember the day the officer got  
17 killed?

18 A. No, sir.

19 Q. You don't remember that day at all?

20 A. Huh-uh.

21 Q. Were you living in Waverly then?

22 A. Yeah, I'm from Waverly. That's my home.

23 Q. Were you working back then?

24 A. Yeah.

25 Q. What shift were you working back then?

1 A. I was off.

2 Q. You were off?

3 A. Yeah.

4 Q. Let me ask you this, Mr. Jones. Did you have an  
5 occasion on Saturday, April the 25th of 1998, to go to  
6 the Dobie's Store?

7 MR. HUYOUNG: Judge, I would object to that.  
8 It's leading. He testified he does not remember the  
9 day the police officer was killed.

10 THE COURT: Well, that doesn't foreclose  
11 that question. He just asked what he did on that day.

12 MR. HUYOUNG: Judge, again, I would object  
13 to it as leading.

14 MR. NOVAK: Judge, I'm asking -- I'll  
15 withdraw the question, actually.

16 BY MR. NOVAK:

17 Q. Mr. Jones, you were subpoenaed to be here today;  
18 is that right?

19 A. Yes.

20 Q. You don't want to be here, do you?

21 A. No.

22 Q. You don't want to testify, do you?

23 A. No, I don't want to be here because I don't know  
24 nothing about it.

25 THE COURT: What did you say?

1 THE WITNESS: I don't know nothing about it.  
2 I mean --

3 BY MR. NOVAK:

4 Q. Mr. Jones, if you -- did you ever hear Terence  
5 Richardson talk about shooting a police officer?

6 MR. HUYOUNG: That's leading.

7 THE COURT: No, it isn't. Overruled.

8 BY MR. NOVAK:

9 Q. Did you ever hear Terence -- you know who Terence  
10 Richardson is; is that right?

11 A. I know Terence.

12 Q. How long have you known Terence Richardson?

13 A. All my life, you know.

14 Q. At any point, have you ever heard Terence  
15 Richardson talk about the murder of the police  
16 officer?

17 A. No.

18 Q. Mr. Jones, you were subpoenaed to appear in front  
19 of the grand jury before; is that right?

20 A. Yeah.

21 Q. You've been in this courthouse; is that right?

22 A. Yes, sir.

23 Q. You showed up on December the 22nd of this year;  
24 is that right?

25 A. Yeah.

1 Q. Grand jury's secret session was on December 22nd  
2 of 1999.

3 Were you here on December 22nd, 1999?

4 A. I think so, yes, sir.

5 Q. At that time, you appeared in front of the grand  
6 jury; is that correct?

7 A. Yeah.

8 Q. I was there, too; is that right?

9 A. Yeah.

10 Q. You were placed under oath?

11 A. Yeah.

12 Q. Is that correct?

13 At that time, you were asked a series of  
14 questions about what, if anything, you knew --

15 A. Yeah.

16 Q. -- about the police officer's murder; is that  
17 right?

18 A. Uh-huh.

19 Q. Did you tell the truth when you testified in front  
20 of the grand jury?

21 A. Yeah, I told the truth.

22 Q. Do you remember, referring to page 5 -- well,  
23 first of all, let me ask you this: The night the  
24 police officer was killed, do you recall ever going to  
25 the Waverly Police station and talking to Chief

1 Sturrup?

2 A. That's who I remember talking to.

3 Q. Did you or did you not got to the Waverly Police  
4 station the night the police officer was killed?

5 THE COURT: I think you can understand if  
6 you move out a little bit. Mr. Jones, you turn and  
7 face this way and slow down. And you go over there.

8 Let's start again.

9 THE MARSHAL: This way, Judge?

10 THE COURT: Yes, so that he's facing the  
11 jury and the court reporter. Then it will be easier  
12 for her to understand, I think.

13 Now, ask the question again because I didn't  
14 hear the answer, and I know she didn't. I don't know  
15 whether the jury did.

16 BY MR. NOVAK:

17 Q. On day the police officer was killed, did you go  
18 to the Waverly Police Department?

19 A. I talked to Sturrup.

20 Q. Okay. What did you tell him?

21 A. I ain't tell him -- I didn't tell him nothing.

22 THE COURT: Mr. Jones, the question is what  
23 did you tell Sturrup.

24 THE WITNESS: I ain't tell Sturrup nothing.

25 THE COURT: You didn't tell him nothing?

1 THE WITNESS: No.

2 THE COURT: All right.

3 BY MR. NOVAK:

4 Q. Do you recall testifying in front of the grand  
5 jury, referring to page 5, line 12, you later on that  
6 day did your civic duty and gave some information to  
7 the police, to ask them to talk to Terence Richardson  
8 and Shawn Wooden; is that right?

9 And you answered, "Yeah, I told them I saw  
10 Terence at Dobie's Store."

11 Do you remember testifying to that?

12 A. I seen Terence --

13 THE COURT: Mr. Jones.

14 THE WITNESS: Sir.

15 THE COURT: Settle down.

16 THE WITNESS: All right.

17 THE COURT: Don't yell.

18 THE WITNESS: All right, sir.

19 BY MR. NOVAK:

20 Q. Do you remember? Did you testify to that, sir?

21 A. I said I seen Terence at the store.

22 Q. Dobie's Store?

23 A. Dobie's Store.

24 Q. The day the officer was killed?

25 A. I don't know nothing about it.

1 Q. Sir, just listen.

2 A. Okay.

3 Q. One step at a time. My question to you is did you  
4 testify that you saw Terence and Shawn Wooden at  
5 Dobie's Store the day the police officer was killed?

6 A. I saw them at the store.

7 Q. Now, at that point, did you hear Terence  
8 Richardson say anything about the murder of the police  
9 officer?

10 A. No.

11 Q. Do you recall testifying, referring to page 6,  
12 line 1, a question that I asked you, "Did Terence say  
13 anything to you then?"

14 And you answered, "Uh-huh. Yeah, Terence,  
15 he said -- Terence said, 'Well,' he said, 'I just  
16 killed a cop.' That's all I knew."

17 A. I ain't say it.

18 Q. Do you remember -- first of all, did you give that  
19 testimony in front of the grand jury?

20 A. I don't remember. It's been so long. I mean, I  
21 don't remember.

22 Q. Let me ask you this: If that testimony is written  
23 down in this transcript, would you agree that you said  
24 that in front of the grand jury?

25 A. I don't know.



1 MR. NOVAK: Judge, we have a stipulation  
2 amongst counsel that all grand jury transcripts are  
3 fair and accurate representations of the testimony of  
4 any witnesses that appeared in front of the grand  
5 jury.

6 THE COURT: So stipulated.

7 BY MR. NOVAK:

8 Q. So, Mr. Jones, since the transcript says that you  
9 said that, did you tell the truth when you said that  
10 in front of the grand jury?

11 A. Did I tell the truth?

12 Q. Yes.

13 A. This happened over what...

14 Q. Did you tell the --

15 THE COURT: Just a minute.

16 The question is, Mr. Jones, when you  
17 testified before the grand jury, did you tell the  
18 truth to what you said there?

19 THE WITNESS: Yeah, I told the truth.

20 THE COURT: All right.

21 BY MR. NOVAK:

22 Q. So you did hear Terence Richardson say that he  
23 killed a cop?

24 A. No, I didn't hear Terence say it.

25 Q. So is this true or false? I'm going to read you

1 what you said, and you tell me was that true or false.

2 "Terence, he said -- he said, 'Well, I just  
3 killed a cop.' That's all I know."

4 Was that true when you said that?

5 A. No.

6 Q. So you lied in front of the grand jury, is what  
7 you're saying?

8 A. No. Look, I ain't lied in front of no grand jury.

9 Q. Mr. Jones --

10 A. This happened three years. I don't know what I  
11 said, but I didn't say that.

12 Q. Mr. Jones, you're afraid --

13 THE COURT: Wait just a minute.

14 Mr. Jones, you're saying two different  
15 things. You're saying that you didn't lie in front of  
16 the grand jury, and you're saying you don't remember  
17 saying that.

18 Now, the question is when you were before  
19 the grand jury, did you tell the truth to whatever  
20 questions you were asked? Were your answers truthful?  
21 Did you tell the truth then?

22 THE WITNESS: I told the truth.

23 THE COURT: Even though you can't remember  
24 it now, did you tell the truth then? Is that right?

25 THE WITNESS: I told -- yeah, I told what I

1 had -- where I was at, you know.

2 THE COURT: All right.

3 BY MR. NOVAK:

4 Q. Do you recall later on in the grand jury -- by the  
5 way, when you said that you had heard Terence  
6 Richardson say this, he didn't say it to you; is that  
7 right?

8 A. I didn't hear Terence say that.

9 Q. So he didn't say anything?

10 A. No, I didn't hear him say nothing.

11 Q. That's what your testimony is today?

12 A. Yeah.

13 Q. So this testimony you gave in front of the grand  
14 jury back then was incorrect?

15 A. I didn't hear him say that.

16 Q. Mr. Jones, do you still live in Waverly? Is that  
17 right?

18 A. Yes, sir.

19 Q. Are you afraid to be here today?

20 A. I don't want to be here because -- no, I don't  
21 want to be here, you know.

22 Q. You don't want to be here; is that right?

23 A. No.

24 MR. NOVAK: Judge, I have no further  
25 questions of Mr. Jones.

1

2

MR. HUYOUNG: Judge, do you want me to stand

3

here?

4

THE COURT: Yes.

5

6

CROSS-EXAMINATION

7

BY MR. HUYOUNG:

8

Q. Good afternoon, Mr. Jones. How are you?

9

A. How're you doing?

10

Q. You had stated earlier that you like to drink,

11

correct?

12

A. Yes, sir.

13

Q. You took an oath today; is that correct? Just

14

when you walked in, you took an oath, also?

15

A. Uh-huh.

16

Q. Are you telling the truth today?

17

A. Yes, sir.

18

Q. Now, Dobie's, that's a convenience store, isn't

19

it?

20

A. Yes, sir.

21

Q. Sells beer?

22

A. Yes, sir.

23

Q. And on that day, did you have something to drink

24

also on that day?

25

A. Yeah.

1 Q. Now, you had stated that you talked to Officer  
2 Sturup or Chief Sturup later on that night, correct?

3 A. Uh-huh.

4 Q. Today you say you didn't say anything; is that  
5 correct?

6 A. No.

7 Q. Now, there were other troopers and other police  
8 officers around, were there not? Do you recall?

9 A. Huh-uh.

10 Q. You don't recall that?

11 A. No.

12 Q. And so do you recall before you met with Chief  
13 Sturup, you spoke with some other police officers.  
14 You didn't tell them much, did you?

15 A. No.

16 Q. You didn't tell them anything, right? Is that  
17 correct?

18 A. I talked with them, but I didn't know nothing.  
19 You know, it wasn't nothing I could say.

20 Q. Were you -- I don't mean to insult you, but were  
21 you intoxicated when you were talking to Chief  
22 Sturup?

23 A. Yeah, I was drinking. I won't lie.

24 Q. In fact, you had said something to the effect that  
25 you were at Waverly Village, and you weren't there,

1 were you?

2 A. No, I wasn't at Waverly Village.

3 Q. And in that grand jury testimony that Mr. Novak  
4 was referring to, you stated in that grand jury  
5 testimony, if you recall or don't, that you heard this  
6 alleged statement by Terence at eleven o'clock that  
7 morning, correct? Do you recall that?

8 A. No.

9 Q. You don't recall that, either? Let me refer to  
10 that transcript here.

11 As Mr. Novak read from, I think it's  
12 probably the same page, on page 8 -- all right. On  
13 page 7, did you make -- did you testify as follows:  
14 "What you know -- was it the day of the murder?"

15 "Yeah, that's how I knew."

16 "What time of the day was it, about?"

17 "About eleven o'clock. When I saw Terence,  
18 about eleven o'clock."

19 Did you say that?

20 A. I was -- look, when this happened, really, I was  
21 in the bed.

22 THE COURT: You were what?

23 THE WITNESS: I was in the bed when this  
24 happened.

25 THE COURT: He didn't ask you whether you

1 were in the bed. He asked you whether you said that.  
2 Did you or did you not say that?

3 THE WITNESS: No, I didn't say that, no.

4 BY MR. HUYOUNG:

5 Q. Mr. Jones, could I ask you this? Basically, that  
6 day of the murder, it was a big thing, wasn't it? It  
7 was just a big event, right?

8 A. Yeah.

9 Q. And you were drinking, correct?

10 A. Yes, sir.

11 Q. And you wanted to -- I guess in drinking, you  
12 wanted to help, right?

13 A. Huh-uh.

14 Q. You didn't want to help?

15 A. No.

16 Q. So basically, you're just making all this up,  
17 right?

18 A. Like I say -- I mean, you know, ain't nothing I  
19 can say because I wasn't there.

20 THE COURT: Nothing you can say because of  
21 what?

22 THE WITNESS: Huh? I wasn't down there when  
23 it happened. I mean, you know.

24 THE COURT: The question wasn't whether you  
25 were down there when it happened. The question is

1 whether Mr. Richardson said something to you.

2 THE WITNESS: No.

3 THE COURT: And if so, what he said.

4 THE WITNESS: He didn't say nothing to me.

5 MR. HUYOUNG: Judge, I have no further  
6 questions. Thank you.

7 MR. EVERHART: We have nothing further,  
8 Judge.

9 MR. NOVAK: Judge, just real briefly if I  
10 could.

11

12 REDIRECT EXAMINATION

13 BY MR. NOVAK:

14 Q. Were you drinking the day of the grand jury?

15 A. Huh?

16 Q. Were you drinking the day of the grand jury?

17 A. I drink all the time.

18 Q. Any particular reason you made the statements  
19 about hearing Terence say he killed a cop?

20 A. No.

21 Q. Just felt like coming into the grand jury and  
22 saying hey, I heard a guy killed a cop?

23 A. No, I ain't said that. I can't say nothing. I  
24 told them I was probably drinking, but I don't  
25 remember telling them, you know.



1 Q. That's not my question, Mr. Jones.

2 The statement that I read to you that you  
3 said to the grand jury, you've already testified you  
4 told the truth when you were in front of the grand  
5 jury; is that right?

6 A. I mean -- huh? I told what I saw. I mean, you  
7 know.

8 Q. And what you heard; is that right?

9 A. No, I ain't hear him say nothing.

10 MR. NOVAK: Judge, I have nothing else of  
11 Mr. Jones.

12 THE COURT: Can he be excused?

13 MR. NOVAK: Please.

14 MR. HUYOUNG: Yes, Your Honor.

15 MR. BOATWRIGHT: Yes, Your Honor.

16 THE COURT: You are released from your  
17 subpoena.

18

19 (Witness stood down.)

20

21 MR. NOVAK: Hope Pierce Wilkins, please.

22

23

24

25

1 HOPE PIERCE WILKINS, a Witness, called by the  
2 Government, first being duly sworn, testified as  
3 follows:

4  
5  
6 DIRECT EXAMINATION

7 BY MR. NOVAK:

8 Q. Good afternoon, ma'am. Do you want to tell the  
9 ladies and gentlemen what your full name is?

10 A. Hope Pierce Wilkins.

11 Q. Ma'am, I want to direct your attention back to  
12 Saturday, April 25th of 1998, and ask you where you  
13 were living?

14 A. Waverly Village Apartment 616.

15 Q. Who were you living there with?

16 A. My husband, my two children, my dad off and on  
17 and -- I have three children, my dad. My husband and  
18 I had temporary custody of a young lady named Kaneka  
19 Jackson.

20 Q. Kaneka Jackson?

21 A. Yes, sir.

22 Q. What's your husband's name?

23 A. Walter Edward Wilkins.

24 Q. Does he have a nickname?

25 A. May May or Frown.

1 Q. May May or Frown?

2 A. Uh-huh.

3 Q. Depending on who's talking to him at the time?

4 A. Yes.

5 Q. Now, you were called the day the police officer  
6 was killed; is that right?

7 A. Yes.

8 Q. Pretty big news down around those parts; is that  
9 right?

10 A. Yes.

11 Q. I'm going to ask you to take a look at the  
12 photograph there. It's been marked CS-3. Do you  
13 recognize that photograph?

14 A. Yes, I do.

15 Q. What is that a photograph of?

16 A. Waverly Village Apartment complex.

17 Q. All right. Do you see where you lived back there  
18 on there?

19 THE COURT: You can stand down if you'd like  
20 to and go over and look at it.

21 THE WITNESS: Here's the playground. Right  
22 here (indicating).

23 BY MR. NOVAK:

24 Q. Indicating the second building, is that correct?

25 A. Yes.

1 Q. You can have a seat again.

2 Do you recall --

3 MR. NOVAK: Perhaps we could give the  
4 witness a pointer as well, Judge.

5 BY MR. NOVAK:

6 Q. Do you recall shortly before eleven o'clock that  
7 day seeing Officer -- you know who Officer Gibson was;  
8 is that right?

9 A. Yes, I do.

10 Q. You had seen him before that day; is that right?

11 A. Yes.

12 Q. How did he treat the residents in the community?

13 A. When he came onto the force, he came around the  
14 complex very often, very nice and friendly, and the  
15 kids at the complex greatly liked him.

16 Q. You were having a birthday party for your kids  
17 that day; is that right?

18 A. Yes, it's was my baby boy's birthday.

19 Q. So there were a bunch of kids out there; is that  
20 right?

21 A. Yes, it was.

22 Q. Do you recall seeing Officer Gibson pulling into  
23 the Village Apartments on that day?

24 A. Yes, I did.

25 Q. Could you show us -- maybe perhaps with the

1 pointer, if you could, tell us what you saw him do  
2 when he pulled in there.

3 THE COURT: If you want to step down, you  
4 can.

5 THE WITNESS: Yes, I can see it better.

6 THE COURT: All right. You don't have to  
7 lean over. The only thing you do have to do is speak  
8 up so that the court reporter and the jury can hear  
9 you.

10 BY MR. NOVAK:

11 Q. The jury has to see him.

12 A. Okay. This is the road coming into the complex?

13 Q. Yes, ma'am.

14 A. Okay. He came on around, and I was coming out my  
15 door going to the mailbox. And he came on around and  
16 circled through. I waved because I thought it was  
17 just a routine, you know, drive-by.

18 Q. Did he leave then?

19 A. Yes, he left out the first time.

20 Q. At some point, did he come back?

21 A. Yes, shortly after, he returned.

22 Q. Do you want to tell the ladies and gentlemen where  
23 he went then?

24 A. He drove up to -- I can't see it that good.

25 Q. Do you see the dumpster --

1 A. Over here (indicating).

2 Q. Indicating in front of where Evette Newby lived  
3 back then?

4 A. Evette Newby and Earl White was living there at  
5 that time.

6 Q. Okay. At some point -- you know a fellow by the  
7 name of Eric Garrett?

8 A. Yes, I do.

9 Q. Does he look like Michael Jordan?

10 A. Yes, he do. Everybody call him Michael Jordan.

11 Q. He tells all the women that, at least, right?

12 A. Yes.

13 Q. All right. Did you see Eric Garrett walking down  
14 there somewhere?

15 A. Yes, I did.

16 Q. Where did you see him walking at?

17 A. He came out -- it was like a path through over  
18 here (indicating).

19 Q. Did he then go over and talk to the officer at  
20 some point?

21 A. As he was coming out of the woods, Officer Gibson  
22 approached him. They conversated. It wasn't that  
23 long, I must say, because Eric immediately turned back  
24 into the woods, going back into the woods. Officer  
25 Gibson came to his car.

1 Q. Let me ask you, by the way, are there some paths  
2 back there in the woods?

3 A. Yes. People used to come through all the time. I  
4 never went back there, though, but I knew there had to  
5 be a path because people travel through there all the  
6 time.

7 Q. Okay. You can have a seat, if you don't mind.

8 After Eric Garrett went back through the  
9 woods, what did Officer Gibson do?

10 A. As I recall, Officer Gibson went to his car, bent  
11 over, did not get in, and after he bent over, doing  
12 whatever he was doing in his car, he returned back  
13 around the building where Evette and Earl was living.

14 Q. Okay. Can you perhaps point to where he went?

15 A. He went around the corner of the building, around  
16 in this area (indicating). Once he got around the  
17 apartments, I can't say where he entered the woods at.

18 Q. Now after that, at some point, did you hear a  
19 gunshot?

20 A. Yes, I did.

21 Q. Where were you when you heard the gunshot?

22 A. I was back -- coming back toward my house. I was  
23 coming from the mailbox, which is up in this area up  
24 in here, right up in here. So we was walking back.  
25 I'd say I was about right up in here when Kaneka and I

1 heard the gunshot (indicating).

2 Q. At some point, the officers came, and you-all were  
3 huddled out there; is that right? A group of people  
4 came together out there -- is that right -- when the  
5 police came?

6 A. Once the shot was fired, Kaneka and I thought it  
7 was Eric that was shot because that was the only  
8 person we saw go in the woods. It never dawned on us  
9 it was Officer Gibson, and I ask Kaneka to call 911.

10 Q. And that's what she did; is that right?

11 A. Yes, she did.

12 Q. Later on, you-all had an interaction with Chief  
13 Sturrup later on; is that right?

14 A. Yes, we did.

15 Q. We're not going to go into that right now.

16 Let me ask you this: Do you know the  
17 defendant, Terence Richardson?

18 A. Yes, I do.

19 Q. Is he related to your husband?

20 A. Yes, he is.

21 Q. How is he related to your husband?

22 A. I really don't know, but I know my husband said  
23 they were related. And I never really got into it.

24 Q. Before that day, would you ever see him in the  
25 Waverly Village Apartments?



1 A. Yes, I have.

2 Q. Where would you -- well, on a regular basis?

3 A. No, I wouldn't say on a regular basis. He might  
4 just happen to drop through every now and then.

5 Q. Where would he go when you would see him?

6 A. Well, him and my husband may stop and mingle over  
7 by the playground area.

8 Q. Is there also a utility box over there, a green  
9 utility box?

10 A. A green box, yes, it was.

11 Q. Do you know if he was ever selling drugs or  
12 anything like that?

13 A. No, I can't say that because I never saw it.

14 Q. Okay. Well, we're only going on what you saw,  
15 ma'am.

16 Do you know the defendant, Ferrone  
17 Claiborne?

18 A. Yes, I do.

19 Q. How do you know him?

20 A. I just know Ferrone coming up. He knew my  
21 husband, also, and I knew his father.

22 Q. Would you see him in the Waverly Village  
23 Apartments?

24 A. Every blue moon, he would come through.

25 Q. Would you ever see him with Terence Richardson

1 there?

2 A. Yes, I have.

3 Q. On how many occasions before the murder?

4 A. I would say maybe once out of every two or three  
5 weeks, not on a routine basis.

6 Q. I'm sorry, how often?

7 A. I said about one out of every two or three weeks.

8 Q. Every other week or every third week?

9 A. He might come through.

10 Q. Would those occasions be normally on the weekends?

11 A. I can't say no specific day.

12 Q. All right. Who would you see there more  
13 frequently, Terence Richardson or Ferrone Claiborne,  
14 around the time of the murder in the Village  
15 Apartments? If you know.

16 A. It would be both of them usually together. I  
17 can't really say who I saw the most.

18 MR. NOVAK: Thank you, ma'am. I have no  
19 further questions, Your Honor.

20

21 CROSS-EXAMINATION

22 BY MR. BOATWRIGHT:

23 Q. Hi, Ms. Wilkins.

24 A. How you doing?

25 Q. How are you today?

1 A. Fine.

2 Q. Do you remember me?

3 A. Yes, I do.

4 Q. I came and saw you at your new home, correct?

5 A. Yes, you did.

6 Q. Down in Waverly, is that right?

7 A. Yes.

8 Q. Thank you for letting me in your house.

9 A. You're welcome.

10 Q. First question is, was there an officer on the  
11 Waverly police force who had a nickname Hillbilly?

12 A. Who?

13 Q. An officer on the Waverly police force by the  
14 nickname of Hillbilly, if you know?

15 A. No, not by Hillbilly. I might know him by another  
16 name.

17 Q. Okay. As I understood it, you were telling  
18 Mr. Novak that Terence would come around the Village  
19 from time to time, and he would hang out with your  
20 husband some; is that right?

21 A. Yeah, joking, talking, conversating.

22 Q. Shoot basketball some?

23 A. Yeah.

24 Q. Talk, have a beer or two?

25 A. I just looked and see them talking, but I just go

1 on my own way, you know.

2 Q. Right, I understand. In other words, as far as  
3 you can recall, it was nothing unusual or suspicious  
4 about Terence coming around Waverly Village, correct?

5 A. Not to my knowledge.

6 Q. I'm almost sure that's all I have to ask you. Let  
7 me just double check, okay?

8 Oh, I know what I wanted to ask. There are  
9 or at least there were at that time a number of older  
10 residents of Waverly Village Apartments, correct?

11 A. Yes.

12 Q. Senior citizen-type folks, correct?

13 A. Yes.

14 Q. And they tended to be retired people; is that  
15 right?

16 A. Yes.

17 Q. They would congregate in a particular area of the  
18 complex, assuming that the weather was good; isn't  
19 that right?

20 A. Yes, sir.

21 Q. Can you point with the pointer where they would  
22 hang out?

23 A. Right in this little area right here. They would  
24 sit their chairs right there (indicating).

25 Q. And you're indicating along the side of that --

1 one of the buildings, correct?

2 A. Yes.

3 Q. And that's the building that's --

4 A. At that time Henry Boggle was staying where they  
5 usually sit their chairs, Mr. Henry Boggle.

6 Q. Who else would hang out there?

7 A. My father would sit out there with him.

8 Q. What's his name?

9 A. Robert Boggle.

10 Q. And they would sit out there and pass the time of  
11 day, basically, correct?

12 A. Yes.

13 Q. And sometimes they would sit out there all day,  
14 wouldn't they?

15 A. Some.

16 Q. Thank you, Ms. Wilkins, very much.

17 Excuse me. You did not see Terence in  
18 Waverly Village the morning that this all took place,  
19 correct?

20 A. No, I did not.

21 Q. Did you see him in the afternoon at all?

22 A. No, I did not.

23 Q. There were a lot of people there in the afternoon,  
24 though, right?

25 A. Right. I can't say he was there. All I can say

1 is I didn't see him there.

2 Q. Do you have an estimate of how many folks were out  
3 there when the crowd was at its largest?

4 A. I'd say about maybe 5 to 600 people.

5 Q. A lot of people?

6 A. A lot of people. Wakefield people was coming into  
7 our area at the time. It was just so many people out  
8 there.

9 Q. That's the biggest thing that's happened in the  
10 area in a long time, correct?

11 A. Yes.

12 THE COURT: You say 5 or 600 people? Is  
13 that what you said?

14 THE WITNESS: Yes. I'm just guessing, you  
15 know.

16 THE COURT: This was after the officer was  
17 shot?

18 THE WITNESS: Yes, after the police officers  
19 and all had arrived at the scene, people just coming  
20 from everywhere.

21 BY MR. BOATWRIGHT:

22 Q. Who is Sherry Jones?

23 A. She was a neighbor that lived down from me in the  
24 apartments. Maybe 614.

25 Q. Maybe 614?

1 A. Yes. I can't think right offhand the exact  
2 number.

3 Q. Okay. Was she up an apartment or down an  
4 apartment?

5 A. Up.

6 Q. The way it worked there is all the doors were on  
7 the ground floor, correct?

8 A. Yes, sir.

9 Q. But if you had an upstairs apartment, the first  
10 thing you had to do is go straight up the steps to the  
11 upstairs where the living quarters were, right?

12 A. Yes, sir.

13 Q. Were you up or down?

14 A. Down.

15 Q. And Evette Newby was up; is that right?

16 A. Yes, sir.

17 Q. Did she live right next to you?

18 A. No, she lived across between one of these two  
19 doors. I'm pretty sure this door here (indicating).

20 Q. That would be the second one over from the left  
21 end of the building; is that right?

22 A. Yes, sir.

23 MR. BOATWRIGHT: Thank you. I have no  
24 further questions now.

25

1 CROSS-EXAMINATION

2 BY MR. EVERHART:

3 Q. Good afternoon, Ms. Wilkins. How are you?

4 A. Fine.

5 Q. Ma'am, from where I was, I couldn't really see as  
6 well where you were saying. Did I understand you to  
7 say you were at the end of what I would call second  
8 building, the first building being the one down by the  
9 rental office that's at the bottom of that photograph?

10 THE COURT: Why don't you just ask her where  
11 she lived? Which building did you live in?

12 BY MR. EVERHART:

13 Q. Which building did you live in?

14 A. Right here (indicating).

15 Q. The entrance to that building then is on the far  
16 side of that building that we see in the photograph,  
17 right?

18 A. The entrance?

19 Q. Yes.

20 A. Yes.

21 Q. It's near the playground? That little bare spot  
22 where you have the pointer, that's the playground,  
23 right?

24 A. Yes, sir.

25 Q. So were you outside when you saw Officer Gibson?



1 A. Yes, I was coming from the mailbox area. When he  
2 first made his first trip coming in, I was in front of  
3 my door because I was coming from my son's birthday  
4 party.

5 Q. Yes, ma'am. And you saw Officer Gibson do what  
6 you said you thought was just a normal ride through?  
7 You waved?

8 A. Yes.

9 Q. And then you walked down to the mailbox?

10 A. Yes, Kaneka and I.

11 Q. Kaneka and yourself. And you walked back. Was it  
12 about the time you got back and saw Officer Gibson  
13 arrive again?

14 A. Yeah, about the time I got about halfway in the  
15 building, going back to my door, he returned again.

16 Q. During that time, you did not see Ferrone  
17 Claiborne, did you, ma'am?

18 A. No, sir, I didn't.

19 Q. In fact, you didn't see him at all that morning in  
20 the Waverly Village Apartments?

21 A. No, I didn't.

22 MR. EVERHART: Thank you, ma'am.

23 MR. NOVAK: Nothing else, Judge.

24 THE COURT: Can she be permanently excused?

25 MR. NOVAK: Please.

1 MR. BOATWRIGHT: Certainly.

2 THE COURT: Mr. Everhart?

3 MR. EVERHART: I'm sorry?

4 THE COURT: Can she be permanently excused?

5 MR. EVERHART: Yes, sir, I'm sorry.

6 THE COURT: All right. Ms. Wilkins, thank  
7 you for being with us and giving us your evidence.  
8 You're released from your subpoena and free to go  
9 about your business.

10 MR. NOVAK: Eric Garrett.

11  
12 ERIC L. GARRETT, a Witness, called by the  
13 Government, first being duly sworn, testified as  
14 follows:

15  
16  
17 DIRECT EXAMINATION

18 BY MR. NOVAK:

19 Q. Sir, do you want to state your full name, please?

20 A. My name is Eric Lamont Garrett.

21 MR. NOVAK: Judge, I'm sorry. I should have  
22 asked your permission. May I proceed, Your Honor?

23 THE COURT: Sure.

24 BY MR. NOVAK:

25 Q. Sir, do you want to tell us how old you are?

1 A. I'm 28 years old.

2 Q. I want to direct your attention --

3 THE COURT: Can you pull that mike towards  
4 you just a little bit and keep your voice up? Just  
5 move the whole thing forwards. The chair won't.  
6 There you go. Thank you.

7 BY MR. NOVAK:

8 Q. I want to direct your attention back to Saturday,  
9 April 25th, 1998, the day the police officer died.

10 You remember that day; is that right?

11 A. Yes, sir.

12 Q. Before that, did you know Officer Gibson?

13 A. Yeah, many times I go to the basketball court and  
14 did my little workouts, and he would ride by and stop  
15 and just have little conversation about sports and  
16 everything.

17 Q. Always friendly?

18 A. Yeah, always friendly.

19 Q. Where were you living back then?

20 A. I was living at my grandmother's house because she  
21 was kind of sick, at [REDACTED] Dogwood Avenue.

22 Q. Do you know the defendant, Terence Richardson?

23 A. Yes, I do.

24 Q. Was he living with his father on that same street?

25 A. Yes, sir.

1 Q. Where is the Westbrook house in relation to your  
2 grandma's house?

3 A. My house is -- my house is where he was at, like  
4 diagonal, left, there his house.

5 Q. I want to direct your attention back to that  
6 Saturday morning and ask you if you went about to mow  
7 some grass?

8 A. Yeah.

9 Q. Why is it you were going to mow some grass?

10 A. My grandma asked me to cut some grass.

11 Q. You don't look like you like to cut grass very  
12 much.

13 A. No. Allergies, I have a big nose.

14 Q. Can you tell us did you have a lawn mower -- you  
15 know, actually I use that excuse with my wife all the  
16 time. It doesn't work.

17 Did you have a lawn mower at your grandma's  
18 house?

19 A. No, my grandma had bought a brand new lawn mower,  
20 which my cousin, Katina, had it at her house.

21 Q. Where did Katina live back then?

22 A. She lived -- I don't know the name of the street,  
23 but she lived way on the other side, way on the other  
24 side.

25 Q. All right. Was there a way that you could take a

1 shortcut to go through the Waverly Village Apartments  
2 to get to your cousin Katina's place?

3 A. Yes, there was.

4 Q. To get a lawn mower?

5 A. Yes.

6 Q. Did you do that that Saturday morning?

7 A. Yeah, I did.

8 MR. NOVAK: If we could show the witness  
9 CS-3 on the easel?

10 THE WITNESS: That's the photo, sir.

11 THE COURT: Do you want to move it a little  
12 closer?

13 BY MR. NOVAK:

14 Q. Can you see it now?

15 A. Yeah, I can see it now.

16 Q. I know you can talk louder than that. Can you  
17 talk a little bit louder?

18 A. Yeah.

19 Q. Do you recognize that photograph?

20 A. Yes, sir.

21 Q. What is that a photograph of?

22 A. Waverly Village.

23 Q. Did you go cut through Waverly Village Apartments  
24 to get that lawn mower that Saturday morning?

25 A. Yes, I did.

1 Q. Do you want to show us where it is that you went  
2 to? From the time you entered into the apartment  
3 complex, show me where you were walking to.

4 A. I came down this street, went through here, behind  
5 the Laundromat right here and went around here  
6 (indicating).

7 Q. And there were three paths in those woods; is that  
8 right?

9 A. Yes, sir.

10 Q. And which path did you take?

11 A. I just take the one near Mrs. Harrison's house.  
12 This one right here (indicating).

13 Q. If you go through those woods, you can eventually  
14 get to your cousin Katina's place; is that right?

15 A. Yeah, it leads right to the street.

16 Q. Now, as you were cutting through to the path, did  
17 you have an occasion to see Officer Gibson?

18 A. Yes, I did.

19 Q. When did you first see him?

20 A. Well, I was walking through the woods, and I seen  
21 him come up. I seen him like pull up. So I just  
22 turned back and went back and talked to him.

23 Q. Why did you do that?

24 A. I don't know. I just went back and talked to him.

25 Q. Well, you're friendly with him; is that right?

1 A. Yes.

2 Q. What kind of conversation did you have with him?

3 A. He was asking me if I seen anybody in the woods,  
4 and I looked back and said, no, I didn't see nobody.

5 THE COURT: Said what?

6 THE WITNESS: He asked if I'd saw anybody in  
7 the woods, and I'm like, no, I didn't see nobody.

8 BY MR. NOVAK:

9 Q. What else did y'all talk about, anything else?

10 A. Nothing but same usual friend talk, just usual  
11 friend talk, just conversating about basketball and  
12 things and little kids. That's all.

13 Q. All right. Had you seen anybody back in the woods  
14 when you first went into the woods?

15 A. No, sir.

16 Q. After you had told him that and after you talked  
17 about basketball or whatever, did you go back then on  
18 your way?

19 A. Yes, sir.

20 Q. Did you cut through woods?

21 A. Yes, sir.

22 Q. As you were cutting through the woods, did you see  
23 anybody else in the woods?

24 A. No. Actually, when I go through the woods, I  
25 don't try to look. I just go through because there's

1 a lot of cats and stuff in there. At that time, there  
2 are lot of snakes and all.

3 Q. So you don't want to know what's in the woods,  
4 basically?

5 A. I don't want to know.

6 Q. Good thing we didn't visit in the afternoon.

7 So did you go on to your cousin's place?

8 A. Yes, I did.

9 Q. Did you get the lawn mower?

10 A. Yeah, I got the lawn mower.

11 Q. Did you go back to the woods, or did you go a  
12 different way?

13 A. I went the long way.

14 Q. What's the long way?

15 A. It's when I come -- I can't see it.

16 Q. Somewhere off the map; is that right?

17 A. Yeah.

18 Q. You have to go on the road; is that right?

19 A. Yeah, there's a street right there that comes all  
20 the way around and comes through here (indicating).

21 Q. Why is it you went the long way as opposed to back  
22 through the woods?

23 A. I can't get the mower across the big ditch.

24 Q. Do you go home to your grandma's house, then?

25 A. Yeah, I stopped on the way, and I talked to a



1 couple of the guys that was on the corner.

2 Q. Eventually, you went back to your grandma's house,  
3 right?

4 A. Yeah.

5 Q. Cut the grass, right?

6 A. Yeah.

7 Q. At some point, Chief Sturup and some other  
8 officers came to your house; is that right?

9 A. Yeah.

10 Q. We're not going to go through everything that  
11 happened at your house. It's not really relevant in  
12 this trial.

13 But you were handcuffed and taken back to  
14 the Waverly Village Apartments; is that right?

15 A. Yes, I was.

16 Q. And you were taken by Chief Sturup and another  
17 officer?

18 A. Yes, sir.

19 Q. You weren't treated too well, were you?

20 A. No, sir.

21 Q. You ended up suffering some injuries out of that?

22 A. Yes, sir.

23 Q. Did they take you back to where Officer Gibson  
24 was?

25 A. Yes, sir.

1 Q. Why don't you tell us what happened when you got  
2 back to Officer Gibson?

3 A. They took me back to Officer Gibson. I was in  
4 cuffs. At that time, I was really in pain. I past  
5 one of his friends. He said a couple words to me  
6 like --

7 Q. They were accusing you of being the killer,  
8 basically; is that right?

9 A. Yes.

10 Q. And you weren't the killer; is that right?

11 A. No, sir.

12 Q. When you went back, did you see Officer Gibson  
13 there?

14 A. Yes, I seen him lying down.

15 Q. Was he still alive?

16 A. Yes, sir.

17 Q. At some point, did they ask Officer Gibson if he  
18 could identify you?

19 A. Yes, sir.

20 Q. What did he say?

21 A. He said something about pain, give me something  
22 for my pain.

23 Q. At any point, did he indicate that he couldn't see  
24 at that point?

25 A. Yes, sir.

1 Q. What did you say?

2 A. I got on my knees, and I said, remember talking to  
3 me this morning because earlier, I said, I just talked  
4 to you about 30 or 15 minutes ago. I said, do you  
5 remember talking to me this morning? That's when they  
6 took me back up to the police car.

7 Q. What did he indicate, that he recognized your  
8 voice?

9 A. Yes, sir.

10 Q. And you weren't the shooter; is that right?

11 A. No, I wasn't the one. Then they took me back up  
12 to the police car and sat me down, and they waited and  
13 everything. And I'm like, what's going on, you know.

14 Q. Let me ask you this: Do you know the defendant,  
15 Terence Richardson?

16 A. Yes, sir.

17 Q. How did you know him?

18 A. We hung out together.

19 Q. I'm sorry?

20 A. We hung out together.

21 Q. Okay. When was that?

22 A. We hung out on occasion. It's been awhile since  
23 we hung out together because of what's going on and  
24 everything, but we just hung out.

25 Q. Did you ever see him wearing any type of T-shirt

1 with the marijuana symbol on it?

2 A. Well, I mean, there's a lot of shirts out there  
3 like that, but --

4 Q. You don't know?

5 A. No, I can't recall that.

6 Q. Do you know Ferrone Claiborne?

7 A. Yes, I do.

8 Q. How do you Ferrone Claiborne?

9 A. Me and Ferrone used to hang out, too. That's way  
10 back.

11 Q. When was that?

12 A. It was awhile back. He left. I mean, we just  
13 lost contact, I guess.

14 Q. Have you ever seen him selling drugs?

15 A. Who me?

16 Q. Yes.

17 A. No.

18 Q. When did you stop hanging out with him?

19 A. Well, with Ferrone?

20 Q. Yes.

21 A. He just -- I mean, it seemed like he just dropped  
22 off the face of the earth, and I didn't see him no  
23 more. That's when we just didn't see eye to eye.

24 Q. Your grandmother has past on; is that right?

25 A. Yes, sir.

1 Q. You don't live down there anymore; is that right?

2 A. No, sir. I live in Colonial Heights now.

3 Q. How long did you live at your grandmother's place?

4 A. It's was like off and on. If something was wrong  
5 with her, I'd go down and sit with her.

6 Q. You really try to stay out of down there; is that  
7 right?

8 A. Yes, sir.

9 Q. A lot of people are involved with selling drugs in  
10 that area?

11 A. Yeah.

12 MR. NOVAK: Judge, I have no further  
13 questions for Mr. Garrett.

14

15 CROSS-EXAMINATION

16 BY MR. HUYOUNG:

17 Q. Good afternoon, Mr. Garrett. How are you?

18 A. All right.

19 Q. Back in the woods, apparently you go through that  
20 woods frequently, correct?

21 A. Yes, I do.

22 Q. It's a shortcut to a lot of places?

23 A. Yeah, it's like three paths.

24 Q. So a lot of people go back and forth through those  
25 woods?

1 A. I take it that they do.

2 Q. They're marked paths, right?

3 A. Yeah, but if you live in Waverly long enough, you  
4 know the paths.

5 Q. There are drainage ditches back there, also, are  
6 there not?

7 A. Yes, sir.

8 Q. You said you knew the defendant and the  
9 codefendant. You also know a gentleman named Shawn  
10 Wooden?

11 A. Yeah, I know Shawn Wooden.

12 Q. You say that --

13 A. Yeah, I know Shawn Wooden.

14 Q. Did you see any of them there at Waverly Village  
15 that morning prior to the shooting?

16 A. No, sir.

17 MR. HUYOUNG: I have no further questions.

18 Thank you.

19

20 CROSS-EXAMINATION

21 BY MR. GAVIN:

22 Q. Good afternoon, Mr. Garrett.

23 You indicated that Ferrone Claiborne sort of  
24 dropped off the map?

25 A. Yeah, I ain't seen him.

1 Q. Do you remember what time that was? Was it  
2 possibly back in 1996?

3 A. Maybe, I don't know.

4 Q. Are you aware that he had moved out of the area?

5 A. He may have moved.

6 Q. So you're not aware or unaware?

7 A. (No response.)

8 Q. When did you first hear a shot? Did you ever hear  
9 a shot?

10 A. Well, no, I can't say I heard a shot because I was  
11 listening to music at the time on the corner, talking  
12 to a couple of friends of mine.

13 Q. Did you have some headphones on?

14 A. No, their car. It was parked at the car. They  
15 got a nice house. They got a nice yard. We were just  
16 sitting outside talking.

17 Q. Your cousin, does she live beyond Bank Street?

18 A. Beyond Bank Street, my cousin Katina?

19 Q. Yeah.

20 A. Yes, she does.

21 Q. So you were heading in that direction?

22 A. Yes, sir.

23 Q. And all the time you were heading in that  
24 direction, you didn't hear a shot?

25 A. No, I didn't hear anything.

1 MR. GAVIN: All right. No further  
2 questions.

3 MR. NOVAK: No questions, Judge.

4 THE COURT: Can he be permanently excused?

5 MR. NOVAK: Please.

6 MR. HUYOUNG: Yes, Your Honor.

7 THE COURT: Mr. Gavin?

8 MR. GAVIN: Yes, sir.

9 THE COURT: All right. Thank you very much.  
10 You may be excused. You're released from your  
11 subpoena. Thank you for giving us your evidence,  
12 Mr. Garrett.

13  
14 (Witness stood down.)

15  
16 MR. NOVAK: Evette Newby.

17  
18 EVETTE NEWBY, a Witness, called by the  
19 Government, first being duly sworn, testified as  
20 follows:

21  
22  
23 DIRECT EXAMINATION

24 BY MR. NOVAK:

25 Q. Ma'am, do you want to tell the ladies and



1 gentlemen what your name is?

2 A. My name is Evette Newby.

3 Q. Ms. Newby, how old are you?

4 A. Thirty-four.

5 Q. The reason you're wearing those clothes is you're  
6 currently in federal custody; is that right?

7 A. Yes, sir.

8 Q. You've pled guilty to the crime of contempt; is  
9 that correct?

10 A. Yes, sir.

11 Q. Why were you charged with contempt?

12 A. Because I didn't show up at a court date.

13 Q. You didn't show up to testify in front of the  
14 grand jury; is that right?

15 A. Yes.

16 Q. Because you didn't want to be involved in this  
17 case; is that right?

18 A. No.

19 Q. You don't want to be here today, do you?

20 A. No.

21 Q. Did you plead guilty for contempt for failing to  
22 show up at the grand jury when you were ordered to do  
23 so?

24 A. Yeah.

25 Q. Are you going to be sentenced later on this month.

1 by Judge Lowe?

2 A. Yeah.

3 Q. Has anybody told you what your sentence is going  
4 to be?

5 A. No.

6 Q. You obviously want to go home as soon as possible;  
7 is that right?

8 A. Yes.

9 Q. Have I told you that if you testified truthfully  
10 here, that I would tell Judge Lowe that you provided  
11 testimony in front of this jury?

12 A. Yes, sir.

13 Q. Have I promised you anything other than that?

14 A. No, sir.

15 Q. Has anybody else promised you anything other than  
16 that, other than me?

17 A. No, sir.

18 Q. While you originally pled guilty to contempt, you  
19 were out on bond; is that right?

20 A. Yes, sir.

21 Q. While you were out on bond, you violated the  
22 conditions of your bond by using drugs; is that right?

23 A. Yes, sir.

24 Q. And that's why you're still in jail; is that  
25 correct?

1 A. Yes, sir.

2 Q. Now, how long have you been using drugs?

3 A. Over ten years.

4 Q. What kind of drugs have you used?

5 A. Crack cocaine.

6 Q. Now, because of your crack cocaine addiction,  
7 you've got an arrest in 1999 for grand larceny and a  
8 conviction for that; is that right?

9 A. Yes, sir.

10 Q. You've also been convicted in 1998 of a  
11 misdemeanor of larceny; is that right?

12 A. Yes, sir.

13 Q. 1997 misdemeanor for shoplifting; is that right?

14 A. Yes, sir.

15 Q. 1994, two different misdemeanors, one of tampering  
16 with a water meter and one of tampering with an  
17 electrical meter; is that right?

18 A. Yes, sir.

19 Q. Now, in addition to that, you -- and from one of  
20 those convictions, by the way, you still have to pay a  
21 fine; is that right?

22 A. Yes, sir.

23 Q. \$218, is that true?

24 A. Yes, sir.

25 Q. Is that in Hampton?

1 A. Yes, sir.

2 Q. Because you're in jail, because you're going to  
3 testify here and you can't be in Hampton, we asked the  
4 prosecutor down there to give you additional time to  
5 pay the fine; is that right?

6 A. Yes, sir.

7 Q. But you still have to pay the fine; is that right?

8 A. Yes, sir.

9 Q. While you were -- before you were in jail, you  
10 were interviewed on a number of occasions by Sussex  
11 County investigators; is that right?

12 A. Yes, sir.

13 Q. And we're going to get to what you've told them  
14 about your knowledge of this murder.

15 But have they given you food money in the  
16 past for you and your kids?

17 A. Yes, sir, \$27 once and \$50 once.

18 Q. Okay. You also received some food money also from  
19 a federal agent, Michael Talbert, on a couple  
20 occasions for your kids as well; is that right?

21 A. Yes.

22 Q. Have been given anything else to testify?

23 A. No, sir.

24 Q. Was any money given to you for you to testify in a  
25 particular fashion?

1 A. No, sir.

2 Q. Has anybody told you to say anything other than  
3 the truth?

4 A. No, sir.

5 Q. Where did you grow up at, ma'am?

6 A. I grew up in Surrey, Virginia.

7 Q. Is Surrey County next to Sussex County?

8 A. Yes, it is.

9 Q. Can you tell us how many kids do you have?

10 A. Three sons.

11 Q. Who is the father of your children?

12 A. Earl White.

13 Q. Does he have a nickname?

14 A. They call him Tony.

15 Q. You know the defendant, Terence Richardson?

16 A. Yes.

17 Q. How long have you known him?

18 A. For a while. I know him from my brothers, also.  
19 He was close friends with my brothers.

20 Q. For a good bit of your life?

21 A. Yeah, about five or six, seven years.

22 Q. At some point, did you move to Wakefield?

23 A. Yes, sir.

24 Q. Wakefield is in Sussex County, not in Surrey  
25 County; is that right?

1 A. Yes, sir.

2 Q. From there, you moved to Waverly in about '93 or  
3 '94; is that right?

4 A. Yes, sir.

5 Q. How long did you live in Wakefield before you  
6 moved to Waverly in about '93?

7 A. About three years.

8 Q. During the time that you lived in Wakefield, did  
9 you ever have an occasion -- were you using drugs back  
10 then?

11 A. Yes, sir.

12 Q. Did you ever have an occasion to purchase any  
13 drugs from Terence Richardson?

14 A. Yes.

15 Q. Where would you see him back then?

16 A. I lived -- his cousin's girlfriend was right there  
17 where I lived. We lived in like a duplex house, and  
18 that's where I would see him, out there hanging with  
19 the guys.

20 Q. I'm sorry? I didn't hear you. You trailed off.

21 A. He was hanging out with the guys. He would be at  
22 his cousin's girlfriend's house.

23 THE COURT: Excuse me. Can you pull that  
24 microphone towards you? Just move the whole thing  
25 towards you. Keep your voice up.

1 All right. Go ahead. Excuse me.

2 BY MR. NOVAK:

3 Q. So when he would come to visit his cousin, I  
4 guess, you would see him and purchase drugs?

5 A. If I had the money to get it, yes, I would get  
6 some from him.

7 Q. What type of drugs did you purchase from Terence  
8 Richardson back then?

9 A. Crack.

10 Q. What kind of quantities of crack cocaine did you  
11 purchase from him?

12 A. Maybe a dime or 20.

13 Q. For those of us that don't use drugs, what does a  
14 dime or 20 mean?

15 A. A \$10 hit, a \$20 hit. You get a rock. It's a  
16 small quantity.

17 Q. What do you do then? You smoke it; is that right?

18 A. Yes, sir.

19 Q. On how many occasions did you purchase 10- or  
20 20-dollar quantities of crack cocaine from

21 Mr. Richardson when you were living down in Wakefield?

22 A. Whenever he had it. It was quite a few times. It  
23 was over ten times, quite a few times.

24 Q. You're a pretty frequent user of crack cocaine; is  
25 that right?

1 A. Yes, sir. I'm not proud of it, but, yes, sir.

2 Q. Directing your attention to '93 or '94, where did  
3 you move to when you moved to Waverly?

4 A. I moved to Waverly Village Apartments.

5 Q. Was there a particular apartment that you recall  
6 living in?

7 A. [REDACTED]

8 Q. If I could show you Government's Exhibit CS-3 --

9 MR. NOVAK: Put it on the easel there.

10 BY MR. NOVAK:

11 Q. Now, do you recognize that photograph?

12 A. Yes.

13 Q. What is that a photograph of?

14 A. The Waverly Village Apartments.

15 Q. Can you tell us where it is that you lived after  
16 you moved there in '93 or '94?

17 A. Right here (indicating).

18 Q. Now, thereafter, after you moved there, did you  
19 ever have an occasion to purchase any crack cocaine  
20 from Terence Richardson?

21 A. Of course, yes, sir.

22 Q. On more than one occasion?

23 A. Yes, sir.

24 Q. On approximately how many occasions until the  
25 officer was killed?



1 A. Quite a few times, over ten times.

2 Q. How often?

3 THE COURT: Over how long?

4 THE WITNESS: Over -- I'd say over ten times

5 but mostly on the weekends.

6 BY MR. NOVAK:

7 Q. On the weekends?

8 A. If he had any, I could get it from him, yeah.

9 Q. This went on until the officer got killed?

10 A. Yes, sir.

11 Q. Now, where is it that you had purchased the crack  
12 cocaine from Mr. Richardson?

13 A. They were out here --

14 Q. Who's --

15 A. -- on the playground area. It's from here to here  
16 (indicating).

17 Q. Indicating from the office area over to the  
18 playground area?

19 A. Yes, sir.

20 Q. Is there a green utility box over there?

21 A. Yes, sir, right here (indicating).

22 Q. Would you see Terence Richardson regularly there?

23 A. Yes, sir. They'd all be down there drinking beer.

24 Q. Who's "they"?

25 A. It's a bunch of guys, his friends, the usual,

1 Terence. It's been three years ago, the usual.  
2 Rayvon, his brother Bully. Do I have to go on?

3 Q. Do you know Ferrone Claiborne?

4 A. Yeah.

5 Q. Would you ever see them there?

6 A. Maybe once or twice. Maybe I'd be with him.

7 Q. Did you ever have occasion to purchase any drugs  
8 off of Ferrone Claiborne?

9 A. Of course, yes.

10 Q. On how many of occasions.

11 A. On lots of occasions.

12 Q. Again, more than ten times?

13 A. Yes, sir.

14 Q. How often would you buy drugs from him, then?

15 A. Sometimes it might be three times out of a week  
16 and mainly on the weekends.

17 Q. So you're buying from both of them, basically?

18 A. Yes, sir.

19 Q. And I gather you're buying from other people at  
20 the same time; is that right?

21 A. Yes, sir.

22 Q. What kind of quantities of crack cocaine would you  
23 buy from Ferrone Claiborne?

24 A. Maybe 20 or 50.

25 Q. Would he have larger amounts?

1 A. Larger amounts, yes, sir.

2 Q. Would you get more for the money when you got his  
3 drugs?

4 A. Yes, sir.

5 Q. Do you know a fellow they call Daddy-O or Raoul  
6 Johnson?

7 A. Yes, sir.

8 Q. How do you know him?

9 A. Because I've been to his house. We smoked crack.

10 Q. Does he live on Locust Street?

11 A. Yes, sir.

12 Q. Is that pretty well-known as the crack house in  
13 Waverly or in that area?

14 A. Yes, sir.

15 Q. People like you who are crack addicts would go  
16 over there and get drugs?

17 A. Yes, sir.

18 Q. Drug dealers would be over there selling drugs?

19 A. Yes, sir.

20 Q. And where is that in relation to the Waverly  
21 Village Apartments?

22 A. It's -- you have to go out here, and it's about  
23 here (indicating).

24 Q. It's actually off the map; is that right?

25 A. Yes, sir, it's off the map.

1 Q. I want to take you to the Saturday that the police  
2 officer died, on Saturday, April the 25th, 1998.

3 I want to ask you where you were living back  
4 on that particular day.

5 A. I was living at Apartment 639 at Waverly Village  
6 Apartments.

7 Q. Who were you living with specifically on that  
8 date?

9 A. My two sons and the children's father.

10 Q. Tony?

11 A. Yes, sir.

12 Q. The night before, had you gone out and done some  
13 drinking?

14 A. Yes, sir.

15 Q. What time was it that you woke up, approximately?

16 A. Between nine -- it's about ten o'clock, about ten.

17 Q. Thereafter, did you have an occasion to get a  
18 shower?

19 A. Yeah, I took a shower.

20 Q. At some point, did you learn that Police Officer  
21 Gibson was in the area?

22 A. Yes, sir.

23 Q. How was -- first of all, did you know who Police  
24 Officer Gibson was?

25 A. Yes, sir.

1 Q. By the way, let me ask you this: Did you have  
2 cable at that time in your apartment?

3 A. No. Hot cable.

4 Q. Hot cable. For those of us who don't know what  
5 hot cable is, do you want to tell us what hot cable  
6 is?

7 A. Yes, sir. You just -- you hook up the wires  
8 without the cable man being there. You get free  
9 cable.

10 Q. You're basically stealing cable; is that right?

11 A. Yes, sir.

12 Q. You were stealing cable back then; is that right?

13 A. Yes, sir.

14 Q. Just like in the past when you had stolen the  
15 electric meter and the water meter; is that right?

16 A. Yes, sir.

17 Q. Now, did you have any concern when the police were  
18 around that you'd get charged for stealing hot cable?

19 A. Yes, sir.

20 Q. Can you tell us, then, how is it that you learned  
21 that the police officer then, Officer Gibson, was in  
22 that area?

23 A. I was taking a shower. I had finished my shower,  
24 and my children's father, who's name is Tony, he  
25 called me and let me know he was going downstairs to

1 dump the trash.

2 I opened the bathroom door about 4 inches so  
3 I could hear him. So he got downstairs. He opened  
4 the door to go over to proceed to dump the trash, and  
5 he let me know that Officer Gibson was riding around  
6 into the apartment area.

7 Q. Did you see the officer?

8 A. Yes, I did.

9 Q. Where did you first see the officer?

10 A. I saw him as I came -- he told me. I came out of  
11 the bathroom, put my housecoat on, and I raised up my  
12 kitchen window. And that's when I saw him.

13 Q. Which window would that be?

14 A. This window here (indicating).

15 Q. Was his vehicle moving, or was it parked?

16 A. It was going around this way (indicating).

17 Q. All right. Did he park anywhere?

18 A. No, not the first time.

19 Q. Then where did he go?

20 A. He came -- he proceeded to go out.

21 Q. Okay. Then what is the next thing you saw in  
22 relation to the officer?

23 A. I was at my window, and he proceeded to come back  
24 in a little later. Then he went out, and he park a  
25 door down from my door.

1 Q. Why don't you show us on the picture where it is  
2 he parked?

3 A. He parked here (indicating).

4 Q. All right. Could you tell us what you saw, then,  
5 after -- did he get out of the vehicle?

6 A. He got out of the vehicle.

7 Q. Did he go around to the side of the apartment  
8 building?

9 A. He went around to the side of the apartment  
10 building.

11 Q. Let me ask you this: Do you have windows on the  
12 side?

13 A. No.

14 Q. So you can't tell who, if anybody, or what he did  
15 on the side or if he spoke to anybody; is that right?

16 A. No.

17 Q. Where is the next place that you saw the officer?

18 A. I saw him come back. He came back to the car to  
19 proceed -- he went inside of his car, and he got his  
20 radio. And he proceeded to go back around the back of  
21 the building.

22 Q. Why don't you show us where he went to?

23 A. Went to his car here, and he proceeded to go back  
24 around the back of the building here (indicating).

25 Q. Is there a path -- are there paths in the woods?

1 A. Yes, there is.

2 Q. Approximately how many paths are back there?

3 A. About three.

4 Q. One on the left and one on the right and one in  
5 the middle?

6 A. Yes.

7 Q. Can we see the middle path on that picture?

8 A. Yes, here (indicating).

9 Q. Okay. What did the -- I'm sorry. I interrupted  
10 you.

11 What did the officer do next?

12 A. He proceeded to go back around the building real  
13 fast the second time. By the time I could get to the  
14 back, he was already -- I thought he was at the cable.  
15 So he was already in the back.

16 I went to see if he was at my cable because  
17 the wire was hanging out the window, and I didn't see  
18 him there. So I proceeded to look further, and I saw  
19 him in the woods. In the clear, I saw him in the  
20 woods.

21 Q. At any point before that, had you seen Terence  
22 Richardson?

23 A. Yes, they were running -- all of the guys were on  
24 the playground.

25 Q. All right. Who else had you seen?



1 A. Ferrone.

2 Q. Anybody else?

3 A. It was another black male, but I couldn't see his  
4 face that clearly. It was three.

5 Q. After that, did you see -- at any point, did you  
6 see Terence Richardson and/or Ferrone Claiborne or  
7 another black male in the woods?

8 A. They proceeded to go back there the first time the  
9 officer came through.

10 Q. Okay.

11 A. The second time he came, they were already back  
12 there.

13 Q. Who's "they"?

14 A. Terence, Ferrone and I could not tell you who the  
15 third black male is.

16 Q. Now, where did you see them at?

17 A. They were back there. I couldn't tell you exactly  
18 where they were back in the back, but I know they was  
19 in this area here (indicating).

20 Q. Now, where that path is, is there a berm there, a  
21 little mound?

22 A. Down?

23 Q. Yes.

24 A. Yes, sir.

25 Q. Where were they in relation to that little mound?

1 A. Right up in here, behind right here (indicating).

2 Q. Now, how do you know they were back there?

3 A. I saw them go back there.

4 Q. Now, you can see that there were leaves on the  
5 trees there; is that right?

6 A. At the top or the bottom or both?

7 Q. In the picture, first of all.

8 A. Yes, sir.

9 Q. Were you able to see through the leaves?

10 A. Not at the bottom but I could see up in the top.

11 Q. What floor are you on?

12 A. I'm on the top floor.

13 Q. If I could show you Government's Exhibit, first of  
14 all, CS-29. If you could look at that television  
15 monitor for a second, ma'am?

16 In that photograph, are we taking a look at  
17 your window?

18 A. Yes.

19 Q. Which window -- first of all, you're on the second  
20 floor; is that right?

21 A. Yes, sir.

22 Q. Which window on the second floor were you looking  
23 out of?

24 A. This one (indicating).

25 Q. Referring to the second window?

1 A. No, the first one right here.

2 MR. NOVAK: Okay. If we could show the  
3 witness CS-5? I'm sorry, CS-4. I said the wrong one.

4 BY MR. NOVAK:

5 Q. Do you recognize that photograph?

6 A. Yes.

7 Q. Is that the path that goes back to the mound?

8 A. Yes, sir.

9 Q. Now, could you tell us were you able to see into  
10 that area?

11 A. Yes. From the top down, yes.

12 Q. Now, how is it you were able to see in that area  
13 with all the leaves on the trees like that?

14 A. Because it was bright. When the sun is shining  
15 right there, my kids play back there. They would play  
16 right there, and I could see exactly the whole area  
17 down because I'm up. I'm up high, and the sun is  
18 shining right down inside.

19 Q. Okay. Could you tell us what it is -- where is it  
20 or what is it, if anything, you saw Terence  
21 Richardson, Ferrone Claiborne and the third black male  
22 doing in the woods?

23 A. I saw the officer. He was talking, like he was  
24 talking to somebody.

25 Q. Okay.

1 A. And the next thing I know, I saw a struggle.

2 Q. Who was struggling?

3 A. It appeared to be the officer and two black males.

4 Q. Do you know who those two black males were?

5 A. Yes, I do.

6 Q. Who were they?

7 A. Terence and Ferrone.

8 Q. How do you know that?

9 A. Because I know it was them. I saw them.

10 Q. While you were looking in the woods, are you able  
11 to see the entire struggle?

12 A. Not all of it. I don't know who -- what're you  
13 saying?

14 Q. I mean with the leaves like that, are you able to  
15 see the whole struggle or are you just seeing bits and  
16 pieces?

17 A. I'd see bits and pieces.

18 Q. All right. Could you tell us as you're seeing  
19 this struggle with the officer and Terence Richardson  
20 and Ferrone Claiborne, am I right? Is that what you  
21 just said?

22 A. Yes.

23 Q. What happens next?

24 A. They struggling, and they get closer over to the  
25 bottom part of where the bushes are.

1 Q. Okay.

2 A. And I hear the gun go off.

3 Q. Now, did you see who fired the shot?

4 A. No, I did not.

5 Q. Now, after you heard the gunshot, what is the next  
6 thing that you saw?

7 A. I saw a black male run to the right side.

8 Q. Show us on that photograph where you saw the black  
9 male run to.

10 A. The black male ran through here. He was already  
11 back here, I guess, where he ran this way, over here  
12 (indicating).

13 Q. Is this the unknown black male you're talking  
14 about?

15 A. Yes, sir.

16 Q. Now, do you know where Ferrone Claiborne went?

17 A. No, I do not.

18 Q. Did you see Terence Richardson after you heard the  
19 shot?

20 A. Yes. He came out to the top and just looked.

21 Q. Referring to the top of the berm?

22 A. Yeah, he didn't come all the way out. He didn't  
23 come all the way out. I knew it was him because he  
24 was wearing this -- I knew it was him.

25 Q. Okay.

1 A. I saw his face.

2 Q. Okay.

3 A. And --

4 Q. Was he holding anything in his hands?

5 A. It appeared something. It looked like he held  
6 something in his hands. It was black.

7 Q. Do you know what it was?

8 A. It might have been a gun. It was like a gun. I  
9 know what a gun looks like.

10 Q. Do you know for sure if it was gun?

11 A. I can't say for sure.

12 Q. All right. But it was something black similar to  
13 a gun; is that right?

14 A. (Nodded head affirmatively.)

15 Q. Could you tell us do you recall what, if anything,  
16 Terence Richardson was wearing at that time?

17 A. He had on jeans, blue jeans, a white T-shirt with  
18 a green leaf plant right at the bottom, and I think he  
19 had a shirt over top. It was an opening here, and it  
20 was an opening here.

21 Q. I am showing you --

22 MR. NOVAK: If I could show the witness  
23 Exhibit RS-1. If I could just hold it up, Judge.

24 BY MR. NOVAK:

25 Q. Do you recognize the item I'm holding up, RS-1?

1 A. Yes, sir.

2 Q. It's kind of falling apart. Where do you  
3 recognize this from?

4 A. In the area where the officer was shot.

5 Q. Who, if anybody, was wearing this shirt at that  
6 time?

7 A. Terence Richardson.

8 Q. Did you see that when he came out on the berm?

9 A. Yes, sir.

10 MR. NOVAK: Judge, I would move for the  
11 admission of RS-1, please.

12 THE COURT: Admitted.

13  
14 (Government's Exhibit RS-1 is admitted into  
15 evidence.)

16  
17 MR. NOVAK: Judge, the defense counsel asked  
18 me to turn it towards them for a moment.

19 Judge, I move -- did I ask for admission of  
20 RS-1?

21 THE COURT: You did, and it was.

22 BY MR. NOVAK:

23 Q. Do you recall if Mr. Richardson had anything on  
24 his head at the time?

25 A. I can't really say. It looked like a scarf. It

1 might have been his hair.

2 THE COURT: If you can't say, don't guess.

3 If you don't know, don't guess.

4 THE WITNESS: I can't say.

5 BY MR. NOVAK:

6 Q. Was there something, whatever it may have been, do  
7 you know was there -- did he have something on his  
8 head?

9 A. Like a scarf. Like I say, it was like a scarf,  
10 but I'm not really sure. It looked like a scarf.

11 Q. But there was something on his head? You're just  
12 saying it looked like a scarf, you don't know?

13 A. Yes.

14 Q. Now, do you recall what kind of hair style he had  
15 at the time?

16 A. Braids in the back.

17 THE COURT: Had what?

18 THE WITNESS: Braided to the back.

19 BY MR. NOVAK:

20 Q. Do you recall -- were you able to see what Ferrone  
21 Claiborne was wearing then?

22 A. Blue jeans, a T-shirt.

23 Q. Okay.

24 THE COURT: What was the answer?

25 THE WITNESS: Blue jeans and a dark-colored



1 shirt, blue.

2 MR. EVERHART: Judge, I thought first she  
3 said dark blue, and the second time --

4 THE COURT: Start again. Let's just ask  
5 her. Start again.

6 What was Mr. Claiborne wearing?

7 THE WITNESS: Dark blue jeans and a dark  
8 blue shirt.

9 THE COURT: Dark blue jeans and dark blue  
10 shirt.

11 MR. EVERHART: Thank you, Your Honor.

12 BY MR. NOVAK:

13 Q. Do you recall what his hair style was back then?

14 A. Bald.

15 Q. Now, I cut you off. You were telling the story  
16 about how Terence Richardson came to the top of the  
17 berm.

18 Can you tell us what happened when he got to  
19 the top of the berm and he was holding the black thing  
20 in his hand?

21 A. He just looked very stunned. He looked very  
22 stunned, and he just turned around and fled, just  
23 left.

24 Q. Can you show us on the map where he went to?

25 A. Straight back like this (indicating).

1 Q. Do you know after that where he went to?

2 A. No, I do not.

3 Q. After you heard the gunshot and you saw  
4 Mr. Richardson run off then, what did you do?

5 A. I proceeded to finish putting on my clothes real  
6 fast, and me and my children ran downstairs. And I  
7 told my next-door neighbor to call the cops, but by  
8 the time I got outside, the whole complex --

9 THE COURT: Wait a minute. You're going  
10 right fast. You got dressed.

11 THE WITNESS: Yes, I got dressed.

12 THE COURT: And then you did what?

13 THE WITNESS: I proceeded to come  
14 downstairs. I knocked on my next-door neighbor's door  
15 for her to call the police, ambulance or whoever it is  
16 because I knew it was an officer back there that was  
17 hurt.

18 BY MR. NOVAK:

19 Q. Now, eventually the police came; is that right?

20 A. Yes, sir.

21 Q. Chief Sturrup came; is that right?

22 A. Yes, sir.

23 Q. And he did all kinds of different things in the  
24 parking lot; is that right?

25 A. Yes, sir.

1 Q. We'll save that for another day.

2 But in any event, at some point Eric -- do  
3 you know Eric Garrett?

4 A. Yes, sir.

5 Q. Was he also brought there as well?

6 A. Yes, sir.

7 Q. He was eventually released?

8 A. Yes, sir.

9 Q. Thereafter that, did you have an occasion to see  
10 after the police had come and after -- there's a big  
11 crowd of people there; is that right?

12 A. Yes, sir.

13 Q. And that kept building all day, more and more  
14 people coming; is that right?

15 A. Yes, sir.

16 Q. Pretty big news; is that right?

17 A. Yes, sir.

18 Q. At some point, did you have occasion to see  
19 Terence Richardson return or again see him in the  
20 Waverly Village Apartments?

21 A. Yes, sir.

22 Q. Where did you see him at?

23 A. It was around the front.

24 Q. Where was that at? Could you show us?

25 A. This area here (indicating).

1 Q. Do you know what he was doing?

2 A. Where was he going?

3 Q. No. What was he doing? Was he just sitting  
4 there, or was he jumping up and down?

5 A. He wasn't jumping up and down. He was there. He  
6 was just sitting there. I mean, it was a lot of  
7 people around the front. He was by his cousin's house  
8 in the front.

9 Q. Which cousin is that? Do you know?

10 A. Alonso.

11 Q. Do you know a fellow by the name of Shawn Wooden?

12 A. Yes.

13 Q. How do you know Shawn?

14 A. He used to hang with my children's father, also.

15 Q. All right. Do you recall if you saw him later on  
16 in the apartment complex?

17 A. Yes.

18 Q. Do you know if he was the third black male in the  
19 woods or not?

20 A. I can't say.

21 Q. All right. Now, later on that day -- let me ask  
22 you this: Later on that day, did you have an occasion  
23 to go to Dobie's Store?

24 A. Yes, sir.

25 Q. How do you get to Dobie's Store from your house?

1 Can you walk, or do you have to ride a car?

2 A. You can walk.

3 Q. It's not that far, right?

4 A. No, it's not.

5 Q. Why did you go to Dobie's Store?

6 A. To get a beer.

7 Q. When you get over there, did you have an occasion  
8 to see Terence Richardson then?

9 A. Yeah, I did. I saw Terence and Shawn Wooden.

10 Q. Was this later in the afternoon?

11 A. Yes, sir.

12 Q. Could you tell us what, if anything, they were  
13 doing at that time?

14 A. They were purchasing beer, beer.

15 Q. What, if anything, did you hear Terence say at all  
16 about the murder at that time?

17 A. He wasn't talking about the murder. He was  
18 talking to Shawn, and he said something -- I know he  
19 said, like, I got that mother fucker.

20 THE COURT: Said what?

21 THE WITNESS: I got that mother fucker.

22 BY MR. NOVAK:

23 Q. That's what you heard him say; is that right?

24 A. Yes, sir.

25 Q. Of course, by then you had already seen him in th

1 back woods with the officer?

2 A. Yes.

3 Q. Going back to the Waverly Village Apartments, when  
4 you were first -- when you first went out there and  
5 all the police arrived, they started interviewing  
6 everybody; is that right?

7 A. Yes, sir.

8 Q. And you were one of the people they first  
9 interviewed at the scene; is that right?

10 A. Yes, sir.

11 Q. When you were first interviewed, where were you  
12 interviewed at?

13 A. In my house.

14 Q. Okay. Were you inside or outside?

15 A. I was mainly on the steps on the inside.

16 Q. At that point, you denied knowing anything about  
17 this; is that right?

18 A. Yes, sir.

19 Q. Do you want to explain to the ladies and gentlemen  
20 why it is that you told the police that you didn't  
21 know anything about it at that time?

22 A. I didn't want to be involved. I was afraid. A  
23 cop got killed, and I didn't want to die either. I  
24 was afraid. I didn't want to have nothing to do with  
25 it.

1 Q. Now, later on that day, you were interviewed again  
2 by some officers; is that right?

3 A. Yes, sir.

4 Q. And you told them a little bit more about it. You  
5 told them there were a couple black males in the  
6 woods; is that right?

7 A. Yes, sir.

8 Q. But you didn't tell them everything you're telling  
9 us here today, did you?

10 A. No, sir.

11 Q. Why, again, did you not tell the whole story that  
12 time?

13 A. The same, I didn't want to get involved. I just  
14 didn't want to be involved.

15 Q. The next day you were interviewed by Deputy Tommy  
16 Cheek; is that correct?

17 A. Yes, sir.

18 Q. Where were you interviewed at?

19 A. In my living room.

20 Q. At that time, you had indicated to Deputy Cheek  
21 that you did see Terence Richardson there; is that  
22 right?

23 A. Yes, sir.

24 Q. Did you mention a fellow by the name of Coop at  
25 that time?

1 A. Yes, sir. I didn't know Ferrone that well, and  
2 the description that I gave, I called him Coop.

3 Q. Okay. Did you correct that the next day when your  
4 kids --

5 MR. BOATWRIGHT: Objection to the leading  
6 form of the question, Judge.

7 THE COURT: Sustained.

8 BY MR. NOVAK:

9 Q. What, if anything, did you say about who Ferrone  
10 Claiborne was the next day when you saw the police?

11 A. The next day?

12 Q. Yes.

13 A. I didn't say. My son did. I didn't say. I  
14 just -- the only thing I --

15 MR. BOATWRIGHT: Objection, Your Honor, to  
16 hearsay.

17 MR. NOVAK: I'm asking her only what she  
18 said.

19 THE COURT: She started to say her son said  
20 something.

21 BY MR. NOVAK:

22 Q. Go ahead.

23 A. Go ahead. I'll be quiet.

24 Q. What, if anything, did you say about Ferrone  
25 Claiborne the following day to the police?



1 A. The description? About his description?

2 Q. At any point, did you give him his name?

3 A. My son did, as I stated, because I called him  
4 Coop. I corrected that. My son --

5 THE COURT: The answer is you didn't give  
6 the name?

7 THE WITNESS: Yes, I did. After my son  
8 said -- he said, "Mama, it's not Coop. His name is  
9 Fashawn. He thought it was Fashawn, but it was not  
10 Fashawn. It was Ferrone.

11 MR. EVERHART: Judge, obviously, we object  
12 to the whole thing.

13 THE COURT: Ladies and gentlemen, what her  
14 son said is admissible to show why she changed her  
15 story or her recitation from the name Coop to the name  
16 Fashawn or Ferrone. It's not admissible to show  
17 that's what his name really is.

18 All right.

19 BY MR. NOVAK:

20 Q. There's no question, though, Ms. Newby, the first  
21 couple of times you talked to the police you did not  
22 tell them the truth; is that right?

23 A. Yes, sir.

24 Q. Ultimately, you told them what it is that you saw  
25 back in the woods; is that right?

1 A. Yes, sir.

2 Q. You then were going to testify in the state  
3 proceedings; is that right?

4 A. Yes, sir.

5 Q. Did you refuse to go to court?

6 A. Yes, sir.

7 Q. Why is it you refused to go to court?

8 A. I didn't want to be bothered.

9 Q. That's when you were subpoenaed to the federal  
10 grand jury as well; is that right?

11 A. Yes, sir.

12 Q. Didn't show up again twice; is that right?

13 A. Yes, sir.

14 Q. That's, again, because you don't want to have  
15 anything to do with this; is that right?

16 A. Yes, sir.

17 Q. That's why you're in jail today; is that right?

18 A. Yes, sir.

19 MR. NOVAK: I have nothing else, Judge.

20

21 CROSS-EXAMINATION

22 BY MR. BOATWRIGHT:

23 Q. Ms. Newby?

24 A. Yes, sir.

25 Q. You have had a problem with crack cocaine that is

1 a problem that's plagued you for a long time, correct?

2 A. Yes, sir.

3 Q. When would you say approximately your serious  
4 problems with using crack cocaine began?

5 A. I'd say about ten years ago, ever since I was  
6 about 18.

7 THE COURT: Ever since what?

8 THE WITNESS: Ever since I was about 18  
9 years old.

10 THE COURT: How long ago was that?

11 THE WITNESS: I'm 34 now, backwards about --  
12 do you want me to go backwards?

13 BY MR. BOATWRIGHT:

14 Q. I'm sorry. I didn't catch that last part.

15 A. Do you want me to go backwards?

16 Q. I think we understand. It's been over ten years,  
17 correct?

18 A. That's what I said, yes, sir.

19 Q. Were you working during this period of time?

20 A. I had my own -- I did hair and nails.

21 Q. You just did that at your own home or other  
22 people's homes?

23 A. Yes, sir, I had a light bill to pay.

24 Q. And that wasn't sufficient, though, to cover the  
25 cost of the drugs you were using, was it?

1 A. At that time, no.

2 Q. So you had to in some cases steal to get the money  
3 to pay for drugs, correct?

4 A. Of course I did to feed my addiction, yes, sir.

5 Q. And you stole a lot more than just the times you  
6 got caught, correct?

7 A. Yes, sir.

8 Q. You would go to stores and shoplift things that  
9 you could sell on the street?

10 A. Yes, sir.

11 Q. Things like baby formula and clothes and things  
12 like that?

13 A. No, sir.

14 Q. What did you steal?

15 A. Food, meat, products like that.

16 Q. Steaks and things like that?

17 A. Yes, sir.

18 Q. And you'd turn around and sell them as quickly as  
19 you could to get some money?

20 A. That's right, yes, sir.

21 Q. On occasion, you would trade sex for drugs?

22 A. I have done it. I'm not proud of it. Yes, sir.

23 Q. Did there come a time sometime after the officer  
24 was killed at Waverly Village where you had a  
25 conversation with Chief Sturupp about the interaction

1 you were having with Sussex County authorities?

2 A. Yes, sir.

3 Q. Were you driving down the street when you sort of  
4 flagged him over? Is that right?

5 A. Yes, sir.

6 Q. He was in a police vehicle?

7 A. Yes, sir.

8 Q. And you told him at that time that you were being  
9 pressured by the Sussex County authorities to say  
10 certain things; is that right?

11 A. One particular thing.

12 Q. Well, first off, let me ask you, who was it that  
13 was putting this pressure on you?

14 A. It was Officer Cheek.

15 Q. Tommy Cheek?

16 A. Yes, sir.

17 Q. He was pressuring you to say what?

18 A. He wanted me to say that I saw Terence shoot the  
19 officer.

20 Q. Had you already told him that you couldn't say  
21 that you saw Terence shoot --

22 A. I did not agree to saying that I would say that he  
23 shot the officer. I wouldn't agree to that.

24 Q. I understand that, but had you -- but when he  
25 asked you about that, had you already told him that

1 you couldn't say that, that that wasn't the case?

2 A. No, I never said that.

3 Q. But then he told -- asked you to say it?

4 A. He asked me to say it? He asked me -- he was  
5 questioning me, like you said. He asked me to say  
6 that Terence actually shot the cop. I could not say  
7 that.

8 Q. Did you tell him that you couldn't say that?

9 A. Yes, I did tell him I couldn't say that. I would  
10 never say that. I'm not going to lie.

11 Q. Did he ask you to say it anyway?

12 A. No.

13 Q. He stopped once you told him you couldn't say it?

14 A. That's right. Yes, sir.

15 Q. The day of April 25th, 1998, the day that Officer  
16 Gibson was killed, you told, well, one person at  
17 least, a Virginia State Trooper, that you didn't see  
18 or hear any struggle, correct?

19 A. I didn't want to be involved with anything.

20 Q. I understand that, but my question to you is  
21 that's what you said to the trooper; isn't that right?

22 A. I guess I did.

23 Q. Later that day -- excuse me.

24 You told another group of officers or  
25 another officer that you saw -- "I thought I saw two

1 people back in the woods;" is that right?

2 A. I saw two people in the back of the woods with the  
3 officer.

4 Q. Earl White, who's also known as Tony White, was in  
5 the apartment at the time the shot went off; isn't  
6 that right?

7 A. No, sir, he was not.

8 Q. He was outside?

9 A. Yes, sir.

10 Q. He came back in?

11 A. He never got inside the house when the officer  
12 pulled up. He was at the trash can by the door. He  
13 never came back inside.

14 Q. Did you ask Tony White or get Tony White to back  
15 your story about what you had supposedly seen out of  
16 your window?

17 A. I can't recall.

18 Q. You can't recall whether or not you asked him to  
19 lie for you?

20 A. No, I never, never.

21 Q. You never asked him to lie for you?

22 A. Never.

23 Q. Aren't you aware that he told the police that he  
24 saw the same things that you say you saw out of the  
25 window?

1 A. Never.

2 Q. You don't know that?

3 A. No, no.

4 Q. You didn't know it then, and you don't know it  
5 now?

6 A. No.

7 Q. All right. So you don't know what Tony White may  
8 or may not have told the various police authorities  
9 investigating the case?

10 A. He was not upstairs with me.

11 Q. I understand that. My question to you is, though,  
12 you don't know what Tony may or may not have told  
13 anyone about this, correct?

14 A. I know he know I would not lie.

15 Q. Let me try it one more time. You don't have any  
16 ideas what Tony told the police any time about the  
17 events of April 25th, correct?

18 A. He was not upstairs.

19 Q. I understand that, ma'am, but I'm asking you do  
20 you have any knowledge about what Tony said to the  
21 police?

22 A. No, I do not.

23 Q. All right. Thank you. Now, let me ask you a  
24 question. You identified one person as being Coop,  
25 C-O-O-P, correct?



1 A. Yes, sir.

2 Q. There's an actual person that you know named Coop;  
3 isn't that true?

4 A. Yes, sir.

5 Q. Isn't his last name Faltz, F-A-L-T-Z?

6 A. Yes, sir.

7 Q. And he was arrested in Waverly at one point; isn't  
8 that right?

9 A. Yes, sir.

10 Q. You later pointed out that Coop couldn't have been  
11 the person that you saw; isn't that true?

12 A. Yes, sir.

13 Q. The fact is, Coop was in the penitentiary on  
14 April 25th, 1998, wasn't he?

15 A. Yes, sir, and that's why I cleared it up.

16 Q. Well, somebody came to you and said, wait a  
17 minute, it couldn't be Coop because he's locked up,  
18 right?

19 A. Yes, sir.

20 Q. Who said that to you?

21 A. It was Officer Cheek.

22 Q. Tommy Cheek?

23 A. That's right.

24 Q. He said you can't be right about that. Coop's in  
25 the penitentiary. So who was it, right?

1 A. Yeah.

2 Q. What did you tell him then?

3 A. I told him that they made a mistake with the  
4 identity. When I identified -- the paper that I saw,  
5 when I identified those guys, I identified tall, with  
6 a bald head and blue jeans and a blue shirt, and I  
7 identified a medium-height man with hair who looked  
8 like Coop Faltz. That's what I said.

9 Q. From that point forward, you stopped identifying  
10 the person that you thought was Coop as being Coop; is  
11 that right?

12 A. No, as I said, I thought it was Coop, the third  
13 male, the third one.

14 Q. When did you find out it couldn't have been him?

15 A. The next day.

16 Q. April 26th?

17 A. Right.

18 Q. From April 26th forward, did you stop saying that  
19 you thought it was Coop out there?

20 A. That I thought --

21 Q. Did you stop telling the police that Coop was one  
22 of the people that was out there?

23 A. After I found out, yes, sir, I did.

24 Q. Okay. All right. Do you know this gentleman  
25 seated next to Mr. Novak? Have you seen him before?

1 A. Yes, sir.

2 Q. He's Special Agent Ritchie with the FBI; isn't  
3 that right?

4 A. Yes.

5 Q. And you have been interviewed by him on several  
6 occasions; isn't that right?

7 A. Yes, sir.

8 Q. And you have -- generally when that happened,  
9 there was another person, another federal law  
10 enforcement officer, with him named Special Agent  
11 Michael Talbert, correct?

12 A. Yes, sir.

13 Q. And you know him, too, don't you?

14 A. Yes, sir.

15 Q. Isn't it a fact, ma'am that they came and  
16 interviewed you here in the United States Marshal's  
17 Office in this courthouse on January 19th, 2000? Do  
18 you remember that?

19 A. Yes, sir.

20 Q. Didn't you tell them then that Coop Faltz was out  
21 in the front area of Waverly Village Apartments with  
22 Ferrone Claiborne, Terence Richardson, Shawn Wooden,  
23 Fred Smith, Larry Stith also known as Puck? Didn't  
24 you say that Coop Faltz was out there then?

25 A. I can't recall. I don't remember.

1 Q. So you don't -- you can't say one way or the  
2 other?

3 A. I don't remember.

4 Q. Another question here, please. Did you say  
5 that --

6 MR. BOATWRIGHT: I've forgotten the exhibit  
7 number. Was it RS -- the T-shirt? I'd ask Mr. Novak  
8 to remind me of the number.

9 MR. NOVAK: RS-1.

10 BY MR. BOATWRIGHT:

11 Q. RS-1, the T-shirt that he held up for you here  
12 that you identified?

13 A. Yes, sir.

14 Q. Did you say that you thought Mr. Richardson was  
15 wearing another garment or shirt in addition to that?

16 A. On top of it?

17 Q. Anywhere, on top, underneath of it or anything?

18 A. It might have been. I'm not going to guess. It's  
19 not good to guess, like they said.

20 Q. I certainly don't want you to guess.

21 A. I might have said it. Did I say that?

22 Q. I'm asking you if you did. That's all.

23 Didn't you tell Agent Ritchie on  
24 January 19th, 2000, that you remembered Richardson  
25 wearing a white T-shirt over a darker long-sleeved

1 shirt?

2 A. It's been so long.

3 Q. So you really don't remember whether you said that  
4 or not; is that right?

5 A. It's been so long.

6 Q. Am I correct you don't recall?

7 A. I can't say.

8 Q. The encounter you described the night of April 25  
9 at Dobie's where you say you saw Terence Richardson,  
10 didn't you tell Tommy Cheek and at least one other law  
11 enforcement person that you saw Coop and the third  
12 party --

13 A. No.

14 Q. -- in a dark medium-sized car with nice rims in  
15 the parking lot?

16 A. No.

17 Q. And in that very same interview given to Tommy  
18 Cheek and the other law enforcement officer, didn't  
19 you say, "I then heard a loud bang and all three guys  
20 went in different directions. "T," meaning Terence,  
21 "then came back up the berm and looked around like he  
22 didn't know what to do"?

23 A. I said that.

24 Q. You remember saying that, right?

25 A. Yes, sir.

1 Q. You just don't remember the other part that I just  
2 asked you about?

3 A. No, I don't.

4 THE COURT: Now, now, now.

5 MR. BOATWRIGHT: I'm sorry?

6 THE COURT: You don't need to editorialize.

7 MR. BOATWRIGHT: I didn't mean to. I'm  
8 sorry.

9 BY MR. BOATWRIGHT:

10 Q. Do you recall being interviewed by Special Agent  
11 Ritchie and Special Agent Talbert on June 12th, 2000,  
12 in the Hampton Roads Regional Jail in Chesapeake,  
13 Virginia?

14 A. Yes, sir.

15 Q. They came in to speak to you about the subject  
16 matter of Officer Gibson's death, correct?

17 A. Yes, sir.

18 Q. Didn't you say at that time that you saw Terence  
19 Richardson with a gun in his hand at the top of the  
20 berm?

21 A. No, I did not. I said it looked like a gun.

22 Q. You didn't say that you were sure it was gun?

23 A. I said it looked like a gun.

24 Q. Okay. You told Mr. Novak that you were -- you  
25 really don't want to be here involved in the testimony

1 of this case; is that true?

2 A. That's correct.

3 Q. But you did make the decision back in November of  
4 last year that you would testify willingly, didn't  
5 you?

6 A. Yes, sir.

7 Q. And you changed your mind; is that right?

8 A. Yes, sir.

9 Q. Did I hear you say in response to what Mr. Novak  
10 asked you that the reason that you found yourself in  
11 the predicament that you're in, in terms of being  
12 locked up right now, is because first you failed to  
13 appear before the grand jury?

14 A. Yes, sir.

15 Q. And you did that twice?

16 A. Yes, sir.

17 Q. And at some point, you were brought in on a  
18 warrant before a different judge than the one we have  
19 here today charging you with failing to appear,  
20 correct?

21 A. Yes, sir.

22 Q. And eventually, you were released on the condition  
23 that, among other things, you refrain from the use of  
24 drugs; isn't that right?

25 A. Yes, sir.

1 Q. And you weren't able to comply with that, were  
2 you?

3 A. No, I wasn't.

4 Q. You were using crack cocaine?

5 A. No, I smoked marijuana joints.

6 MR. BOATWRIGHT: Excuse me, Judge. If I  
7 could just get a little latitude?

8 BY MR. BOATWRIGHT:

9 Q. The events you described at Dobie's the night of  
10 April 25th, you happened to just coincidentally run  
11 into Terence Richardson; is that right?

12 A. Yes, sir.

13 Q. You had no idea he would be there?

14 A. No, sir.

15 Q. It wasn't unusual seeing him there, correct?

16 A. No, sir, it's not unusual to see him there.

17 Q. That's just sort of a place where everybody in  
18 that area goes if they want to buy beer or cigarettes  
19 and things of that nature, correct?

20 A. Yes, sir.

21 Q. With whom was Mr. Richardson speaking when you  
22 said he said things about the m-f and so forth?

23 A. He wasn't talking to me. He was talking to his  
24 boy. Shawn Wooden was with him.

25 Q. Was there anyone else?



1 A. They was talking. I don't know who the third guy  
2 was. It was a third guy with him.

3 Q. Can you describe him for us?

4 A. Tall, big guy, tall, brown skin.

5 Q. Was he a white guy, black guy?

6 A. Black.

7 Q. You just don't know him?

8 A. No.

9 Q. It's nobody you've seen in Waverly before?

10 A. No.

11 Q. You've been in Waverly for a while at that point,  
12 correct?

13 A. Yes.

14 Q. You knew a lot of people there?

15 A. Yes.

16 Q. Particularly the people that you associated with  
17 while you were using drugs?

18 A. Yes.

19 Q. And it was as far as you could tell a total  
20 stranger?

21 A. I mean, it's not unusual for strangers to come to  
22 the store, but he was with the guys.

23 Q. So you didn't see any car or people?

24 A. Yes, I did see a car. They got out of a brown  
25 car, a brown car. It looked like Shawn Wooden's car,

1 his girlfriend's car.

2 Q. Are you saying it was or it looked like?

3 A. That's the car they got out of.

4 Q. Are you saying that was Shawn Wooden's  
5 girlfriend's car or resembled it but you're not sure?

6 A. I'm not sure if it was his girlfriend's car or  
7 not, but that's the car.

8 Q. Now, you knew Shawn Wooden as of April 25th,  
9 correct?

10 A. I know him all the time.

11 Q. Right. If you saw him, you didn't have any  
12 trouble recognizing him?

13 A. No.

14 Q. But you never saw him back there in the woods, did  
15 you?

16 A. No, I didn't say he was back there in the woods.

17 Q. You saw -- in addition to Officer Gibson, you saw  
18 two black males and two black males only, correct?

19 A. It was three that went in the woods. I saw two  
20 struggle with the officer.

21 Q. Did you -- were you able to make an identification  
22 of the third person going in?

23 A. No.

24 Q. Was it Shawn Wooden?

25 A. I can't say.

1 THE COURT: All right, Mr. Boatwright.  
2 That's enough. She said "I don't know" more times  
3 than I can count. She can't identify the other one.  
4 If she can't identify it, you can't ask her if it was  
5 X.

6 MR. BOATWRIGHT: I won't. Can I have just a  
7 moment to consult with Mr. Huyoung?

8  
9 (Discussion off the record.)

10

11 BY MR. BOATWRIGHT:

12 Q. What was the name of Shawn Wooden's girlfriend?

13 A. I didn't know her. I don't know her that well,  
14 either.

15 Q. Could I try to refresh your memory?

16 MR. NOVAK: Judge, I object. She says she  
17 doesn't know.

18 THE COURT: I think she said she doesn't  
19 know. She didn't say she had forgotten.

20 Objection is sustained.

21 MR. BOATWRIGHT: All right. If you will  
22 give me just one moment, then?

23 BY MR. BOATWRIGHT:

24 Q. Isn't it a fact that the only things in terms of  
25 drugs you ever bought from Terence Richardson was

1 weed, meaning marijuana?

2 A. No, sir.

3 Q. Well, you were asked questions about what you had  
4 purchased from Terence Richardson in front of the  
5 grand jury; isn't that true?

6 A. Yes, sir.

7 Q. And did you tell them that you had purchased crack  
8 cocaine from him?

9 A. Yes, I did.

10 Q. Are you sure about that?

11 A. That's what I said.

12 Q. Do you recall being asked this question and giving  
13 this answer, page 7, last line, 25, over to page 8 for  
14 several lines?

15 This is Mr. Novak asking you questions,  
16 correct? "Let me ask you this: Did you ever buy  
17 drugs from Terence Richardson?"

18 A. Yes, sir.

19 Q. No, no. I'm asking you if you recall being asked  
20 this question and giving this answer.

21 A. I said, yes, sir.

22 Q. Okay. Well, let me finish the question and  
23 answer.

24 "QUESTION: Let me ask you this: Did you  
25 ever buy drugs from Terence Richardson?

1 "ANSWER: Some weed.

2 "QUESTION: Anything else other than that?

3 "ANSWER: No, sir."

4 A. No, sir. I wasn't smoking weed. I was a  
5 crackhead. I was smoking crack. I wasn't smoking  
6 weed back then.

7 Q. The question that was about buying from  
8 Mr. Richardson, was that a question that was asked of  
9 you and the answer you gave to the grand jury?

10 A. About weed?

11 Q. About what you had purchased from Mr. Richardson.

12 A. Crack cocaine.

13 Q. I understand that. I'm asking you what you told  
14 the grand jury on January 19th, 2000.

15 A. Could you repeat the question again?

16 Q. I certainly can. Didn't Mr. Novak ask you these  
17 two questions and you gave these two answers?

18 "QUESTION: Let me ask you this: Did you  
19 ever buy drugs from Terence Richardson?

20 "ANSWER: Some weed.

21 "QUESTION: Anything else other than that?

22 "ANSWER: No, sir."

23 A. I don't recall that. I don't recall that. I know  
24 I bought crack from him. It was crack that I bought.

25 MR. BOATWRIGHT: We have stipulated as to

1 the grand jury transcripts. Thank you. No other  
2 questions.

3 THE COURT: Are you going to be a while?

4 MR. EVERHART: Yes, sir.

5 THE COURT: I think it's a good time to take  
6 the afternoon recess for 20 minutes, please, ladies  
7 and gentlemen. Take your pads with you, if you would.

8

9 (Jury exited the courtroom at 3:55 p.m.)

10

11 THE COURT: All right. We'll take a  
12 20-minute recess by that clock, which would mean we'll  
13 begin again at a quarter after with the witness back  
14 on the witness stand before the jury comes in, and  
15 then we'll bring the jury in.

16

17 (Recess taken.)

18 (Jury entered the courtroom at 4:15 p.m.)

19

20 THE COURT: All right. Ms. Newby, I remind  
21 you you're under the same oath that you took earlier  
22 today.

23 MR. GAVIN: Thank you, Judge.

24

25 CROSS-EXAMINATION

1 BY MR. GAVIN:

2 Q. Ms. Newby, I'm Charles Gavin. I represent  
3 Mr. Claiborne. Good afternoon.

4 Ms. Newby, is it fair to say that back on  
5 April 25th in 1998 you were addicted to crack?

6 A. Yes, sir.

7 Q. All right. And you continued to be addicted to  
8 crack right on up to the time you got arrested by the  
9 federal people; is that correct?

10 A. Yes, sir.

11 Q. And you haven't had anything of a drug while  
12 you've been incarcerated, have you?

13 A. No, sir.

14 Q. And immediately prior to your incarceration,  
15 Ms. Newby, you tested positive on January 2nd for  
16 cocaine?

17 A. Yes, sir.

18 Q. You tested positive on March 6th for cocaine?

19 A. Yes, sir.

20 Q. And you tested positive on March 16th for cocaine?

21 A. Yes, sir.

22 Q. And then you got arrested?

23 A. Yes, sir.

24 Q. And you're hoping that your testimony today might  
25 in some effect get you out early; is that correct?

1 A. No, sir. I want justice to be done.

2 Q. You're not proud of everything you did while you  
3 were addicted to crack, are you?

4 A. No, sir.

5 Q. You stole?

6 A. Yes, sir.

7 Q. And you lied?

8 A. Yes, sir.

9 Q. And is it fair to say, Ms. Newby, that when you're  
10 on crack the only thing that you're looking for is  
11 your next hit of crack? Is that fair?

12 A. No, sir.

13 Q. It's not fair?

14 A. No, sir.

15 Q. How many times were you using crack a week?

16 A. Approximately -- all of a week?

17 Q. Right.

18 A. Four.

19 Q. Four times a week?

20 A. Four.

21 Q. Once a day or every day or every other day?

22 A. Every other day.

23 Q. Or four times in one day?

24 A. Every other day, mostly on the weekends, mainly on  
25 the weekends.



1 Q. All right. Were you using crack on April 25th,  
2 1998?

3 A. Was I using crack that morning? No, I was wide  
4 awoke that morning.

5 Q. You had just gotten up, correct?

6 A. Yes, sir.

7 Q. One of the most important people to you, though,  
8 when you have a crack addiction like that would be the  
9 person supplying the crack, wouldn't you agree?

10 A. Yes, sir.

11 Q. And you said that Mr. Claiborne sold crack to you  
12 at least 12 times; is that correct?

13 A. Yes, sir. Over ten times is what I said, over  
14 ten.

15 Q. Over ten times. But you indicated that your son,  
16 who's eight years old, knew him better than you did?

17 A. No, sir. I indicated that he scrapped the name  
18 out.

19 Q. So you couldn't identify the person in the woods,  
20 but your son had to tell you who it was?

21 A. I said at the time of the identification, when I  
22 gave them the identification, they misquoted it.

23 That's why all of this came up as this  
24 misidentification.

25 Q. Misidentification?

1 A. That's right, yes, sir.

2 Q. Ma'am, you have a brother?

3 A. Yes, sir.

4 Q. What's his name?

5 A. Leonard Newby.

6 Q. What did Leonard Newby look like back then on  
7 April 25th, 1998?

8 A. He had long dreadlocks, individual locks on his  
9 head.

10 Q. Do you know if he used crack?

11 A. No, my brother doesn't use drugs.

12 Q. He never used crack?

13 A. No.

14 Q. I guess he never sold crack, either, then?

15 A. Oh, yes, he sold it.

16 Q. Sold crack?

17 A. Yes, sir.

18 Q. Did he sell crack in Waverly Village?

19 A. Not to my knowledge.

20 Q. Where did he sell it at?

21 A. Smithfield, Virginia, where he lived.

22 Q. All right. How far was that from Waverly Village?

23 A. Approximately -- I can't say approximately how

24 far, but it's over 50 miles.

25 THE COURT: You're dropping off.

1 THE WITNESS: It's over 50 miles, over  
2 50 miles.

3 BY MR. GAVIN:

4 Q. Did Mr. Newby, your brother, have individuals that  
5 he hung around with when he was selling crack?

6 A. Did he have what?

7 Q. Did he have people that he hung around with,  
8 friends that he hung around with, a group of  
9 individuals with whom he sold crack?

10 A. In Smithfield, Virginia?

11 Q. Yes.

12 A. I don't recall because I don't know too many of  
13 the guys that he hung with out there.

14 Q. Did Tony White know him?

15 A. Did Tony White know Leonard?

16 Q. Yes.

17 A. Of course.

18 Q. He had been over to your apartment several times?

19 A. Of course.

20 THE COURT: Who is "he"?

21 BY MR. GAVIN:

22 Q. I'm sorry. Tony White -- or Leonard. Leonard had  
23 been over to your apartment several times to see Tony?

24 A. To see his sister, me.

25 Q. Okay. But he knew Tony through his relationship

1 with you?

2 A. Yes, sir.

3 Q. Had Ferrone Claiborne ever been in your apartment?

4 A. Not to my knowledge.

5 Q. Ma'am, you indicated that the three individuals  
6 you saw that day went into the woods. Where did they  
7 go in?

8 A. I can't recall exactly if they -- they didn't go  
9 across that hump. I can't recall that they went  
10 across that hump, but they went into the back there.  
11 They went into the back of the woods.

12 Q. How do you know?

13 THE COURT: Wait a minute. It's hard to  
14 hear. Pull that up to you a little bit. Keep your  
15 voice up.

16 MR. GAVIN: Let me -- Judge, may I approach  
17 this exhibit?

18 BY MR. GAVIN:

19 Q. What hump are you referring to?

20 A. I can't see.

21 Q. Let me turn it a little bit. Is that better?

22 A. Yes.

23 Q. What hump are you referring to?

24 A. Which hump? This is an entrance in back here,  
25 okay, this entrance, but if you go around here, you

1 can go across there, too (indicating).

2 Q. All right. So you're saying you know that he went  
3 in the woods, but you didn't see him go in the woods?

4 A. I know they were back there. I didn't see them go  
5 in through that hump there, but I know they went in  
6 the woods.

7 Q. Those are the same individuals you saw here?

8 A. Yes, sir.

9 Q. You say you saw five individuals here?

10 A. There's a whole playground. There's a lot of  
11 people out there.

12 Q. You saw them first thing through that door right  
13 there, correct?

14 A. No, from my window.

15 Q. This window?

16 A. No, this window here (indicating).

17 Q. When did you see these individuals --

18 THE COURT: Excuse me. Can you-all see all  
19 right?

20 THE JURY: Yes.

21 BY MR. GAVIN:

22 Q. When you saw these individuals over here from your  
23 window, where was the officer?

24 A. Where was the officer? The officer was coming  
25 around. He was coming around this way (indicating).

1 He was observing the activity on the playground.

2 Q. All right. Then he pulled in here (indicating)?

3 A. No. He pulled around here, and he went out. And  
4 then he came back. When they saw him come in and go

5 out, that's when they flee to enter behind the

6 building to go across there (indicating).

7 Q. All right. And you left that window, and you went  
8 to the back window?

9 A. After the officer -- after the officer pulled  
10 here, he got out of his car, and he went around the  
11 back. He got -- he came -- proceeded straight back  
12 and got on his radio. I was still there, still there.

13 Q. Did he pull in here or here (indicating)?

14 A. I said I was still here. He pulled in and went  
15 and parked the second time.

16 Q. But he came in this way (indicating)?

17 A. (Nodded head affirmatively.)

18 Q. All right. So you saw these individuals back  
19 here?

20 A. Yes, sir.

21 Q. All right. What was the third individual wearing?

22 A. Blue, he had on blue, too, blue and a colored  
23 T-shirt, dark colored T-shirt, also.

24 Q. So he also had on blue -- were they jeans?

25 A. Yes, that's regular colors.

1 Q. Blue jeans and a blue shirt?

2 A. Yes, sir.

3 Q. Where was he when all this -- in what you  
4 described, where was he at this time?

5 A. He was with them. He was walking with them. He  
6 walked with them back to the back part of the woods  
7 area.

8 Q. Was it a long-sleeve blue shirt or short-sleeve?

9 A. It was kind of warm. It was not long sleeves.

10 Q. Did you see his hair?

11 A. It was like not as long, low but not, medium dark.

12 Q. Low but not, medium dark?

13 A. Yes, sir.

14 Q. When he ran, you didn't follow him with your eyes?

15 A. He just ran over. He just ran down to the right.

16 Q. Was the window open?

17 A. Yes, my window was cracked like this so I could  
18 see. I was nosy. That was my word.

19 Q. On the 25th, the first time you gave a statement,  
20 isn't it true, Ms. Newby, that you said you thought  
21 you saw two people?

22 A. It was two people that attacked the officer.  
23 Waverly policemen, they wrote those statements. An  
24 officer had just got killed. Everybody was nervous.  
25 I cannot control what they wrote on those papers.

1 All I did was sign because of the simple  
2 fact they were officers. I believe what an officer  
3 says or whatever he wrote, I believed it. That's  
4 mainly the majority of what they wrote.

5 Q. Let me hand you something and ask if you can  
6 identify this. Will you look at page 2 of that?

7 A. This is not my handwriting.

8 Q. Flip to page 2. Is that your signature at the top  
9 of the page?

10 A. Yes, sir.

11 Q. First page is not your handwriting?

12 A. No, it's not.

13 Q. Did the officer write that down while he was  
14 talking to you?

15 A. I'm quite sure he did, yes, sir.

16 Q. So he didn't leave and come back and have you sign  
17 something? He took it right there in front of you,  
18 and then you signed it?

19 A. Yes, sir, but it's still not -- everything that  
20 they wrote is still mixed up. The majority of it was  
21 mixed. I'm sorry, and that's the truth.

22 Q. So would you look over it real quickly and see if  
23 that refreshes your recollection about your statement?

24 A. Which part? The whole thing?

25 Q. Yes, ma'am.



1 A. Okay.

2 Q. Having seen that, does that refresh your  
3 recollection about what you said?

4 A. Yes, sir.

5 Q. In that statement, does it not say that you saw  
6 two men?

7 A. It was two people with the officer that attacked  
8 him. It was two people.

9 Q. And the officer went back there with something in  
10 his hands, but you couldn't tell what it was; is that  
11 correct?

12 A. His radio.

13 Q. That's actually the second statement you gave,  
14 isn't it? Didn't you give a statement to the officer  
15 at the scene, a state trooper by the name of Turner?

16 A. It's been three years ago. I tell y'all, it's  
17 been three years ago, and every little bit, it's been  
18 three years.

19 Q. All right. I understand.

20 The next day, Ms. Newby, you gave another  
21 statement to Tommy Cheek. At that time he was a  
22 sheriff in Sussex, correct? Do you remember him?

23 A. Yes, sir.

24 Q. Do you remember meeting with a man named Danny Fox  
25 from the State Police?

1 A. I don't recall that officer, but I recall  
2 Mr. Cheek.

3 Q. You gave another written statement?

4 A. Did I? You said did I?

5 Q. Yes.

6 A. I don't recall.

7 Q. Let me ask you another way. When you gave a  
8 statement, ma'am, it was just like that one that you  
9 just looked at? Somebody took down some writing based  
10 on what you were telling them, and then you signed  
11 your name?

12 A. Yes, sir.

13 Q. Let me hand you something else I'd ask you to  
14 identify. Flip to page 3 of that document, ma'am.

15 Is that your signature on that page 3?

16 A. Yes, it is.

17 Q. And that page, that signature also has some  
18 writing right there on the page, does it not?

19 A. Yes, sir.

20 Q. So your signature is not the only thing on that  
21 page; is that correct?

22 A. Yes, sir.

23 Q. Do you recall reading this document before you  
24 signed it, or did he just write down what you said and  
25 then had you sign it?

1 A. I just signed it.

2 Q. This was after, basically, you decided to come  
3 clean, correct?

4 A. Yes, sir.

5 Q. So you weren't scared at this point when you made  
6 this statement?

7 A. I was always scared.

8 Q. But you weren't so scared that you wouldn't come  
9 forward and tell the police officers what they wanted  
10 to know, correct?

11 A. At that time, yes, sir.

12 Q. Well, in the statement, do you recall the contents  
13 of the statement, or would you like an opportunity to  
14 review it?

15 A. I recall the statement.

16 Q. In the statement, you identified Terence as one of  
17 the individuals, correct?

18 A. Yes, sir.

19 Q. And you identified Terence Richardson as the  
20 gentleman who came up to the berm; is that correct?

21 A. Yes, sir.

22 Q. And the second individual, you identified as Coop?

23 A. Yes.

24 Q. And who is Coop?

25 A. It was a mix-up in the names. I did not know

1 Ferrone as well as I knew Terence.

2 Q. My question, ma'am, is did you identify Coop as  
3 the second individual?

4 A. I said looked like, looked like. That was for the  
5 third. It was three of them. It was for the third.  
6 Some of this is mixed up. This paper is mixed up, as  
7 I said. We supposed to have got this straight a long  
8 time ago. It's mixed up.

9 Q. So then your testimony today, ma'am, is that the  
10 officers wrote down something that's totally  
11 incorrect?

12 A. It's mixed up. It's the same thing.

13 Q. Well, in this statement, whether you believe it's  
14 correct or not -- well, strike that.

15 In this statement, did you also identify a  
16 third individual?

17 A. Yes, I did.

18 Q. What did you -- how did you identify him?

19 A. I identified the third individual short, medium  
20 brown with knotty hair, looked like little plastic or  
21 something on his head. That's what I identified the  
22 third one.

23 Q. As a matter of fact, you identified him as an  
24 unknown black male, early twenties, light skin, poppy  
25 eyes and knots, small dreads starting, skinny, taller

1 than T but shorter than Coop; is that correct?

2 A. If that's wrote down there like that, it's  
3 probably correct.

4 Q. Well, that's fairly specific, wouldn't you agree?

5 A. Yes, sir.

6 Q. And Coop Faltz, his mother is Brenda Turner, black  
7 male, early twenties, blue jeans, blue shirt, small  
8 dreadlocks --

9 THE COURT REPORTER: Excuse me, Mr. Gavin.  
10 Would you slow down, please?

11 MR. GAVIN: I was going too fast. I'm  
12 sorry.

13 THE COURT REPORTER: Could you repeat that,  
14 please?

15 THE COURT: I think that we're going to have  
16 to put a governor on you and Mr. Novak.

17 MR. GAVIN: I'm sorry.

18 THE COURT: Do you want to start that whole  
19 question over?

20 MR. GAVIN: I'll start that whole question.

21 THE COURT: If she got any of that, she gets  
22 an award.

23 BY MR. GAVIN:

24 Q. Coop Faltz, mother is Brenda Turner, black male,  
25 early twenties, blue jeans, blue shirt, small

1 dreadlocks, tall and muscular. Is that how you  
2 described Coop?

3 A. Yes, sir.

4 Q. Terence Richardson -- and that's on the same page,  
5 is it not, Ms. Newby, that you signed? Look on page 3  
6 and see if that's not correct.

7 A. No, sir.

8 Q. On page 2 of that statement, Ms. Newby, it says  
9 that you went to Dobie's and saw Terence looking wild,  
10 and he said a couple of things.

11 But you indicate at the top of page 3, which  
12 has your signature on it, that the other two, Coop and  
13 the other black male, were in a dark, medium-size car  
14 with nice rims in the parking lot.

15 Do you remember telling them that?

16 A. Yes, sir.

17 Q. Ma'am, that's the third statement. Well, you  
18 don't recall the night you did the first statement.  
19 So as far as you're concerned, that's the second  
20 statement.

21 Do you remember giving the fourth statement  
22 to Special Agent Ritchie seated, standing or sitting  
23 to my right?

24 A. Yes, sir.

25 Q. Do you recall when that was?

1 A. The third statement that I gave him? The first  
2 statement or the third one?

3 Q. Well, the first statement, you don't recall. The  
4 second statement is that statement that I handed to  
5 you, the first one I handed to you. The third  
6 statement would be the third one I handed to you.  
7 Actually, there's another statement in there dated  
8 May 4th, 1998.

9 Do you remember having a conversation with  
10 Special Agent Alfonza Moore?

11 A. No, sir, I don't recall.

12 Q. May 4th, 1998, same time you took a test for them?

13 MR. NOVAK: Judge, I object. Can we see you  
14 at the sidebar?

15 MR. GAVIN: I was just trying to refresh her  
16 recollection.

17 BY MR. GAVIN:

18 Q. Do you remember that date, ma'am?

19 A. Could you repeat the question?

20 Q. Do you remember having an interview with Alfonza  
21 Moore?

22 A. Alfonza Moore? I don't recall.

23 Q. Okay. Do you remember having an interview with  
24 Agent Ritchie on January 20th of 2000?

25 A. Yes, sir.

1 Q. Is that the time that you told him what you've  
2 told us today?

3 A. Yes, sir.

4 Q. Is that the first time, ma'am, that you implicated  
5 Terence Richardson?

6 A. No, sir.

7 Q. Is that the first time you implicated Ferrone  
8 Claiborne?

9 A. No, sir.

10 Q. Is there anywhere that Ferrone Claiborne's name  
11 appears in the April 26th statement?

12 A. There was a mix-up, as I said.

13 Q. Is there anywhere where it appears on the  
14 April 25th statement? And you don't recall the  
15 May 4th statement?

16 A. They did not get it correctly. It was a mistake,  
17 as I said.

18 Q. So you don't know whether or not you did not  
19 identify Ferrone Claiborne on May 4th, 1998, in front  
20 of Alfonza Moore?

21 A. Do I directly identify him? I talked to so many  
22 officers, I can't say. I can't say about what officer  
23 I talked with. I spoke with so many different  
24 officers.

25 Q. You say that Ferrone Claiborne that day was



1 wearing a blue shirt?

2 A. Yes, sir.

3 Q. What kind of shirt was it?

4 A. It was like a T-shirt.

5 Q. Long-sleeve T-shirt?

6 A. No.

7 Q. Was it tucked in?

8 A. I don't know if it was tucked in. He wore his  
9 clothes like a gangster like.

10 Q. You don't know if it was tucked in?

11 A. No, I can't say whether it was tucked in or not.

12 Q. Jeans, long jean shorts or were they blue jeans  
13 full length?

14 A. They were long jeans.

15 Q. I'm going to ask you one last question, if I  
16 could. CS-4, Mr. Novak showed that picture to you,  
17 didn't he? Where on this particular picture is this  
18 berm at?

19 A. You can't see it behind these bushes here. You  
20 can't see it right here. You have to be up top. It's  
21 behind here but a little farther over.

22 Q. That's the berm?

23 A. Yes, sir.

24 Q. Was it on this picture?

25 A. It's behind but a little farther. You can't see

1 it if you're looking at it like that.

2 Q. But is it back in here (indicating)?

3 A. Yes, sir.

4 Q. So it's right here?

5 A. I can't say exactly right there, but I know I saw  
6 it down inside of the brush.

7 Q. Well, can you mark on here where you saw it?

8 A. Can I mark on there?

9 Q. Yes, the general direction where you saw it.

10 A. Here, it's behind here (indicating).

11 Q. Well, why don't you mark that for me?

12 A. Up here somewhere, back down.

13 Q. Just put a circle for me.

14 A. (Witness complies.)

15 MR. GAVIN: Thank you. I don't have  
16 anything else, Judge.

17 THE COURT: All right. Anything else,  
18 Mr. Novak?

19 MR. NOVAK: No, sir.

20 THE COURT: All right. Thank you very much.  
21 You may step down. You may be excused.

22  
23 (Witness stood down.)

24  
25 MR. NOVAK: Judge, there was --

1 THE COURT: Do we need her?

2 MR. NOVAK: No. Stipulation No. 5.

3 THE COURT: All right.

4 MR. NOVAK: On April 25th 1998, Charles Coop

5 Faltz was in the custody of the Lawrenceville

6 Correctional Center in Lawrenceville, Virginia.

7 THE COURT: All right.

8 MR. NOVAK: Carlissa Ellis.

9  
10 CARLISSA L. ELLIS, a Witness, called by the  
11 Government, first being duly sworn, testified as  
12 follows:

13  
14 MR. NOVAK: May I proceed, Your Honor?

15 THE COURT: Please.

16  
17 DIRECT EXAMINATION

18 BY MR. NOVAK:

19 Q. Ma'am, do you want to tell us what your full name  
20 is?

21 A. Carlissa Louise Ellis.

22 Q. Ms. Ellis, how old are you?

23 A. I'm 29.

24 Q. Are you employed?

25 A. Yes, I am.

1 Q. What do you do for a living?

2 A. I work at Smithfield Packing Company. I'm an  
3 inspector.

4 Q. Can you keep your voice up a little bit?

5 A. Okay.

6 THE COURT: You might pull that microphone  
7 back towards you. There you are.

8 BY MR. NOVAK:

9 Q. Do you know the defendant, Terence Richardson?

10 A. Yes, I do.

11 Q. How do you know him?

12 A. We went to school together. I was a few years  
13 above him.

14 Q. Which school was that?

15 A. Sussex Central High School.

16 Q. Do you know the defendant, Ferrone Claiborne?

17 A. Yes, I do.

18 Q. How do you know him?

19 A. I've been with him occasionally at the school,  
20 also.

21 Q. Again, you're older than him as well?

22 A. Yes, sir.

23 Q. I want to take you back to the day the officer was  
24 killed on Saturday, April 25th, 1998, and ask you were  
25 you living in the Waverly Village Apartments back

1 then?

2 A. Yes, I was.

3 Q. You no longer live there; is that right?

4 A. No, I do not.

5 Q. As of the time that you had lived there -- well,  
6 how long had you lived there as of that time?

7 A. About a year.

8 Q. Now, you were not present when the officer -- when  
9 the shooting occurred; is that right?

10 A. No, I was not.

11 Q. You arrived shortly thereafter; is that right?

12 A. Shortly after that.

13 Q. In times and that year before that you had lived  
14 there, would you see Terence Richardson in the Waverly  
15 Village Apartments?

16 A. Occasionally, yes.

17 Q. Where would you -- if we could refer to Exhibit  
18 CS-3, where would you see Mr. Richardson? First of  
19 all, do you recognize that photograph?

20 A. Yes, I do.

21 Q. What is that a photograph of?

22 A. This is the Waverly Village Apartments.

23 Q. Okay. Where did you live back then?

24 A. About right there (indicating).

25 Q. Did you live close to Evette Newby?

1 A. Yes, I did, right below her.

2 Q. Now, is there a playground area?

3 A. Yes, it is, right here (indicating).

4 Q. Do you recognize that area?

5 A. Yes, I do.

6 Q. Is there also a green utility box there?

7 A. Yes, right there (indicating).

8 Q. Where, if anywhere, would you see Terence  
9 Richardson -- in the year when you would see him in  
10 the Waverly Village Apartments, where would you see  
11 him at?

12 A. Most times when I saw him, he was right at the  
13 green utility box.

14 Q. How often per week would see him there?

15 A. I don't know because I didn't really go out there  
16 that much. I probably saw him out there maybe once or  
17 twice a month maybe. I don't know exactly.

18 Q. Do you recall testifying in front of the grand  
19 jury in this case?

20 A. Yes, sir.

21 Q. Do you recall testifying that you would regularly  
22 see him in the playground area?

23 A. I can't say as to how many times a week it was,  
24 but I would regularly see him there.

25 Q. So it was pretty frequent; is that right?

1 A. Yeah.

2 Q. Would you see Ferrone Claiborne there?

3 A. I've seen him there once or twice, yes.

4 Q. Not as often as Mr. Richardson; is that right?

5 A. No, sir.

6 Q. Did you ever see either one of them engaged in  
7 drug transfers?

8 A. No, I can't say. I've never actually seen him  
9 sell drugs, no.

10 Q. You haven't seen the drugs themselves; is that  
11 right?

12 A. No, I haven't.

13 Q. What did you see that led you to believe that they  
14 might have been selling drugs?

15 MR. GAVIN: Objection to the leading  
16 question. I don't believe she said she saw it.

17 MR. NOVAK: She said she didn't see the  
18 drugs themselves.

19 THE COURT: Let's go back to square one.  
20 What time period are we talking about?

21 MR. NOVAK: She said she lived there in the  
22 year prior to the murder.

23 THE COURT: So you're talking about from --  
24 when did you move in?

25 THE WITNESS: I think I moved in in like

1 '97. I don't know the exact date.

2 THE COURT: What month?

3 THE WITNESS: August, I believe it was.

4 THE COURT: August of '97?

5 THE WITNESS: '96, August of '96.

6 THE COURT: You moved in in August of '96?

7 THE WITNESS: Yes.

8 THE COURT: The events we're talking about  
9 occurred -- the shooting of the officer was April of

10 '98. Did you live there the whole time?

11 THE WITNESS: Yes, I did.

12 THE COURT: All right. Now go ahead.

13 BY MR. NOVAK:

14 Q. When you would see Terence Richardson in the  
15 playground area, would you see people go up to him?

16 A. Yes. It would always be more than one person  
17 there.

18 Q. Would you see people go up to him and make  
19 exchanges with him, hand things to him and be handed  
20 things back?

21 A. I can't say because I never saw them exchange  
22 anything. So I can't say that he exchanged anything,  
23 but I have seen him make gestures like that. They  
24 would slap hands, you know, like they could be  
25 exchanging something, but I can't say that they



1 actually exchanged anything.

2 Q. Let me ask you this: When you testified in front  
3 of the grand jury, do you recall testifying that you  
4 would see people hand Mr. Claiborne and Mr. Richardson  
5 money and they would exchange something back?

6 A. I testified to the fact that I saw them make hand  
7 gestures, that they could -- that could be that. I  
8 didn't say -- I've never, ever seen them exchange  
9 anything.

10 Q. You testified you didn't actually see the drugs;  
11 is that right?

12 A. Yes.

13 Q. And you maintain that today; is that right?

14 A. I still maintain that.

15 Q. Did you see them exchanging things back and forth?  
16 You testified before that you saw them exchanging  
17 money; is that correct?

18 A. I seen them -- I've seen them make hand gestures.  
19 I've never seen them exchange the money, never.

20 Q. On these hand gestures that you observed, how  
21 often -- when you would see Terence Richardson out  
22 there, for example, how often would you see them  
23 making these hand gestures with other people?

24 A. Maybe two or three times, maybe once or twice,  
25 maybe two or three times. It depends.

1 THE COURT: Once or twice in the three-year  
2 period or once or twice a day or once a twice a week  
3 or what?

4 THE WITNESS: I mean --

5 THE COURT: I think he's trying to find out  
6 how often you saw whatever was going on go on out  
7 there when Mr. Richardson was out there. How  
8 frequently was it?

9 THE WITNESS: When I would see  
10 Mr. Richardson and people would come up to him, you  
11 know, I would see that, but I can't give you a time or  
12 number on it because I don't know. I didn't keep  
13 track of it.

14 THE COURT: Well, I understand that, but do  
15 you remember did this kind of thing happen or was he  
16 out there in that area more than once a month, less  
17 than once a month?

18 THE WITNESS: It was definitely more than  
19 once a month. It was probably more than once a month.  
20 I can't give you an exact number because I didn't keep  
21 track.

22 THE COURT: It was more than once a month?

23 THE WITNESS: Yeah.

24 THE COURT: For how many months? The whole  
25 time you were there or some lesser time?

1 THE WITNESS: It was periodically, off and  
2 on.

3 THE COURT: Off and on.

4 THE WITNESS: I didn't really -- like I say,  
5 it didn't really faze me any. It was not something I  
6 put into memory as to count how many days it was or  
7 anything. I would see him. I would speak and go on  
8 about my business.

9 BY MR. NOVAK:

10 Q. Let me ask you this: Would you allow your  
11 children to go over in that area where they were?

12 A. No.

13 Q. Why not?

14 A. I'm an overprotective mother. I like to keep my  
15 children where I can see them so that I'll know  
16 exactly what they're doing.

17 Q. That's a playground over there; is that right?

18 A. Yes.

19 Q. Any particular reason why as a mother you didn't  
20 want your kids to go to a playground where they were  
21 hanging out at?

22 A. I wasn't -- I don't like the fact that the older  
23 people were there, you know, and they were drinking  
24 and doing whatever they were doing. And I did not  
25 like that fact.

1 Q. Do you recall -- so according to you now, your  
2 testimony is that you did not know that they were  
3 selling drugs; is that right?

4 A. I'm still maintaining I cannot say definitely that  
5 they were selling drugs because I never saw the  
6 exchanging.

7 Q. Do you recall testifying -- referring to page --  
8 in front of the grand jury on December 22nd of 1999,  
9 on page 9, line 18, I asked you, "There is no doubt in  
10 your mind that -- what was going on; is that right?"

11 You answered, "No, I knew pretty much what  
12 was going on."

13 Do you remember saying that?

14 A. I pretty much know what's going on, but I can't --  
15 like I said, I can't tell you 100 percent that that's  
16 what it was because I never actually saw the exchange.  
17 But I mean...

18 Q. Everything they did was consistent with that; is  
19 that right?

20 A. Yeah, it was consistent.

21 Q. Can you recall testifying that cars would come up  
22 and people would get out and walk over to them?

23 A. Oh, yes.

24 Q. And they would make the hand gestures; is that  
25 right?

1 A. Yes, sir.

2 Q. And they would get back in the car and leave; is  
3 that right?

4 A. Yes.

5 Q. You knew what they were doing; is that right?

6 A. Yes.

7 MR. BOATWRIGHT: Objection. He's asked  
8 about five leading questions in a row.

9 THE COURT: Well, under the rule, he's  
10 permitted to now. So the objection is overruled.

11 MR. NOVAK: No further questions, Judge.

12

13 CROSS-EXAMINATION

14 BY MR. BOATWRIGHT:

15 Q. Good afternoon, Ms. Ellis.

16 A. Good afternoon.

17 Q. You don't know me, do you?

18 A. No.

19 Q. All right. I'm John Boatwright. I represent  
20 Mr. Richardson.

21 Ma'am, when you testified in front of the  
22 grand jury, one of the things that you told Mr. Novak  
23 and the grand jurors was that most often when you  
24 would see Terence out there it was at night, correct?

25 A. Yes.

1 Q. So and when you were seeing them, it sounds to me  
2 that what you're saying is it's as if you're passing  
3 by when you're doing this; is that right?

4 A. Yes.

5 Q. You lived at the far end of the complex from the  
6 playground; is that right?

7 A. Yes, I did.

8 Q. I take it you weren't standing at your window just  
9 looking out there at night --

10 A. No, sir.

11 Q. -- taking a -- making a list of what was going on,  
12 am I right?

13 A. That's right.

14 Q. You saw Terence out there at times when there was  
15 nothing unusual about what he was doing, correct?

16 A. Yes, I did.

17 Q. There were times when you got there and you just  
18 kind of there's Terence and thought no more of it,  
19 correct?

20 A. Yes.

21 Q. Mr. Richardson never tried to sell you any drugs,  
22 correct?

23 A. No.

24 Q. Or any of your friends?

25 A. No.

1 Q. Let me make sure I covered everything that I  
2 wanted to cover, if you will just be patient with me  
3 for a second.

4 You told Mr. Novak that while you were  
5 testifying in front of the grand jury you never saw  
6 drugs with your own eyes transfer from one person to  
7 another, correct?

8 A. Correct.

9 Q. You never saw money transfer from one person to  
10 another with your own eyes, correct?

11 A. Correct.

12 Q. And this was maybe about once a week or so,  
13 correct?

14 A. Yeah.

15 MR. BOATWRIGHT: I don't have any other  
16 questions. Thank you so much.

17 MR. GAVIN: Judge, we don't have any  
18 questions for Ms. Ellis?

19 THE COURT: Any redirect?

20 MR. NOVAK: Judge, yes, just one.

21

22 REDIRECT EXAMINATION

23 BY MR. NOVAK:

24 Q. Ms. Ellis, you testified in front of the grand  
25 jury that you did see money being transferred; isn't

1 that right?

2 A. No, I've always said that I'd seen hand gestures.

3 THE COURT: He'll give it to you when he  
4 asks the question, I assume.

5 MR. GAVIN: Judge, I object anyway. I think  
6 it was asked and answered. I don't think it's  
7 redirect of anything --

8 MR. NOVAK: I'll just withdraw the question.

9 THE COURT: It is permissible redirect.

10 MR. NOVAK: I'll just withdraw it, Judge.

11 THE COURT: Now that you've asked it, do you  
12 agree she did it or not? I think the way we have to  
13 deal with it now in fairness is whether she said it or  
14 didn't say it.

15 MR. NOVAK: It was actually two different  
16 things on two different pages. One is, "I never  
17 actually saw the money transfers."

18 MR. EVERHART: Where are you, Mr. Novak?

19 MR. NOVAK: I'm sorry. I'm referring page  
20 7, line 16 and 17. Then I am also referring to page  
21 9, line 15 and 16 where I said, "Did you see hand  
22 gestures as if a purchase was occurring?" The answer  
23 was, "Yes."

24 THE COURT: That's not impeaching because  
25 that's what she testified to here.



1 MR. NOVAK: I withdraw the question. I have  
2 no further questions of Ms. Ellis.

3 THE COURT: Can she be excused?

4 MR. NOVAK: Yes, please.

5 MR. BOATWRIGHT: Yes, sir.

6 THE COURT: Thank you for being with us  
7 Ms. Ellis. You may be excused and released from your  
8 subpoena and may go about your business.

9 THE WITNESS: Thank you.

10  
11 (Witness stood down.)

12 MR. NOVAK: Michael Winfield.

13 THE COURT: Who's that?

14 MR. NOVAK: Michael Winfield.

15  
16  
17 MICHAEL WINFIELD, a Witness, called by the  
18 Government, first being duly sworn, testified as  
19 follows:

20  
21 MR. NOVAK: May I proceed, Your Honor?

22 THE COURT: Please.

23 BY MR. NOVAK:

24 Q. Sir, would you tell the ladies and gentlemen what  
25 your name is?

1 A. Michael Winfield.

2 Q. Mr. Winfield, how old are you?

3 A. Thirty.

4 Q. You're in jail right now; is that right?

5 A. Right.

6 Q. In state custody?

7 A. Yes.

8 Q. For what type of offense?

9 A. Shoplifting and drug distribution.

10 Q. Felony drug conviction?

11 A. Yes.

12 Q. When did you go into custody?

13 A. At first, I was in October '98. I made bond, and

14 I got locked back up in February of '99.

15 Q. You're serving a sentence for how long?

16 A. Three years.

17 Q. When are you scheduled to be released?

18 A. September the 10th of this year.

19 Q. Have you received any type of promises from the  
20 government for any type of help on your sentence?

21 A. No, sir.

22 Q. You'll get nothing out of this; is that right?

23 A. Nothing but immunity for my testimony.

24 Q. You were told that if you told the truth about  
25 your drug dealing, you would not get any further

1 prosecution in addition to your state prosecution; is  
2 that right?

3 A. True.

4 Q. Now, do you have any other convictions?

5 A. No.

6 Q. You have two shoplifting convictions?

7 A. Right, and drugs.

8 Q. But no more for drugs, is that right?

9 THE COURT: Well, he testified earlier he  
10 was in jail for shoplifting and felony drug  
11 distribution.

12 MR. NOVAK: I'm sorry, Judge. I missed  
13 that.

14 BY MR. NOVAK:

15 Q. Where did you grow up at, sir?

16 A. In Sussex.

17 Q. Any particular town?

18 A. Waverly.

19 Q. Did you live in -- back in 1998, did you live in  
20 Waverly, or did you live outside of Waverly?

21 A. Outside of town.

22 Q. How far outside of Waverly?

23 A. About eight miles.

24 Q. Now, when did you -- you sold crack cocaine; is  
25 that right?

1 A. True.

2 Q. When was that, that you started selling crack  
3 cocaine?

4 A. About '95.

5 Q. And you sold that until you were arrested in  
6 October of '98?

7 A. Yes.

8 Q. Where did you sell drugs from?

9 A. Off of 35 where I lived at.

10 Q. 35, referring to Route 35?

11 A. Right.

12 Q. There's a town out there called Homeville; is that  
13 right?

14 A. Right.

15 Q. That's where your house was?

16 A. Right.

17 Q. So you were selling drugs out of your house?

18 A. Right, outside in the yard.

19 Q. Did you have a cousin across the street from you?

20 A. Yes.

21 Q. What was his name?

22 A. Dwight.

23 Q. Was he also selling drugs there, too?

24 A. Yes.

25 Q. Do you know the defendant, Terence Richardson?

1 A. Yes.

2 Q. How do you know him?

3 A. We went to high school together.

4 Q. Who's older?

5 A. I am.

6 Q. Have you ever supplied him with crack cocaine?

7 A. Yes.

8 Q. When was it that you first started supplying him  
9 with crack cocaine?

10 A. He would come back to the house about '96 or '97.

11 Q. That went on until when?

12 A. Until about the end of '97, end of '98.

13 Q. How many times did you supply him with crack  
14 cocaine?

15 A. Probably about 10 or 12.

16 Q. Where on these occasions that you supplied him  
17 with crack cocaine, where did they -- did they always  
18 occur at your house or somewhere else?

19 A. Always at the house, yes.

20 Q. What kind of quantities of crack cocaine did you  
21 supply him with on those occasions?

22 A. About \$20 worth to \$50 worth.

23 Q. It was always crack; is that right?

24 A. Right.

25 Q. Would Mr. Richardson come alone, or he would come

1 with other people?

2 A. He was always with someone.

3 Q. Do you know some of the other people that he came  
4 with?

5 A. Mostly be with one of the Williams boys.

6 Q. Do you know a fellow called Bootie?

7 A. Yes.

8 Q. Is he also one of the Williams brothers?

9 A. Yes.

10 Q. You know they were selling drugs on Dogwood  
11 Street; is that right?

12 A. Yes.

13 Q. Did you ever get high with the defendant,  
14 Mr. Richardson?

15 A. We used to smoke blunt together.

16 Q. Do you want to tell us what a "blunt" is?

17 A. It's where you take a cigar, take all the tobacco  
18 out and replace it with weed.

19 Q. "Weed," referring to marijuana?

20 A. Yes, sir, or cocaine and roll it back up.

21 Q. What do you do then?

22 A. Smoke it.

23 Q. Do you know the defendant, Ferrone Claiborne?

24 A. Yes.

25 Q. How do you know him?

1 A. Well, his family -- his uncle married my aunt. So  
2 I've been knowing the Claiborne family for a long  
3 time.

4 Q. So you've been knowing him for a while; is that  
5 right?

6 A. Yes.

7 Q. You have some kind of distant relationship going  
8 on?

9 A. Yes.

10 Q. All right. Have you ever supplied him with crack  
11 cocaine?

12 A. He was going to the house on occasions.

13 Q. On how many occasions do you believe that you  
14 supplied him with crack cocaine?

15 A. About ten.

16 Q. When did you start supplying him with crack  
17 cocaine?

18 A. I guess he started coming to the house around  
19 about 1997.

20 Q. Would it be fair to say that the Waverly dealers  
21 didn't like to travel out to your place unless they  
22 couldn't get anything in downtown Waverly?

23 MR. HUYOUNG: Judge, I would object to that  
24 as far as "Waverly dealers."

25 THE COURT: Just a minute, please.

1 MR. HUYOUNG: Judge, I would object to that  
2 as far as "Waverly dealers."

3 MR. GAVIN: Same objection. He's  
4 characterized the people as dealers that we don't know  
5 who he's talking about.

6 THE COURT: Sustained.

7 BY MR. NOVAK:

8 Q. Let's go back to Mr. Claiborne, then. Do you  
9 recall when the police officer was murdered that day  
10 down in Waverly?

11 A. Yes.

12 Q. Pretty big news down in your parts; is that right?

13 A. Yes.

14 Q. Did you have an occasion to see Mr. Claiborne the  
15 night before?

16 A. Yes.

17 Q. Where did you see him at?

18 A. He was at the house.

19 Q. Do you know did he come alone or with somebody  
20 else?

21 A. He was with someone.

22 Q. I'm sorry?

23 A. He was with someone.

24 Q. Do you know who he came with?

25 A. He just said it was one of his cousins from



1 Richmond or somewhere.

2 Q. When he would come in the past on those other ten  
3 or so occasions, would he normally come alone or with  
4 somebody else?

5 A. It would be with a guy named Pumpkin or some girls  
6 that he knew. He would never drive out there.

7 Q. Going back to that Friday night before the murder,  
8 can you tell us what happened when Mr. Claiborne came  
9 with the person he said was his cousin? What  
10 occurred?

11 A. He just was standing out there. We talked. He  
12 brought a little piece of crack, and we were out in  
13 the yard and just smoked and drank.

14 Q. Did you sell him any type of crack that night?

15 A. It was about like a 20.

16 Q. Did he buy a 20?

17 A. Yes.

18 Q. Twenty dollars worth, is that right?

19 A. Yes.

20 Q. Approximately how much is \$20 worth of crack?  
21 What does that come out to in the world of crack?

22 A. Not a whole lot. About two-tenths of a gram.

23 Q. Basically, that's a rock of crack?

24 A. Yes.

25 Q. That would be like an individual use; is that

1 right?

2 A. Yes.

3 Q. You didn't see him on the day of the murder; is  
4 that right?

5 A. No, sir.

6 Q. Did you have an occasion to talk to Ferrone  
7 Claiborne on the next day, Sunday?

8 A. Yes, he came to the house.

9 Q. Did he tell you -- what did y'all talk about?

10 A. He wanted to know was I doing anything, referring  
11 to drugs.

12 Q. What did you say?

13 A. I told him yes.

14 Q. Did you offer to sell him a quantity?

15 A. Yes.

16 Q. How much?

17 A. He said he wanted a 50.

18 Q. How much is a 50 in the world of crack?

19 A. It's like a gram.

20 Q. How much did you -- well, a 50 is \$50 worth?

21 A. Yes.

22 Q. Did he ever come over to pick up the drugs?

23 A. No, he never came.

24 Q. Now, after you got arrested in October of 1998,

25 were you ever in jail with him?

1 A. Yes, I was locked up in the cell with him.

2 Q. At any point, did you ask him where he was at the  
3 time of the murder?

4 A. I didn't ask him, but he and a guy was discussing  
5 it. And he said he didn't want to talk about it. He  
6 said he wasn't around. He said he was at Hopewell at  
7 his sister's house or something, and we left it at  
8 that.

9 Q. All right. How far away is Hopewell from Waverly?

10 A. Probably about 30 minutes.

11 MR. NOVAK: Judge, I don't have any more  
12 questions of Mr. Winfield.

13 THE COURT: All right.

14

15 CROSS-EXAMINATION

16 BY MR. HUYOUNG:

17 Q. Good afternoon, Mr. Winfield. Basically, you and  
18 Terence Richardson smoked crack cocaine together,  
19 correct?

20 A. On occasion.

21 Q. He's a friend of yours?

22 A. Yes.

23 Q. Then you said that, I guess, during your career  
24 from 1996 to 1997 and then again in 1999, is that  
25 correct?

1 A. No.

2 THE COURT: What are you talking about?

3 That's a very indefinite question.

4 MR. HUYOUNG: I'll rephrase it.

5 THE COURT: It gets fixed with a subject and  
6 a predicate and all the other things that make up a  
7 question.

8 MR. HUYOUNG: My wife's an English teacher.  
9 I should know better.

10 BY MR. HUYOUNG:

11 Q. You stated that from 1996 to 1997 you were  
12 involved in the distribution of crack cocaine?

13 A. Up to '98.

14 Q. I just wanted to know the time period. And during  
15 that time period, you sold crack cocaine to Terence  
16 Richardson approximately you said ten?

17 A. Between 10 and 12.

18 Q. And the amounts would be like 20?

19 A. Twenty to 50, yes.

20 Q. And that's consistent with personal use, correct?

21 A. Yes.

22 MR. HUYOUNG: No further questions, Your  
23 Honor.

24

25 CROSS-EXAMINATION

1 BY MR. GAVIN:

2 Q. Good afternoon, Mr. Winfield.

3 You said that on about ten occasions Ferrone  
4 Claiborne came to your house at the intersection of 35  
5 and 40; is that right?

6 A. Yes, about a mile and a half.

7 Q. Towards Courtland or back towards --

8 A. Towards Courtland.

9 Q. And you sold him 20 to 50, nothing big; is that  
10 right?

11 A. True.

12 Q. Twenty is consistent with personal use, right?

13 A. True.

14 Q. Somebody smoking a whole lot of crack, 50 would be  
15 consistent with personal use, correct?

16 A. Fifty is not a whole lot for a smoker.

17 Q. Fifty would not be a whole lot for a smoker?

18 A. The way we smoke it in blunts, it's like three  
19 blunts.

20 Q. That's just three blunts? So 50 would be three  
21 blunts?

22 A. Something like three, four blunts.

23 Q. Might get you through a day, might get you through  
24 two days?

25 A. Depends on how you want to smoke it.

1 Q. Might get you through an afternoon?

2 A. True. It depends on how you use it.

3 Q. And you characterized to the grand jury, as I  
4 recall, Mr. Claiborne to be a user; is that correct?

5 A. I never known him to deal, yes.

6 MR. GAVIN: I don't have anything else.

7 THE COURT: Anything else?

8 MR. NOVAK: No, Judge.

9 THE COURT: All right. You may step down.

10

11 (Witness stood down.)

12

13 MR. NOVAK: Special Agent Huddle.

14

15 JAMES A. HUDDLE, a Witness, called by the  
16 Government, first being duly sworn, testified as  
17 follows:

18

19 MR. NOVAK: May I proceed, Your Honor?

20

THE COURT: Please.

21

22 DIRECT EXAMINATION

23 BY MR. NOVAK:

24 Q. Sir, do you want to introduce yourself to the  
25 ladies and gentlemen of the jury?

1 A. James A. Huddle. I'm a member of the Virginia  
2 State Police Bureau of Criminal Investigations,  
3 currently assigned to the Violent Crimes Unit in  
4 Chesapeake, Virginia.

5 Q. How long have you been a -- you're actually a  
6 senior special agent?

7 A. Yes, sir, I am.

8 Q. How long have you been a special agent with the  
9 State Police?

10 A. I've been with the State Police since 1978. I  
11 entered police work in 1964.

12 Q. Now, I want to direct your attention back to April  
13 of 1998. You were working as a member of the Virginia  
14 State Police back then?

15 A. Yes, sir.

16 Q. Were you assigned to assist in the investigation  
17 into the murder of Allen Gibson on April the 25th,  
18 1998?

19 A. Yes, sir.

20 Q. I want to direct your attention to the next day  
21 after the murder, Sunday, April the 26th, at  
22 approximately 4:30 p.m.

23 Did you have an occasion to interview the  
24 defendant, Terence Richardson?

25 A. Yes, I did.

1 Q. Where is it that you had an occasion to interview  
2 the defendant at?

3 A. The Waverly Police Department in Waverly,  
4 Virginia.

5 Q. He was arrested before -- you weren't present at  
6 the arrest; is that right?

7 A. No, I was not.

8 Q. Who was the person that brought him to you?

9 A. I know him has Mo Williams. He's a chief deputy  
10 for Sussex County Sheriff's Department.

11 Q. He brought him to you at approximately 4:30 p.m.?

12 A. Yes, he did.

13 Q. At the time that he brought him to you, did Deputy  
14 Williams have an occasion to read the defendant his  
15 Miranda rights?

16 A. Yes, sir.

17 Q. Did the defendant agree to make a statement?

18 A. Yes, he did.

19 Q. You ended up taking the statement, however; is  
20 that correct?

21 A. It was an interview.

22 Q. An interview?

23 A. Yes.

24 MR. NOVAK: Now, Your Honor, may I show the  
25 witness Exhibit IN-1, please?



1 BY MR. NOVAK:

2 Q. Before I actually show you that exhibit, let me  
3 ask you this: Do you recall --

4 MR. NOVAK: May we show the witness on the  
5 monitor Exhibit P-2A and then B?

6 BY MR. NOVAK:

7 Q. Do you recognize that person?

8 A. Yes, I do.

9 Q. Who's that?

10 A. That's Terence Richardson.

11 Q. Is that the way he looked at the time you  
12 interviewed him?

13 A. Correct, it is.

14 Q. I show you B as well.

15 A. Yes.

16 MR. NOVAK: Judge, I think I've already  
17 moved to admit P-2A and B. If I haven't, I move to do  
18 that.

19 THE COURT: You have.

20 BY MR. NOVAK:

21 Q. Now, at the time, did you have an occasion to  
22 note -- you did an interview; is that right?

23 A. Yes.

24 Q. Which was eventually codified into a report; is  
25 that correct?

1 A. Correct.

2 Q. Is that what Exhibit IN-1 is?

3 A. Correct.

4 Q. Did you have an occasion to note what his height  
5 was at the time?

6 A. Yes, I did.

7 Q. What was that?

8 A. In my rough notes, I indicated that his height was  
9 5'8". His weight was 150 pounds and that he had black  
10 hair and brown eyes.

11 Q. Now, thereafter, did you then ask Mr. Richardson  
12 where he was at the time of the murder, essentially?

13 A. Yes, I did.

14 Q. Did you then interview him and write down what it  
15 is that he said?

16 A. Yes.

17 Q. Are the results of that within Exhibit IN-1?

18 A. Correct.

19 Q. Could you tell the ladies and gentlemen what it is  
20 that he told you about the day of the murder?

21 A. He stated that he was at Shawn Wooden's house and  
22 that he had been there for approximately a week, but  
23 on this particular night, the night the police officer  
24 was shot, he was there all night.

25 He stated that he awoke approximately

1 nine a.m. as he was sleeping on the sofa. He got up  
2 and went to the bathroom, and when he returned,  
3 Shawn's children were in the room watching cartoons.

4 Richardson stated at approximately  
5 ten o'clock Joe Mack came over and had a conversation  
6 with Shawn and then left. He stated Joe Mack's  
7 girlfriend Nuke called later looking for Joe Mack and  
8 told them that on that time the police officer had  
9 been shot.

10 Richardson also added that later on Joe Mack  
11 came back over to the house and called his girlfriend  
12 to the phone -- on the phone, correction. Terence  
13 stated that he and Shawn left Shawn's residence  
14 between one p.m. and two p.m. on their way to his  
15 grandmother's house.

16 He stated they stopped by Dobie's to get a  
17 cold beer, and from there, they rode to the  
18 grandmother's house and drank a cold beer on her front  
19 porch. He stated from there they rode their bicycles  
20 to the village, which is a community in Waverly and  
21 arrived at approximately three p.m.

22 Richardson went on to state that when he is  
23 at his father's house where he lives close to the  
24 village, he usually doesn't get up until 12 noon or  
25 1:00 p.m. But when he is at someone else's home, he

1 gets up when they do.

2 He stated the reason he was staying with  
3 Shawn was because Shawn was his nigger, and he just  
4 wanted to hang out with him for a while.

5 Q. By the way, that's his language; is that correct?

6 A. That's his language, yes sir.

7 Richardson went on to relate that he doesn't  
8 work, but he does obtain finances from his mother, his  
9 grandmother and his uncle. Therefore, why should he  
10 work.

11 Q. Is there one more paragraph, then?

12 A. Yes. Richardson went on to relate that he  
13 sometimes keeps a T-shirt which he uses to clean his  
14 shoes and the stereo in his house.

15 He states he has not worn that T-shirt in a  
16 while and probably hasn't used it in a while because  
17 he hasn't been to his house in a week. Richardson  
18 would ask if he would --

19 Q. All right. Let me ask you this, Agent Huddle.  
20 Was that the -- that report then fairly and accurately  
21 represents the conversation you had with

22 Mr. Richardson?

23 A. There's two items or three items that were not  
24 dictated that were taken down in my rough notes.

25 Q. They refer to what?

1 A. We were talking about the possibility of his  
2 fingerprints being on the murder weapon, and he stated  
3 that the police already had his fingerprints and that  
4 we would not find them on the gun.

5 Q. Did he say why?

6 A. He went on to say that -- and I can only assume.

7 Q. Don't assume. Just say what he said.

8 A. He said that the chief of police picked up the gun  
9 and waved it around and that he had heard that -- he  
10 had heard -- he had not heard about who had done it,  
11 but he had heard that the police officer had committed  
12 suicide.

13 MR. NOVAK: I have no further questions of  
14 Agent Huddle.

15  
16 CROSS-EXAMINATION

17 BY MR. HUYOUNG:

18 Q. Investigator Huddle, when you took the statement  
19 from the defendant, was it recorded by any type of  
20 tape mechanism?

21 A. No, sir, it was not.

22 Q. You just asked what he did, and he gave you the  
23 statement. He voluntarily gave the statement to you?

24 A. Yes.

25 Q. In regards to the two items, I believe, that you

1 refer to in your rough notes regarding this report?

2 A. Yes.

3 Q. He basically said you weren't going to be able to  
4 find any fingerprints on the gun?

5 A. That's correct.

6 Q. And he never said that he was there during the  
7 morning of that -- of the incident, correct? He never  
8 said he was there that morning of the incident?

9 A. At the murder scene?

10 Q. Right. Other than in the afternoon, according to  
11 your statement?

12 A. No.

13 Q. And he told you about the T-shirt? Right here in  
14 the statement, he said this is where my T-shirt will  
15 be, told you where it was, and that's where you found  
16 it? Did you go find the T-shirt?

17 A. I think we had found the T-shirt prior to me  
18 asking him about the T-shirt.

19 Q. Okay. But he told you about it?

20 A. Yes, he did.

21 Q. He didn't try to hide it or anything?

22 A. No.

23 Q. And basically he said he used -- he had it there  
24 for a while and used it to clean his shoes?

25 A. Correct.

1 MR. HUYOUNG: No further questions, Your  
2 Honor. Thank you.

3 MR. GAVIN: No questions, Your Honor.

4 MR. NOVAK: No redirect.

5 THE COURT: All right. You may be -- can he  
6 be excused permanently?

7 MR. NOVAK: Yes, sir.

8 THE COURT: All right. Agent Huddle, thank  
9 you for being with us and giving us your evidence.  
10 You're permanently excused.

11 (Witness stood down.)  
12

13 MR. NOVAK: Agent Ritchie. Judge, may I  
14 speak to defense counsel for one moment before we  
15 begin?  
16

17 THE COURT: Sure.

18 (Discussion off the record.)  
19

20 ROBERT B. RITCHIE, JR., a Witness, called by the  
21 Government, first being duly sworn, testified as  
22 follows:  
23

24 MR. NOVAK: May I proceed, Your Honor?  
25

1 THE COURT: Please.

2  
3 DIRECT EXAMINATION

4 BY MR. NOVAK:

5 Q. Sir, do you want to introduce yourself to the  
6 ladies and gentlemen?

7 A. Sure. My name is Robert B. Ritchie, Jr. I'm a  
8 special agent for the FBI.

9 Q. Where are you assigned to, sir?

10 A. Richmond Field Division.

11 Q. How long have you been assigned to the Richmond  
12 Field Division?

13 A. Two years.

14 Q. What did you do before you were an FBI agent?

15 A. I was a police officer in the Commonwealth of  
16 Massachusetts.

17 Q. For how many years?

18 A. Ten years total.

19 Q. Did you also serve in the U.S. Coast Guard before  
20 that?

21 A. Yes, I did, five years.

22 Q. Law enforcement capacity?

23 A. Yes, sir.

24 Q. You are the co-case agent for the federal  
25 investigation, along with Special Agent Michael



1 Talbert with the ATF; is that right?

2 A. Yes, I am.

3 Q. When was it that you started your investigation  
4 into the murder of Officer Allen Gibson?

5 A. December of 1999.

6 Q. Did you conduct an investigation that was in  
7 connection with the Sussex County investigation, or  
8 did you conduct an independent investigation?

9 A. The federal investigation was an independent  
10 investigation.

11 Q. Now, as part of that investigation, did you have  
12 an opportunity to interview the defendant, Terence  
13 Richardson, on October 26th of the year 2000?

14 A. Yes, I did.

15 Q. At that time, he no longer had an attorney; is  
16 that right?

17 A. That's correct.

18 Q. And you visited him at the Powhatan Correctional  
19 Facility?

20 A. Deep Meadows Correctional Facility in Powhatan.

21 Q. At that time, did you have an occasion -- first of  
22 all, did you read him his rights before you asked him  
23 to give you his statement?

24 A. Yes, I did.

25 Q. Did he agree to tell you what he knew about what

1 he was on the day of April the 25th, 1998?

2 A. Yes, he did.

3 Q. Did you make a report of your interview with  
4 Mr. Richardson?

5 A. Yes, I did.

6 MR. NOVAK: If I could show the witness  
7 IN-2, please?

8 THE CLERK: IN what, Mr. Novak?

9 MR. NOVAK: IN-2.

10 BY MR. NOVAK:

11 Q. Now, Agent Ritchie, let me ask you first of all do  
12 you recognize IN-2?

13 A. Yes, sir.

14 Q. What is IN-2?

15 A. That's an FBI 302.

16 Q. Which means what?

17 A. That's our form that we use to write reports with  
18 for interviews.

19 Q. At the time you interviewed Mr. Richardson, you  
20 had access to the materials from the state  
21 investigation; is that right?

22 A. That's correct.

23 Q. And so you knew some of the things to ask him; is  
24 that right?

25 A. Yes, sir.

1 Q. Including you had access to Agent Huddle's  
2 statement?

3 A. Yes, I did.

4 Q. At that point, did you interview him about what he  
5 said where he was on April the 25th of 1998?

6 A. Yes, I did.

7 Q. If you can go down to the part where he starts  
8 telling you about where he was, I believe in the first  
9 page, where it says, "Richardson initially stated,"  
10 can you read to the jury what it is that he told you  
11 about his whereabouts and his activities on that time?

12 THE COURT: Have you-all agreed that he  
13 can't remember what he said, what Mr. Richardson said  
14 without reading what's in the statements? If he can  
15 testify from his memory, that's what he ought to do.

16 If he can't, if he reads the memo and it  
17 refreshes his recollection, then he can testify, and  
18 then if he doesn't, he can read from the memo as past  
19 recollection reported. But we haven't gotten to that  
20 stage yet.

21 MR. NOVAK: Judge, I don't think they are  
22 objecting. That's one of the reasons why I'm doing it  
23 this way.

24 THE COURT: Well, that's what I want to  
25 know. That's what I'm asking.

1 Are you-all agreeable that in fact this is  
2 an acceptable procedure?

3 MR. BOATWRIGHT: I think to the extent that  
4 he can remember it from his memory, he should state  
5 from his memory. If he needs it, then he can refer to  
6 it, but the reason I object to reading is because --

7 THE COURT: Because I said something about  
8 it?

9 MR. BOATWRIGHT: Well, that helped. That  
10 helped, but also, I think some of the words that are  
11 used are characterizations and perhaps not unfair  
12 words but characterizations all the same that  
13 Mr. Ritchie arrived at, and there's one coming in that  
14 first sentence.

15 THE COURT: All right.

16 MR. NOVAK: All right.

17 THE COURT: We'll do it that way.

18 BY MR. NOVAK:

19 Q. Well, let me ask you this --

20 A. Hold on a second. You do not want me to read from  
21 this; is that correct?

22 THE COURT: Not yet. I can understand how  
23 that exchange may have been confusing.

24 BY MR. NOVAK:

25 Q. Let me ask you this: Would it be fair to say that

1 during the course of this investigation you  
2 interviewed well over 100 witnesses?

3 A. Easily.

4 Q. And you've written reports on all of them; is that  
5 right?

6 A. That's correct.

7 Q. Do you have -- why do you write reports, by the  
8 way?

9 A. Because it's an accurate recording of what was  
10 said in that interview, and I could not possibly  
11 remember everyone that I interviewed or what they said  
12 to me.

13 Q. Off the top of your head, are you able to remember  
14 everything that Terence Richardson told you that day?

15 A. No.

16 Q. Is it necessary for you to refer to your report  
17 for you to recall the details of what it is that he  
18 told you?

19 A. Yes, sir.

20 MR. NOVAK: Judge, I would ask --

21 THE COURT: Then read it to yourself and see  
22 if that refreshes your recollection. Read the parts  
23 when you interviewed him.

24 What you're asking him about are statements  
25 he made about where he was, right?

1 MR. NOVAK: Well, I'll get you that if I can  
2 go forward.

3 THE COURT: You mean you'd rather question  
4 the witness than allow me to do it?

5 MR. NOVAK: I thought I did that in a subtle  
6 fashion.

7 THE COURT: I always liked to have judges  
8 leave my witnesses alone, too.

9 MR. NOVAK: It's 20 after 5:00. I'm just  
10 trying to get the answers, Judge. That's all I'm  
11 trying to do here.

12 BY MR. NOVAK:

13 Q. All right. Let's try this again.

14 When you first interviewed Mr. Richardson,  
15 did you ask him about where he was in the week  
16 preceding the murder?

17 A. Yes, I did.

18 Q. What did he tell you?

19 A. He told me that he was staying at Shawn Wooden's  
20 trailer, and then he recanted that and said --

21 MR. BOATWRIGHT: I'm going to object to  
22 recanting. If he augmented or supplements, that's one  
23 thing, but recanting is a characterization, Judge.

24 THE COURT: So is augmenting and  
25 supplementing, I think.

1 MR. BOATWRIGHT: Well --

2 THE COURT: He said something else.

3 MR. BOATWRIGHT: Right.

4 THE COURT: The objection is overruled.

5 That was a fair answer.

6 THE WITNESS: He changed his answer and said  
7 that on April 23rd he spent the evening at home, which  
8 would have been Thursday.

9 BY MR. NOVAK:

10 Q. Now, by the way, if we could refer to Exhibit CH-4  
11 while we're doing this. That's the big one there.

12 Now, do you recognize CH-4?

13 A. Yes, sir.

14 Q. Does CH-4 fairly and accurately represent the  
15 layout of certain locations within the City of  
16 Waverly?

17 A. Yes.

18 Q. You had that prepared; is that right?

19 A. Yes.

20 MR. NOVAK: Judge, if I haven't moved for  
21 admission of CH-4, I move to do that.

22 THE COURT: It's admitted.

23 (Government's Exhibit CH-4 is admitted into  
24 evidence.)  
25

1

2 BY MR. NOVAK:

3 Q. Now, on there are various photographs of different  
4 places; is that right?

5 A. That's correct.

6 Q. Is the residence of the defendant where he lived  
7 with his father depicted on CH-4?

8 A. Yes, it is.

9 Q. Could you show us where that is?

10 A. That would be this photo of the Westbrook house,  
11 and if you follow the red arrow, that is located on  
12 Dogwood Avenue.13 Q. Where is Dogwood Avenue, if you could show the  
14 jury, in relation to the Waverly Village Apartments,  
15 which are also depicted?16 A. This road here is Dogwood Avenue, and if you  
17 follow Dogwood Avenue down onto Middle Street, onto  
18 Amherst Lane, this is the Waverly Village Apartments  
19 right here (indicating).20 Q. Now, so that's what he said, according to you, he  
21 just said he spent Thursday night at that location  
22 that's depicted on there; is that right?

23 A. That's correct.

24 Q. Did he tell you what he did when he woke up on  
25 Friday morning, April the 24th?



1 A. Yes, he did.

2 Q. What did he tell you?

3 A. May I refer to the 302, sir?

4 MR. NOVAK: Judge, may he refer to the 302?

5 THE COURT: If he can't remember without

6 referring, go ahead.

7 A. Okay.

8 Q. Can you tell us what it is that he told you about  
9 what he did on Friday, April 24th?

10 A. Friday, April 24th, he woke up late morning or  
11 early afternoon, washed up, got something to eat. He  
12 mentioned to me that specifically he washed his tennis  
13 shoes that morning, which he described as red, black  
14 and white Filas.

15 And he washed those tennis shoes with a  
16 white T-shirt, which had a marijuana emblem on the  
17 front, which he kept in his stereo cabinet.

18 Q. Is that -- showing you Exhibit RS-1. By the time  
19 you had interviewed Mr. Richardson, you were obviously  
20 familiar with the fact that the State Police had  
21 already seized the T-shirt; is that correct?

22 A. That's correct.

23 Q. Is that the T-shirt y'all were discussing at that  
24 time?

25 A. Yes, sir.

1 Q. Now, at some point, did he indicate to you that he  
2 left his father's residence and hooked up with Shawn  
3 Wooden?

4 A. Yes, he did.

5 Q. Did he tell you what time that was?

6 A. He said it was around 1:30 in the afternoon.

7 Mr. Wooden and his girlfriend, Jovanna Jones, picked  
8 him up in a vehicle.

9 Q. Did he tell you what type of vehicle it was that  
10 Jovanna Jones and Shawn Wooden had picked him up in?

11 A. Honda Accord.

12 Q. Whose Honda Accord was that?

13 A. Jovanna Jones.

14 Q. Did he tell you where they went after they picked  
15 him up?

16 A. He said they went to Dobie's Store, got some  
17 change, and then they went to the Laundromat on Maple  
18 Street in Waverly.

19 Q. From there, where did they go to?

20 A. Later that evening, Mr. Richardson told me that he  
21 and Shawn Wooden went to the Ramada Inn in Petersburg.

22 Q. Did he tell you who was the manager down there?

23 A. Louis Langford.

24 Q. Did he tell you what they did when they got down  
25 to the Ramada Inn down in Petersburg?

1 A. He said they sat around, talked and drank beer.

2 Q. Did he tell you if anybody else was present other  
3 than Mr. Wooden and Mr. Langford?

4 A. Mr. Langford's girlfriend, identified as Rhonda.

5 Q. After they were done drinking at the Ramada Inn,  
6 did he tell you, according to him, where he went to?

7 A. After they finished drinking at the Ramada Inn, he  
8 and Shawn Wooden returned to Waverly to Shawn Wooden's  
9 trailer where Mr. Richardson spent the evening on  
10 Mr. Wooden's couch.

11 Q. Now, did you then ask him about the day of the  
12 murder?

13 A. Yes, I did.

14 Q. Did you ask him what time it was that he woke up  
15 that day?

16 A. Between 9:30 and 10:00 a.m.

17 Q. Did he tell -- did he indicate to you what  
18 occurred after he woke up?

19 A. He got up and went to the bathroom and washed up.  
20 The children were up, and they began watching  
21 cartoons.

22 Q. Did he tell you what cartoons, according to him,  
23 he was watching with Mr. Wooden's children?

24 A. Yeah, he told me that he was watching Eerie,  
25 Indiana and Ultimate Goosebumps at 10:00 and 10:30,

1 respectively.

2 Q. Did he tell you what time Eerie, Indiana started,  
3 according to him that he was watching?

4 A. According to him, ten a.m.

5 Q. Did he tell you what time that that show ended,  
6 according to him?

7 A. 10:30.

8 Q. Did he tell you at what time the show Ultimate  
9 Goosebumps started?

10 A. 10:30.

11 Q. Did he tell you what time the Ultimate Goosebumps  
12 ended?

13 A. Eleven a.m.

14 Q. Then after that, what occurred after they watched  
15 Ultimate Goosebumps?

16 A. Shawn got up and came out into the living room.  
17 He indicated that the program Silver Surfer was coming  
18 on, but they did not watch that program.

19 Q. What time was Silver Surfer supposed to come on?

20 A. Eleven a.m.

21 Q. Did he tell you why they didn't watch it?

22 A. Because Shawn Wooden turned on the radio.

23 Q. Did he mention anything about a fellow named Joe  
24 Mack?

25 A. Yes, he did.

1 Q. You know who Joe Mack is, right?

2 A. Joe Mack is Anthony Jones.

3 Q. That's his real name; is that right?

4 A. Right.

5 Q. Another drug dealer; is that right?

6 A. Yes.

7 Q. Did he tell you what time Joe Mack came over to --  
8 according to Mr. Richardson, what he had told you  
9 about what time Joe Mack had come over to the Wooden's  
10 trailer?

11 A. Yes, he did tell me what time. I have to refer to  
12 the 302. It was noontime.

13 Q. Let's go back to before that. At any time, did he  
14 tell you anything about a tow truck coming?

15 A. Yes, he did.

16 Q. What did he tell you about a tow truck?

17 A. He told me that Jones Towing arrived at about  
18 11:15, 11:20, that time frame, and picked up  
19 Mr. Jones's, meaning Anthony Jones a/k/a Joe Mack, his  
20 vehicle and left at 11:30.

21 Q. By the way, have you -- in order to see whether  
22 that was true or not, have you gone out to determine  
23 whether a tow truck came over to that location on that  
24 day?

25 A. Yes.

1 Q. Have you checked the tow companies down there?

2 A. We issued a subpoena asking for records if they  
3 had towed a vehicle that day.

4 Q. Did they have any records for towing on that day?

5 A. No, they did not.

6 Q. Going to the TV shows, I think, again, you  
7 indicated the first show was Eerie, Indiana cartoon;  
8 is that right?

9 A. That's correct.

10 Q. That was at ten o'clock -- is that right --  
11 according to him?

12 A. Yes, sir.

13 Q. To 10:30?

14 A. Yes, sir.

15 Q. Did he mention any shows before Eerie, Indiana  
16 that he had watched?

17 A. No.

18 Q. The show after, according to him, after Eerie,  
19 Indiana, was Ultimate Goosebumps from 10:30 to 11:00;  
20 is that right?

21 A. That's right.

22 Q. Then the next one he was going to watch was Silver  
23 Surfer, but they didn't watch it; is that right?

24 A. That's right.

25 MR. NOVAK: Judge, I'd like to read

1 Stipulation No. 8 to the jury, if I could, please?

2 THE COURT: All right.

3 MR. NOVAK: Stipulation No. 8 reads as  
4 follows: "During the morning of April the 25th, 1998,  
5 WRLH-Fox 35 broadcasted the following television shows  
6 during the following time periods: From 7:00 to 7:30  
7 a.m., Beast Wars (Animated); from 7:30 to 8:00 a.m.,  
8 Zorro (Animated); from 8:00 to 8:30 a.m., Ned's Newt;  
9 from 8:30 to 9:00 a.m., Power Rangers in Space; from  
10 9:00 to 9:30 a.m., Goosebumps; from 9:30 to 10:00  
11 a.m., Eerie, Indiana, The Other Dimension; from 10:00  
12 a.m. to 10:30, Ultimate Goosebumps; from 10:30 to  
13 11:00 a.m., Toonsylvania; from 11:00 to 11:30, Silver  
14 Surfer; from 11:30 to Noon, Sam and Max; from Noon to  
15 2:00 p.m., Fox-35 Action Theater Movie: 'I come in  
16 Peace,' starring Dolph Lundgren.

17 "Spiderman had stopped being broadcast on  
18 Fox-35 a couple months before April 25, 1998 and was  
19 not being broadcast on any other station in the  
20 Waverly viewing area on April the 25th of 1998.  
21 Government's Exhibit TV-1 is the television listing  
22 for all television stations broadcasting in the  
23 Waverly viewing area on April 25, 1998, and correctly  
24 reflects the television shows broadcast by each of the  
25 television stations on April 25, 1998 at the times

1 reflected in the documents. The parties agree to the  
2 introduction into evidence of Exhibit TV-1 without any  
3 further foundation or authentication."

4 THE COURT: It's admitted without objection.

5 MR. NOVAK: Thank you.

6  
7 (Government's Exhibit TV-1 is admitted into  
8 evidence.)

9  
10 BY MR. NOVAK:

11 Q. So then after the shows that he told, Eerie,  
12 Indiana and Ultimate Goosebumps, essentially he moved  
13 them up by half an hour -- is that right -- from what  
14 actually was broadcast?

15 A. That's correct.

16 Q. Now, at some point, did you have a discussion with  
17 Mr. Richardson then about a telephone call from this  
18 fellow Joe Mack's girlfriend by the name of Nuke?

19 A. Yes, I did.

20 Q. Did he tell you what time it was that this  
21 girlfriend Nuke had called the Wooden's trailer?

22 A. 11:30 a.m.

23 Q. Did he tell you, according to him, what the  
24 substance of that conversation was when Nuke called  
25 the trailer?



1 A. Nuke called the trailer looking for Anthony Jones  
2 a/k/a Joe Mack, who was her boyfriend at the time.  
3 Mr. Wooden sent his daughter down the street to find  
4 Joe Mack to tell him that Nuke was on the phone.

5 And while she was on the phone, she told  
6 them that a police officer had been shot at the  
7 Waverly Village.

8 Q. He told you that phone call was at 11:30; is that  
9 right?

10 A. That's correct.

11 Q. Now, did he indicate to you if he made any phone  
12 calls then?

13 A. He indicated to me that he made a phone call at  
14 11:40 a.m.

15 Q. Who was that to?

16 A. To Fred Smith.

17 Q. So the only phone call before that, though,  
18 involving Nuke was at 11:30 a.m.; is that right?

19 A. That's correct.

20 Q. That's when Nuke allegedly called the trailer  
21 looking for Joe Mack; is that right?

22 A. That's correct.

23 Q. Now, I want to show you Government's Exhibit WI-1,  
24 if I could.

25 MR. NOVAK: If we could place this on the

1 easel, please.

2 THE COURT: How much more do you have for  
3 this witness?

4 MR. NOVAK: A lot.

5 THE COURT: Well, I think it's probably time  
6 to let the jury go home today, then. It's 5:30. It's  
7 a good breaking point.

8 And ladies and gentlemen, please remember my  
9 admonition about keeping yourself free from media  
10 exposure, and drive carefully. And we'll see you in  
11 the morning.

12 Remember also not to discuss the matter with  
13 anybody, and if you will give Mr. Neal the notebooks,  
14 he'll keep those. We'll start at nine in the morning.  
15 Thank you very much for your careful attention.

16

17 (Jury exited the courtroom at 5:35 p.m.)

18

19 THE COURT: All right. You may step down.

20

21 (Witness stood aside.)

22

23 THE COURT: Can you get Mr. Tyler connected?

24 MR. NOVAK: I'm sorry, Judge?

25 THE COURT: Are you getting to Mr. Tyler

1 tomorrow?

2 MR. NOVAK: I've been moving around. So if  
3 I could just have a second to see my list.

4 Probably not. I can't -- I mean, I want to  
5 be optimistic. We're trying to move the case as much  
6 as we can. I originally had him testifying at the end  
7 of today. I mean, this is when I first mapped out the  
8 case.

9 My estimation, I'm one day behind my  
10 schedule, but I'm trying to make it up by cutting some  
11 people and moving some things around. I'm not going  
12 to be able to make up a whole day. So my honest  
13 opinion is I don't think he will get on until Thursday  
14 morning.

15 THE COURT: I don't know what else you've  
16 got, but if you've got people who know they were  
17 dealing drugs and people who can say that, people like  
18 Mr. Wooden and whoever else you're going to put on,  
19 that gets right to it. I think you better get them  
20 on.

21 MR. NOVAK: That's essentially it, Judge.  
22 I've got to get Mr. Wooden. I've got a little bit  
23 more scientific evidence. I've got some statements by  
24 Mr. Claiborne.

25 And I've got a number of drug dealers who

1 are going to talk about drugs and prove Count I. I  
2 haven't really addressed that. I've been addressing  
3 the murder at this point.

4 THE COURT: Yes, I know.

5 MR. NOVAK: Judge, I'm obviously aware of  
6 the fact that I have a lot of drug dealers lined up to  
7 testify to, you know, similar things, and I've learned  
8 Rule 611, I think it is, pretty good.

9 THE COURT: It's a good rule.

10 MR. NOVAK: But I also have to think of the  
11 worst and see how it is that they react and what they  
12 do as far as defense.

13 THE COURT: I understand. I haven't  
14 forgotten what it's like to try cases, but I also know  
15 that I always learned more stuff than I ever needed.

16 MR. NOVAK: I will tell you this:  
17 Mr. Boatwright says I don't have the courage to tell  
18 you, that the reason we're a day behind is because we  
19 got the jury instructions a day late.

20 THE COURT: Probably my fault. Everything  
21 else that happens around here is my fault. So I  
22 accept it.

23 Do you-all have anything else to say on  
24 Mr. Tyler other than what you said in your papers or  
25 anything up to date? I will be glad to hear what you

1 have to say.

2 MR. HUYOUNG: We've said everything, Judge.

3 THE COURT: All right.

4 MR. BOATWRIGHT: Nothing additional, Your  
5 Honor.

6 THE COURT: Do you have anything else  
7 additional to say?

8 MR. NOVAK: No, Judge.

9 THE COURT: I believe that under Gray and --  
10 how do you pronounce it?

11 MR. NOVAK: I thin it's Akinkoye.

12 THE COURT: Akinkoye and Marsh and  
13 Richardson that the redacted testimony as proposed in  
14 the government's submission can go forward as  
15 proposed.

16 MR. HUYOUNG: Just note our exceptions, Your  
17 Honor.

18 THE COURT: You don't have to.

19 MR. HUYOUNG: That's right.

20 THE COURT: You've already done it, and I  
21 know you think that that's an erroneous ruling and you  
22 can take care of it with people who have far greater  
23 knowledge and wisdom and power than I.

24 All right. Ladies and gentlemen, we will  
25 see you in the morning. We'll start at nine. You-all

1 be here at 8:45 in case we need to do anything.

2

3 (The proceedings in this matter adjourned at  
4 5:40 p.m.)

5

6

7 I, Diane J. Daffron, certify that the  
8 foregoing transcript is a correct record of the  
9 proceedings taken and transcribed by me to the best of  
10 my ability.

10

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ORIGINAL SIGNED

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DIANE J. DAFFRON, RPR

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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UNITED STATES OF AMERICA, :  
 :  
 :  
-vs- : CRIMINAL ACTION  
 : NO. 3:00CR383  
TERENCE JEROME RICHARDSON :  
and FERRONE CLAIBORNE, :  
 : June 6, 2001  
Defendants :  
-----

VOLUME III (Part 1)

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

DAVID J. NOVAK, Assistant United States Attorney  
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Counsel on behalf of the United States

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BY: JOHN B. BOATWRIGHT, III, ESQ.

BARNES & BATZLI  
Richmond, Virginia  
BY: MICHAEL HUYOUNG, ESQ.  
  
Counsel on behalf of Defendant Richardson

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RICE, EVERHART & BABER  
Richmond, Virginia  
BY: JEFFREY L. EVERHART, ESQ.

WHITE, BLACKBURN & CONTE  
Richmond, Virginia  
CHARLES A. GAVIN, ESQ.

Counsel on behalf of Defendant Claiborne

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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On behalf of the United States:

Robert Ritchie	4	25	--	--
Shawn Wooden	58	127	167	--
Alan Martell	173	181	185	--
Brian Covington	187	198	201	--
Elmer Gist, Jr.	205	212	--	--
Shiela Jones	214	223	--	--
George Drew	228	248	260	--
Kieth Jackson	261	285	--	--
Jermont Perry	295	--	--	--
Steven Vaughan	303	314	--	--
Jermont Perry	319	331	--	--
Frankie Richardson	334	346	353	--
Eulanda Holloman	356	370	--	--



1 (At 9:15 a.m. the proceedings continued.)

2

3 THE CLERK: Criminal Number 3:00CR00383, The  
4 United States of America v. Terence Jerome Richardson  
5 and Ferrone Claiborne.

6

7 Mr. David Novak represents the United  
8 States. Mr. John B. Boatwright, III and Mr. Michael  
9 HuYoung represent the Defendant Terence Jerome  
10 Richardson. Mr. Charles A. Gavin and Mr. Jeffrey L.  
11 Everhart represent the Defendant Ferrone Claiborne.

12

13 Are counsel ready to proceed?

14

15 MR. NOVAK: The United States is present and  
16 ready.

17

18 MR. BOATWRIGHT: Ready on behalf of Mr.  
19 Richardson.

20

21 MR. EVERHART: Mr. Claiborne is ready.

22

23 THE COURT: All right. Gentlemen, I have  
24 had a request from the jury, not directed to any one  
25 of you, but to several of you, to talk clearly and  
26 more slowly. I'm having some trouble following what  
27 they asked. Is that correct? Well, now they will do  
28 better.

29

30 MR. NOVAK: I don't know about that, Judge.  
31 Some things are genetic by nature.

32

33 THE COURT: Speech patterns are trained, not

1 genetic.

2 All right. Detective Ritchie, resume the  
3 stand.

4 MR. NOVAK: May I proceed, Your Honor?

5 THE COURT: Mr. Ritchie, I remind you, you  
6 are under the same oath you took yesterday.

7 THE WITNESS: Yes, Your Honor.

8

9 DIRECT EXAMINATION CONTINUED BY MR. NOVAK:

10

11 Q. Mr. Ritchie, I think yesterday when we stopped, I  
12 was asking about the interview that you had with Mr.  
13 Richardson at the state facility that you spoke of; is  
14 that right?

15 A. Correct.

16 Q. By the way, who was present during that interview?

17 A. Special Agent Michael Talbert.

18 Q. And the defendant, obviously?

19 A. Yes, sir.

20 Q. I was not present; is that right?

21 A. No, you were not.

22 Q. Now, I think we left off with I had asked you if  
23 the defendant had told you whether he remembered a  
24 phone call from a woman named Nuke.

25 A. Yes.

1 Q. Do you recall testifying to that?

2 A. Yes, I recall that.

3 Q. Do you recall what the defendant said about what  
4 time it was that that phone call had occurred?

5 A. I believe I said 11:30.

6 Q. Well, the key point though is what did he tell  
7 you?

8 A. He told me 11:30.

9 Q. Okay. And did he tell you if the fellow, Joe  
10 Mack, was present at the time the first phone call  
11 came from Nuke?

12 A. No.

13 Q. Did he tell you if Mr. Wooden sent one of the kids  
14 after him?

15 A. Yes, he did.

16 Q. And what did he tell you then after that about  
17 that circumstance about Joe Mack?

18 A. He told me that Joe Mack wasn't home, and the  
19 phone conversation ended after Nuke told Mr. Wooden  
20 that a police officer had been shot at the Waverly  
21 Village.

22 Q. But it is clear to you that he told you that that  
23 phone call was 11:30 a.m.; is that right?

24 A. Yes.

25 MR. NOVAK: Judge, if I could show the

1 witness Government's Exhibit WI-1.

2 BY MR. NOVAK:

3 Q. Mr. Ritchie, do you recognize the Exhibit WI-1?

4 A. Yes, I do.

5 Q. And we are about to hear more evidence today about  
6 Shawn Wooden's caller I.D. information; is that right?

7 A. That's correct.

8 Q. Now, have you since learned that the person going  
9 by the nickname of Nuke, her real name was Leola  
10 Murphy?

11 A. Yes, sir.

12 Q. And you have reviewed the records that again we  
13 are going to introduce into evidence this morning  
14 about Shawn Wooden's caller I.D.; is that right?

15 A. Yes.

16 Q. Had you reviewed them at the time that you spoke  
17 to Mr. Richardson at the state facility that you were  
18 speaking at?

19 A. Yes.

20 Q. And did you know what the time frames were,  
21 according to the caller I.D., as to when the person,  
22 Nuke, Leola Murphy, had actually called the house?

23 A. Yes. Leola Murphy called at 12:27 p.m. and  
24 1:00 p.m.

25 Q. So according to the caller I.D. records, which,

1 again, we are going to reference to in a few minutes,  
2 those indicate that the phone call that Mr. Richardson  
3 said occurred at 11:30 actually occurred closer to  
4 12:30; is that right?

5 A. That's correct.

6 THE COURT: What time did they occur?

7 THE WITNESS: 12:27 p.m. and 1:00 p.m.,  
8 according to the caller I.D.

9 MR. NOVAK: You can put that down. Thank  
10 you.

11 BY MR. NOVAK:

12 Q. Now, did Mr. Richardson indicate to you about  
13 whether -- about what time it was that he left Shawn  
14 Wooden's trailer that day?

15 A. He indicated to me that they left the trailer at  
16 1:00 p.m.

17 Q. And did he tell you who left then at that time?

18 A. He left with Mr. Wooden.

19 Q. And did he tell you where it is that they went to?

20 A. Yes, he did. He told me that they went to Dobie's  
21 store and that they each bought a 40 ounce beer.

22 Q. Referring to each of them being himself and Mr.  
23 Wooden?

24 A. Mr. Wooden and himself.

25 THE COURT: He's already testified to this,

1 that they had a beer and went to the grandmother's  
2 house, sat on the porch, drank the beer and went back  
3 somewhere. So let's get on to what he hadn't  
4 testified to.

5 MR. NOVAK: Judge, I don't think he did.

6 THE COURT: Well, did I just imagine all  
7 that because I don't think I have any independent way  
8 of knowing it.

9 All right. Go ahead. It sounds like we are  
10 retracing what we did yesterday at the end of the day.

11 MR. NOVAK: Judge, actually, I think we were  
12 talking about the day before. I think that's what you  
13 are speaking of, respectfully.

14 THE COURT: All right.

15 BY MR. NOVAK:

16 Q. Now, did Mr. Richardson indicate to you whether he  
17 had come in contact with Ferrone Claiborne at the  
18 Dobie store?

19 A. Yes, he did.

20 Q. What did he tell you about that?

21 A. He told me that he spoke with Mr. Claiborne and he  
22 told Mr. Claiborne that he was going to Waverly  
23 Village to see what had happened.

24 Q. And did he, in fact, go there, according to him?

25 A. Yes, he did.

1 Q. And can you tell us what he told you about that  
2 then?

3 A. After he left the store, he went to -- he told me  
4 he went to Mr. Wooden's greatgrandmother's house on  
5 Railroad Avenue next to Peace Funeral Home. Sometime  
6 between 2:00 and 2:30, they left there and they went  
7 to the Waverly Village Apartments.

8 Q. Now, on the way there -- strike that. Did he tell  
9 you who it was that he came into contact with at the  
10 Waverly Village Apartments?

11 A. Yes, he did. He told me he went to his cousin's  
12 house, Alonzo Scott.

13 Q. And did he tell you what, if anything, Alonzo  
14 Scott was doing at that time?

15 A. He said that Alonzo Scott was going to be leaving  
16 that afternoon to go to Virginia Beach at 3:00 p.m.

17 THE COURT: What was that?

18 THE CLERK: My arm hit a button, a wake up  
19 call, Your Honor.

20 MR. NOVAK: Save that for later.

21 BY MR. NOVAK:

22 Q. Did Mr. Richardson indicate to you about  
23 approximately what time it was that he left the  
24 Waverly Village Apartments, according to him?

25 A. Sometime around 3:00 p.m.

1 Q. Did he tell you where he went to after he went to  
2 the Waverly Village Apartments?

3 A. He went to Fred Smith's house, which is located on  
4 Locust Street in Waverly.

5 Q. And Mr. Smith was a friend of his; is that right?

6 A. That's right.

7 Q. Now, did he indicate to you if he had any contact  
8 with a fellow by the name of Fernando Lewis?

9 A. Yes, he did.

10 Q. Could you tell us what Mr. Richardson told you  
11 about his contact with Fernando Lewis at that time?

12 A. Fernando Lewis told Richardson that -- in a joking  
13 fashion that he was probably the one that shot the  
14 police officer.

15 THE COURT: Who is he?

16 THE WITNESS: Meaning Mr. Richardson.

17 BY MR. NOVAK:

18 Q. And what did Mr. Richardson have to say about  
19 that?

20 A. Mr. Richardson said that he was glad that he  
21 didn't match the description, and he went into detail  
22 about what that description was.

23 Q. Was it referencing specifically to his hair?

24 A. Yes.

25 Q. Do you want to tell us what he said about that?



1 A. He said that he had corn rows, and the description  
2 of the suspect was dreads and that corn rows couldn't  
3 be mistaken for dreads.

4 Q. Now, later on did he indicate if he -- that Mr.  
5 Wooden and Mr. Richardson eventually went over to the  
6 Wooden trailer again?

7 A. Yes, he did.

8 Q. Why don't you just finish up and tell us what he  
9 told you about what happened the rest of that  
10 afternoon into the evening.

11 A. He went back to the Wooden trailer. That evening  
12 Mr. Richardson went out separate from Mr. Wooden. He  
13 indicated that he went to Dobie's store several times  
14 that evening to buy beer. He told me that he was  
15 drinking heavily, that he was intoxicated. He met his  
16 cousin at the store. They went over to New Street.

17 Q. Now, did he tell you approximately what time it  
18 was that he went to the New Street area?

19 A. I'd have to look at the 302 to refresh my memory  
20 on that.

21 Q. Do you have it with you?

22 A. No.

23 Q. Where is your copy?

24 THE COURT: Can I see you all up here a  
25 minute?

1 BENCH CONFERENCE:

2

3 THE COURT: We have had enough of rebuttal  
4 to the alibi. Now, it's one thing for him to have  
5 said that he was somewhere else then as evidence of  
6 fabrication. You are trying this case as a preemptive  
7 strike against the alibi defense, and I'm stopping  
8 it.

9 It is not going to go on any more. There is  
10 no relevance to what he told anybody about what  
11 happened all the rest of the afternoon unless they put  
12 it in issue, and it's just wasting time, Mr. Novak.

13 MR. NOVAK: Judge, may I respond?

14 THE COURT: You told me this before, and I  
15 told you you could do it. But we have just gone too  
16 far with it. It's out of hand.

17 MR. NOVAK: Judge, may I just explain to you  
18 about that? I just had to get to where they were  
19 going to New Street. The reason is our next set of  
20 witnesses this afternoon are going to say he was at  
21 the trailer, and that's when he said he killed  
22 somebody else earlier that day.

23 It's statements corroborating the fact he  
24 was at this location; he was drinking, and that's the  
25 reason why it is that this statement came in.

1 THE COURT: Now you are off on hearsay for  
2 --

3 MR. NOVAK: No. I'm offering the  
4 defendant's statement saying I was at this location.  
5 That's all I'm going to do.

6 THE COURT: What has happened here is that  
7 you are trying the alibi case, and it should not -- I  
8 shouldn't have ever allowed it to go in this order.  
9 We are going to carve it down to what -- you can go on  
10 and finish this conversation. And from now on we are  
11 going to talk about the merits of the case.

12 If you need rebuttal time to deal with the  
13 alibi, then we are going to do that. But you are  
14 trying the defense case before the defense is ever put  
15 on.

16 MR. NOVAK: That's not what I'm doing now,  
17 Your Honor. That's not what I'm --

18 THE COURT: It's wasting time, wasting a lot  
19 of time about the -- you're putting on alibi evidence,  
20 evidence to show that he said that he was here or  
21 there or somewhere else. And certainly you can -- I  
22 suppose you can put on evidence to show that he's made  
23 statements about an alibi and that he was somewhere  
24 else. But to go through everything --

25 MR. NOVAK: That's not what I'm doing now,

1 Judge.

2 THE COURT: What were you doing? Certainly,  
3 it isn't relevant to anything else.

4 MR. NOVAK: He said he went to this place,  
5 John Brown's trailer. That's where he makes this  
6 statement.

7 THE COURT: Then all you have to do is put  
8 on a witness who heard that statement. That's all  
9 that's important.

10 MR. NOVAK: The fact that the defendant says  
11 "I was there" corroborates the significance --

12 THE COURT: But if he says that, if he gets  
13 on the stand and says that I wasn't at John Brown's  
14 trailer, then you can call this guy back to say all  
15 this.

16 What you are doing, you want to prove ahead  
17 of time -- you want to put up corroboration to rebut  
18 ahead of time his denial of the statement that he  
19 hadn't even denied yet.

20 MR. NOVAK: What if the defendant doesn't  
21 testify, and what if they argue that the witness who  
22 is going to talk about this --

23 THE COURT: If he doesn't testify, if he  
24 doesn't testify, then you don't have a problem because  
25 you have got unrebutted admissions on the record..

1 MR. NOVAK: But they will argue that the  
2 witness has some kind of bias or some kind of  
3 credibility issue and that they can't be believed.

4 Can I just ask this witness, Judge, if the  
5 defendant admitted that he was at John Brown's  
6 trailer?

7 THE COURT: You can get it there, and we are  
8 going on. We are going to try this case the way the  
9 case ought to be tried with not trying rebuttal to the  
10 alibi case up front. Okay.

11 MR. NOVAK: All right.

12

13 END BENCH CONFERENCE

14

15 BY MR. NOVAK:

16 Q. Now, Agent Ritchie, going later on in the  
17 defendant's statement, at any point during that  
18 interview did he indicate to you whether he had gone  
19 on that Saturday night to a fellow's trailer by the  
20 name of John Brown?

21 A. Yes, he did.

22 Q. And did he tell you approximately what time he  
23 went to that location?

24 A. Sometime between 11:00 p.m. and 2:00 a.m. that  
25 evening.

1 Q. And did he tell you what he did at that location?

2 A. Just hung out and drank some beers.

3 Q. Did he tell you if he was extremely drunk at that  
4 time?

5 A. Yes, he did.

6 Q. Now, you went back and interviewed him again on  
7 November 8th; is that correct?

8 A. That's correct.

9 Q. And, again, it was you and Agent Talbert?

10 A. Yes.

11 Q. And did you confront him again about the fact that  
12 some of these things were inconsistent?

13 A. Yes, I did.

14 Q. Tell him about the TV station and such?

15 A. Yes, I did.

16 Q. Would he change his story in any fashion?

17 A. No. He told me that he was accurate and that he  
18 was mistaken.

19 Q. Now, at any point during this second interview on  
20 November 8th, did you discuss with him whether he had  
21 previously been engaged in the sale of drugs?

22 A. Yes.

23 Q. Could you tell the ladies and gentlemen what he  
24 told you about whether he sold drugs or not?

25 A. He told me that he may have sold some drugs back

1 in the day, but that in 1998 at the time that that  
2 police officer was killed, he wasn't selling drugs.

3 THE COURT: He may have sold drugs when?

4 THE WITNESS: Back in the day.

5 THE COURT: Back in the day, D-A-Y?

6 THE WITNESS: Yes, Your Honor.

7 BY MR. NOVAK:

8 Q. Those are his words; is that right?

9 A. That's correct.

10 Q. And did he tell you what kind of quantities he  
11 sold back then?

12 A. He said small amounts.

13 Q. Now, change channels now for a second. If we  
14 could show the witness CH-4, please.

15 THE COURT: Excuse me just a minute. Maybe  
16 there is something that I don't understand. Did he  
17 explain what "the day" meant, that is, when he was  
18 talking about --

19 THE WITNESS: Back in the day, it's kind of  
20 street slang, Your Honor, referring to several years  
21 ago, but not recently.

22 THE COURT: That's what you understood it to  
23 mean?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Did he explain that?

1 THE WITNESS: No, Your Honor.

2 BY MR. NOVAK:

3 Q. Did he tell you that -- let me ask you this, Agent  
4 Ritchie. Did he tell you that he was no longer  
5 selling by 1998; is that right?

6 A. That's what he told me.

7 MR. NOVAK: May I proceed then, Your Honor?

8 THE COURT: Yes.

9 BY MR. NOVAK:

10 Q. Would you show the witness CH-4. Now, Agent  
11 Ritchie, do you recognize Exhibit CH-4?

12 A. Yes, I do.

13 Q. Is that a map of Waverly with various photographs  
14 of the relevant locations in this case?

15 A. Yes, it is.

16 Q. Did you help have that created?

17 A. Yes, I did.

18 Q. From a map of Waverly?

19 A. Yes.

20 MR. NOVAK: Judge, if that has not been  
21 moved into admission, I will move it in, CH-4.

22 THE COURT: It is.

23 BY MR. NOVAK:

24 Q. Now, let me ask you this. Are you familiar with  
25 whether there was an auto store that sold auto parts



1 and such anywhere in Waverly at that time?

2 A. Yes.

3 Q. Could you tell us where that store was located?

4 That's not depicted on there; is that right?

5 A. It's not depicted specifically. There were two  
6 auto stores in 1998. One was on 460, which is this  
7 route right here, just outside the corporate limits,  
8 if not just inside.

9 And there was a smaller auto parts store  
10 between the car dealership and the Be-Lo's grocery  
11 store, which was on 460, if you went across 460 onto  
12 Railroad, approximately to the right diagonally from  
13 where Dobie's store would be. So right about in this  
14 area right here.

15 MR. NOVAK: Thank you. Now, just by the  
16 way, each of the photographs on that chart have been  
17 individually marked. Again, there is no objection to  
18 those. Instead of showing them all those, if I could  
19 just read off the numbers and move their admission  
20 since they are already depicted on the chart.

21 THE COURT: That's fine.

22 MR. NOVAK: P-6, P-7, P-8, P-9, P-10, P-11,  
23 P-12, P-13, P-14, P-15 and P-16, we would ask for  
24 their admission.

25 THE COURT: They're admitted without

1 objection.

2

3 (Government's Exhibit Numbers P-6 through  
4 P-16 were received in evidence)

5

6 BY MR. NOVAK:

7 Q. Now, Agent Ritchie, you've had an occasion to  
8 measure various distances so you could tell the jury  
9 how close various things are or various locations are  
10 in the town of Waverly; is that right?

11 A. Yes, I have.

12 Q. And you had occasion to do that over the weekend;  
13 is that right?

14 A. Yes, I did.

15 Q. Now, could you tell us, do you know the  
16 approximate distance from Dobie's store, which is  
17 depicted on CH-4, to the Waverly Village Apartments?

18 A. Dobie's store, which is here on Railroad Avenue,  
19 heading out on Railroad Avenue, down Dogwood, down  
20 Middle and onto Amherst, which is where the Waverly  
21 Village Apartments is, is seven-tenths of a mile.

22 Q. Now, we have heard reference to Roosevelt  
23 Claiborne, Uncle Roosevelt, for Mr. Claiborne. Do you  
24 know where his location is depicted on that chart,  
25 CH-4?

1 A. Mr. Claiborne's apartment was on Beaver Dam Road.  
2 There is a picture of the apartment, and there is the  
3 exact location on Beaver Dam Road.

4 Q. Now, did you have an occasion to determine the  
5 distance of that location to the Dobie store?

6 A. Yes, I did.

7 Q. And what is that distance?

8 A. Covington to Dobie's via Main Street -- this is  
9 Main Street here -- Main Street onto Railroad Avenue  
10 and Covington to Dobie's is nine-tenths of a mile.

11 Q. Now, let me ask you this. There is somewhat of a  
12 triangle that is formed there. Could you tell us what  
13 is in-between that triangle between where the Dobie  
14 store is and where the apartment complex is?

15 A. To the north is Main Street. To the south and  
16 west is 460, and to the east is Beaver Dam Road. In  
17 this particular area, there are houses along Main  
18 Street. There are businesses along 460. There was  
19 several houses and a trailer park along Beaver Dam  
20 Road. This area right here is a wooded area right  
21 behind the Be-Lo store.

22 Q. And is there a path at all that goes through that  
23 wooded area such that somebody could walk from  
24 Dobie's?

25 A. There is a path that comes from behind Be-Lo's,

1 and it comes out on to Beaver Dam Road, just up from  
2 Beale Boy's store, which is located at the corner of  
3 Main Street and Beaver Dam Road.

4 Q. Now, I want to direct your attention to a  
5 photograph there of a house called Ernest Giles'  
6 house. Do you see where that is?

7 A. Mr. Giles' house is right here. It's located on  
8 Franklin Street I believe.

9 Q. Now, could you tell us if -- it appears that one  
10 of those roads comes to a dead end. Is there a ball  
11 yard anywhere in there?

12 A. This particular area right in here is a wooded  
13 area. There is a ball field. There is a basketball  
14 court. It's all wooded back in here. There is a ball  
15 field and a basketball court that has a fence going  
16 all the way around it.

17 Q. Now, did you have an occasion to measure the  
18 distance to Mr. Giles' house if you were to go from  
19 down near the Waverly Village area over to that  
20 cutting through the back through where the ball yard  
21 is?

22 THE COURT: From Giles house to where?

23 MR. NOVAK: To the Waverly Village  
24 Apartments area.

25 THE WITNESS: What we did was, we went from

1 the corner of Cedar and Locust, which is directly  
2 across the street from the back wooded area, which  
3 would be here, where the officer was killed, and we  
4 followed into the woods on well-traveled paths.

5 We went from Cedar and Locust into the  
6 woods, and we kind of went in a northerly direction,  
7 came along the back of the houses on Middle Street to  
8 another well-worn path, and that well-worn path went  
9 directly to the ball field, which had a fence all the  
10 way around it.

11 If you walked around the back of the ball  
12 field, it would put you out at the bottom of this dead  
13 end here, or there is another road that's a dirt road  
14 that had several trailers on it that's not depicted  
15 called Delk Street. It would put you on either of  
16 those two roads. I walked that and I measured both  
17 distance and time.

18 Q. What was the distance, first of all?

19 A. The distance was six-tenths of a mile from here to  
20 this intersection here.

21 Q. And walking how long did that take you?

22 A. I walked it briskly, and it took me five and a  
23 half minutes.

24 Q. When you talk about briskly, were you running?

25 A. No.

1 Q. Now, by the way let me just ask you real quickly.  
2 How long of a street is Locust Street that's depicted  
3 on there?

4 A. Locust Street runs from Railroad to Bank and it is  
5 three-tenths of a mile long.

6 Q. And how long is Dogwood Street?

7 A. Dogwood Street runs between Railroad and Middle  
8 Street. It is two-tenths of a mile long.

9 Q. And how long then is Middle?

10 A. Middle is a cul-de-sac to Amherst Lane, and it is  
11 two-tenths of a mile long.

12 Q. Let me just end by asking you this, not in  
13 connection to the chart. You can sit down.

14 Agent Ritchie, are you familiar with the  
15 chief of police from Waverly, Chief Sturrup?

16 A. Yes, I am.

17 Q. And is he currently under indictment for his  
18 actions on that day?

19 A. Yes, he is.

20 Q. And he is awaiting trial; is that right?

21 A. That's correct.

22 MR. NOVAK: Judge, I have no further  
23 questions of Agent Ritchie.

24

25

## CROSS EXAMINATION BY MR. BOATWRIGHT:

1

2

3 Q. Good morning, Agent Ritchie.

4 A. Good morning.

5

6 Q. Or Special Agent. First, let's touch on the  
7 question of your first interview with Mr. Richardson  
8 at the Deep Meadow Correctional Center on October  
9 27th.

9

THE COURT: What year are we talking about?

10

MR. BOATWRIGHT: 2000, if I'm not mistaken.

11

THE COURT: Is that right?

12

THE WITNESS: Yes, sir.

13

BY MR. BOATWRIGHT:

14

15 Q. All right. With reference to the question of the  
16 T-shirt, you spoke to him specifically on that  
17 subject; is that right?

18

19 A. The T-shirt is referenced several times in that  
20 report. Which instance are you --

21

22 Q. I'm specifically looking at your notes about the  
23 Friday night, April 24th.

24

25 A. That statement is as he offered it to me.

26

27 Q. Right. He told you that he had not worn that  
28 shirt for several years, correct?

29

30 A. Yes, he did.

31

32 Q. He told you that he routinely used the shirt to

1 wash his tennis shoes, correct?

2 A. Yes, he did.

3 Q. He said that the shirt was kept in a stereo  
4 cabinet in his bedroom.

5 A. Yes, he did.

6 Q. And he said that -- he apparently was aware that  
7 that shirt had been seized by some law enforcement  
8 authority, correct?

9 A. He mentioned the shirt to me. So he must have  
10 been aware.

11 Q. He said something along the lines of that's the  
12 same shirt that was taken from my father's home on  
13 April 26th, correct?

14 A. Similar to that.

15 Q. By that I mean April 26, 1998, correct?

16 A. That's correct.

17 Q. All right. The vehicle that you spoke of that he  
18 said Mr. Wooden, Jovanna Jones and he rode in was  
19 actually Mr. Wooden's grandmother's car, correct? Do  
20 you need to use your notes?

21 A. Yes.

22 Q. Here, I'll hand you mine. There is highlighting  
23 right there. So that might help you. That's what he  
24 said, right?

25 A. The 302 indicates that it would have been the



1 grandmother's vehicle.

2 Q. While we are talking about the 302 --

3 THE COURT: Now, wait a minute. The  
4 question was about whether he said it or whether, in  
5 fact, it was somebody's car.

6 BY MR. BOATWRIGHT:

7 Q. I'm asking you, is that what he told you?

8 A. That's what he told me.

9 THE COURT: Now, what is what he told you,  
10 that it was his grandmother's car?

11 THE WITNESS: Yes, Your Honor.

12 BY MR. BOATWRIGHT:

13 Q. Let me just stop for a minute and talk to you for  
14 a minute about 302s for a minute. The FBI has a firm  
15 policy that disallows agents from using tape recorders  
16 to record interviews such as this, correct?

17 A. That's correct.

18 Q. You are not allowed to use them, period,  
19 essentially, correct?

20 A. There are exceptions, but the rule is that we do  
21 not tape record conversations.

22 Q. So you have to rely on taking extensive notes,  
23 correct?

24 A. Yes, sir.

25 Q. And then you turn those notes into a written

1 report called a 302, correct?

2 A. Yes, sir.

3 Q. And you try to do that as soon after the interview  
4 as possible so that you can be as accurate as  
5 possible, correct?

6 A. Yes, sir.

7 Q. But, again, you do not have any type of recording  
8 to rely upon when you do the 302?

9 A. No.

10 Q. You mentioned that Mr. Richardson told you that he  
11 and Wooden went to the Ramada Inn in Petersburg,  
12 Virginia, later that night; is that right?

13 A. That being Friday night, sir?

14 Q. Yes, sir.

15 A. Yes.

16 Q. Did you ask him -- How did they go there? Did you  
17 ask him that question?

18 A. I don't recall.

19 Q. So that didn't come up as far as you can remember?

20 A. Not that I recall.

21 Q. Now, turning to what he told you about Saturday,  
22 April 25, 1998. Now, you had a number of questions  
23 for him about the time of certain things, correct?

24 A. I did not ask specific questions about time. I  
25 asked Mr. Richardson to tell me what happened that

1 day.

2 Q. Well, how were the time references generated then?

3 A. Mr. Richardson offered those time references on  
4 his own.

5 Q. Did you question him about them?

6 A. Not at that particular time. At that particular  
7 time, I told Mr. Richardson that this was an  
8 independent investigation, that we had taken nothing  
9 for granted from the initial investigation and that I  
10 was asking him if he was willing to cooperate with us  
11 and give us a statement as to what he remembered  
12 transpiring that day.

13 Q. Did you ask Mr. Richardson, for example, whether  
14 he wore a watch?

15 A. No, I did not.

16 Q. Did you ask him, for example, were there clocks or  
17 various types of time devices in Shawn Wooden's  
18 trailer?

19 A. I did not ask him that.

20 Q. Did you ever go in that trailer?

21 A. No.

22 Q. By the time you got in involved, Shawn Wooden was  
23 no longer living at that trailer; is that correct?

24 A. That's correct.

25 Q. So you just didn't have that opportunity to begin

1 with, correct?

2 A. That's correct.

3 Q. I'm not talking now for just one moment about what  
4 Mr. Richardson told you, but you mentioned that you  
5 looked at tow truck records, correct?

6 A. We subpoenaed records from Jones Towing.

7 Q. You looked at it, right?

8 A. There was nothing to look at.

9 Q. Well, Mr. Richardson claimed that Anthony Jones,  
10 also known as Joe Mack, his vehicle had been  
11 impounded, correct?

12 A. Mr. Richardson indicated that it had been towed.

13 Q. Did he tell you -- why don't you take a look at  
14 this. Maybe this will help you. It's this paragraph  
15 right here.

16 Mr. Richardson told you that he understood  
17 that Mr. Anthony Jones or Joe Mack's car had been  
18 impounded; is that correct?

19 A. That's correct.

20 Q. Did your investigation determine that was correct?

21 A. Yes.

22 Q. It had been?

23 A. It had been impounded.

24 Q. As a result of an arrest for driving with a  
25 suspended license, correct?

1 A. That's what Mr. Jones, Anthony Jones, told us.

2 Q. Okay. Now, with reference to the time for TV  
3 programs. Mr. Richardson told you that he recalled  
4 that the program Silver Surfer began on the television  
5 at 11:00 a.m.?

6 A. That is correct.

7 Q. And that is, in fact, correct, isn't it?

8 A. Yes, sir.

9 Q. He was right about that?

10 A. Yes, he was.

11 Q. Next area, the phone call that he claimed came in  
12 at 11:30, he said around 11:30; isn't that a fact?

13 A. Yes. Let me look at the 302, please.

14 Q. See that one little word?

15 A. Yes, that's correct.

16 Q. That was his word, around 11:30, correct?

17 A. That's correct.

18 Q. Now, actually, he told you that it was Shawn  
19 Wooden who was talking on the phone, correct?

20 A. Yes.

21 Q. Not Mr. Richardson, himself?

22 A. Yes.

23 Q. And he understood that Mr. Wooden was speaking to  
24 Nuke, correct?

25 A. Yes.

1 Q. That's Leola Murphy?

2 A. Yes, sir.

3 Q. And, supposedly, according to Mr. Richardson, Mr.  
4 Wooden sent one of his children to the trailer next  
5 door to see if Anthony Jones a/k/a Joe Mack was there?

6 A. That's correct.

7 Q. The child supposedly returned and said he's not  
8 there, according to Mr. Richardson?

9 A. That's correct, according to Mr. Richardson.

10 Q. Okay. Where did -- in fact, where did Leola  
11 Murphy a/k/a Nuke live?

12 A. Sussex Trace Apartments.

13 Q. And those are located -- I'm going to jump ahead  
14 of Mr. Everhart here. Those are located all the way  
15 down Main Street, just outside the corporate limits of  
16 the town of Waverly, correct?

17 A. That's correct.

18 Q. Now, in this interview you did not ask Mr.  
19 Richardson to explain the question of the discrepancy  
20 regarding the television shows, correct?

21 A. Not in that interview, no.

22 Q. All right. Nor did you ask him to explain the  
23 question regarding the discrepancy about the time of  
24 the call from Leola Murphy a/k/a Nuke, correct?

25 A. I did not ask him to clarify that at that time.

1 Q. Mr. Richardson spoke to you about talking to Fred  
2 Smith; is that right?

3 A. Yes, he did.

4 Q. Later on after the Leola Murphy a/k/a Nuke phone  
5 call?

6 A. Yes.

7 Q. And Fred Smith is under subpoena for this case; is  
8 he not?

9 A. Yes, he is.

10 Q. He told that it was a conversation, sort of a  
11 joking conversation with Mr. Smith regarding Mr.  
12 Richardson's appearance and the question of his  
13 resemblance or lack of resemblance to the person who  
14 was supposed to have done this; is that right?

15 A. The actual conversation was between Fernando  
16 Lewis --

17 Q. Oh, excuse me, you are exactly right. You are  
18 exactly right.

19 A. It took place at Mr. Smith's house.

20 Q. All right. And Mr. Richardson told you that Fred  
21 Smith told him that it was Mr. Smith's understanding  
22 they were looking for a black guy with dreads wearing  
23 camouflage pants and a T-shirt, correct?

24 A. Mr. Richardson told me that Mr. Smith told him  
25 that, that's correct.

1 Q. Bear with me just a minute, Mr. Ritchie, please.

2 A. Certainly.

3 Q. Dobie's store is located on Railroad Avenue a  
4 short distance down from Main Street, correct?

5 A. That's correct.

6 Q. And then the Peace Funeral Home is even a shorter  
7 distance further down Railroad Avenue, correct?

8 A. Correct.

9 Q. And then Mr. Wooden's greatgrandmother's house is  
10 near there on Railroad Avenue; is that correct?

11 A. That's correct.

12 Q. Is that a fact?

13 A. That's a fact.

14 Q. That's where his greatgrandmother's house is?

15 A. That's where it was. I don't know if she still  
16 lives there.

17 Q. But at that time?

18 A. Yes.

19 Q. Mr. Richardson told you that he encountered  
20 several people doing things like washing their car and  
21 people standing in their yard doing the normal sort of  
22 things that people would be doing on Saturday  
23 afternoon, correct?

24 A. Yes, he did.

25 Q. Mr. Richardson also told you that when he got to



1 Waverly Village, there was discussion going on among  
2 those present about the description of one of the  
3 people who is supposed to have done this, correct?

4 A. There was some discussion, yes. I'd have to look  
5 at the 302 to see exactly.

6 Q. Here we go, right where my finger is, the  
7 paragraph that --

8 MR. NOVAK: Judge, I object to all this  
9 scuttlebutt that Mr. Richardson said he heard about.

10 THE COURT: Well, I wondered where we were  
11 going, Mr. Boatwright.

12 MR. BOATWRIGHT: I'm not going --

13 THE COURT: You are not going --

14 MR. BOATWRIGHT: That's all I wanted to ask  
15 him.

16 THE COURT: I don't know what all that was  
17 about anyway. Let's get on to something that counts.

18 BY MR. BOATWRIGHT:

19 Q. Terence Richardson told you that he spoke with  
20 Alonzo Scott; is that not true?

21 A. Yes, he did.

22 Q. Alonzo Scott is certainly under subpoena for this  
23 case; is that right?

24 A. Yes, sir.

25 Q. Later on that evening, Mr. Richardson claimed to

1 you that he went to a pool hall in the Waverly area;  
2 is that right?

3 A. Yes, sir.

4 Q. Was there, in fact, a pool hall there?

5 A. Yes, sir, on New Street right across from Hicks  
6 Store. I could point it out approximately.

7 Q. That's okay. But there is one there; is that  
8 right?

9 A. Yes.

10 Q. Now, Mr. Novak asked you and you said that he told  
11 you he went to John Brown's trailer?

12 A. He indicated to me, I believe the 302 says that he  
13 saw John Brown.

14 Q. He never actually told you that he went to his  
15 residence, did he?

16 A. He said he saw him.

17 Q. He said --

18 THE COURT: You all are using a lot of  
19 indefinite pronouns. It might be better if you  
20 identified the "he said that he said that he said that  
21 he saw" because by the time you finish that sentence,  
22 you can't figure out who he was in any one of the  
23 placements of the pronoun.

24 THE WITNESS: I'm sorry, Your Honor.

25 THE COURT: The question and the answer,

1 let's both try to use names.

2 MR. BOATWRIGHT: My fault. I got it  
3 started, so to speak.

4 BY MR. BOATWRIGHT:

5 Q. Mr. Richardson told you that he, Mr. Richardson,  
6 remembered speaking to Ernest Barrow and John Brown,  
7 correct?

8 A. That's correct.

9 Q. But he never specifically told you that he went to  
10 John Brown's trailer?

11 A. No.

12 Q. He, Mr. Richardson, told you that he was pretty  
13 intoxicated at this point, correct?

14 A. Yes, he did.

15 Q. Intoxicated to the point where he needed help to  
16 get back to where he was going to spend the night; is  
17 that right?

18 A. That's what Mr. Richardson told him.

19 Q. Now, also, you are talking to him two and a half  
20 years after the death of Officer Gibson, correct?

21 A. That's correct.

22 Q. When you told Mr. Richardson what the purpose of  
23 your interview was, did he agree to speak to you  
24 without hesitation?

25 A. There was some slight hesitation but --

1 Q. Basically --

2 A. Basically, yes.

3 Q. And he told you that he wanted to do so in an  
4 effort to clear his name, so to speak?

5 A. Yes, sir.

6 Q. All right. When he told you -- he actually told  
7 you in that first interview as well, did he not, that  
8 he had sold small amounts of drugs "back in the day,"  
9 correct?

10 A. That's correct.

11 Q. Now, did you ask him what type of drugs are you  
12 talking about?

13 A. What is written in the 302 says drugs. That is  
14 what Mr. Richardson said to me.

15 Q. So you did not ask him what type of drugs are you  
16 talking about?

17 A. Yes, I did. I spoke specifically about crack  
18 cocaine.

19 Q. And what did he say?

20 A. He said exactly what that 302 says.

21 Q. He just said drugs?

22 A. Yes, sir.

23 Q. All right. So you didn't go -- you didn't pin it  
24 down on him, so to speak?

25 A. No, sir.

1 Q. All right. Now, turning to the subsequent  
2 interview the next month, shoot, just about what, ten,  
3 fifteen days later, correct?

4 A. Yes, sir.

5 Q. You had to go a little further to go see him this  
6 time. He was in a different facility.

7 A. Yes, sir.

8 Q. He was way down in southwest Virginia, correct?

9 A. A lot further.

10 Q. At Red Onion Correctional Facility, correct?

11 A. Yes, sir.

12 Q. And he again repeated the assertion about selling  
13 drugs "back in the day"?

14 A. Yes, sir.

15 Q. Did you pin him down then about what drugs he was  
16 talking about?

17 A. I asked him specifically crack cocaine, and he  
18 gave me the same answer. Mr. Richardson in that  
19 second interview was not as forthcoming with me as he  
20 was in the first.

21 Q. He told you he wasn't happy being where he was;  
22 isn't that true?

23 A. That's correct.

24 Q. It's a much more oppressive environment, so to  
25 speak, correct?

1 A. It was a maximum security prison.

2 THE COURT: Maybe austere?

3 MR. BOATWRIGHT: I'm sorry?

4 THE COURT: Maybe Austere.

5 MR. BOATWRIGHT: Austere, yes.

6 BY MR. BOATWRIGHT:

7 Q. Perhaps spartan even environment; is that fair to  
8 say?

9 A. A maximum security prison is --

10 Q. Yes.

11 A. Yes.

12 Q. Now, this is when you talked to him about, wait a  
13 minute; what you told me about the TV times and so  
14 forth doesn't appear to match up with the way that the  
15 TV schedule actually was.

16 A. That's correct.

17 Q. Right?

18 A. Yes, sir.

19 Q. And he said, hey, that's the way I recall it or  
20 words to that effect; isn't that true?

21 A. That's correct.

22 Q. All right. We are still now a little bit further,  
23 two and a half years down the road, correct?

24 A. A few weeks.

25 Q. You told him, wait a minute, Shawn Wooden is not

1 backing up your story, correct?

2 A. I did.

3 Q. But you knew he already knew that; isn't that  
4 true?

5 A. Yes. I --

6 Q. Because you knew that Shawn Wooden --

7 THE COURT: Let him finish.

8 MR. BOATWRIGHT: I'm sorry. I tend to get a  
9 little wound up, too.

10 THE COURT: That may be why they said slow  
11 down.

12 MR. BOATWRIGHT: I know. I had two cups of  
13 coffee this morning, one and a half too many probably.

14 BY MR. BOATWRIGHT:

15 Q. Go ahead and finish your answer, I'm sorry.

16 A. Would you repeat the question for me, please?

17 Q. I forgot what I asked.

18 THE COURT: Another reason not to. All  
19 right.

20 BY MR. BOATWRIGHT:

21 Q. Well, let's --

22 MR. BOATWRIGHT: Maybe the court reporter  
23 could help me.

24 MR. NOVAK: I will object to it then anyhow.

25 How's that?

1 THE COURT: We don't read them back.

2 MR. BOATWRIGHT: Could I speak with Mr.  
3 HuYoung just a moment?

4  
5 (Discussion off the record)

6  
7 BY MR. BOATWRIGHT:

8 Q. Oh, Mr. Wooden. That's what it was. Mr. Wooden  
9 -- you knew when you spoke to him that sometime, well  
10 over a year before that, Mr. Wooden had testified at  
11 the preliminary hearing involving the state court  
12 cases and Mr. Richardson and Mr. Claiborne; did you  
13 not?

14 A. Yes, sir.

15 Q. And you knew that in that testimony Mr. Wooden  
16 had, among other things, at least not backed up a good  
17 portion of what Mr. Richardson had told you?

18 A. Yes, sir.

19 Q. And you knew, of course, Mr. Richardson is -- you  
20 knew Mr. Richardson had been present when that  
21 occurred, correct?

22 A. Yes, sir.

23 Q. So you weren't telling him anything -- you knew  
24 you weren't telling him anything new, correct?

25 A. That's correct.



1 Q. Now, and you say, hey, or words to this effect,  
2 you know, Mr. Wooden is not backing you up. He's been  
3 charged with obstruction of justice and has basically  
4 said he's a witness to the killing of Officer Gibson,  
5 true?

6 A. That's what I told him.

7 Q. And Mr. Richardson just said, I wasn't there. I  
8 had nothing to do with it.

9 A. That's correct.

10 Q. You also attempted -- you and Mr. Talbert again  
11 were present, I assume.

12 A. Yes, sir.

13 Q. You also attempted to broach the subject with him  
14 of, well, maybe this thing could have happened, but it  
15 wasn't an intentional killing, correct?

16 A. I told him that maybe you went out there and you  
17 didn't intend for that to happen. Maybe it was an  
18 accident.

19 Q. And he said that's not something that he even  
20 wanted to discuss with you.

21 A. That's correct.

22 MR. BOATWRIGHT: Thank you, Mr. Ritchie. I  
23 don't have any other questions for you.

24

25

## CROSS EXAMINATION BY MR. EVERHART:

1

2

3

Q. Good morning, Special Agent Ritchie.

4

A. Good morning.

5

6

MR. EVERHART: Could we see, please, the --  
I think it's CH-3, the large -- is it 4? 4, please.

7

BY MR. EVERHART:

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Q. Just so I'm clear, Special Agent Ritchie. I see a picture. It says Roosevelt Claiborne's apartment at Covington Court, Beale Boys store in the background in the upper right-hand corner. Do you see that, sir?

A. Yes, sir.

Q. And I think you mentioned in talking about the distances that that would be Beaver Dam and Main, essentially; is that right?

A. Beale Boys would be located at Beaver Dam and Main.

Q. And you mentioned a distance from there down to Bank and Beaver Dam. I think you said actually Covington Court. So I assume that's the Covington Court we're talking about.

A. Yes. I mentioned from Covington Court to Bank and Beaver Dam.

Q. If I could just take a step or two forward, it appears there is a green line running kind of the

1 perimeter, if you will, of I guess what is the city  
2 limits of Waverly. Is that -- does Beaver Dam  
3 continue on down from here down to here?

4 A. Yes, sir. Beaver Dam Road continues to run along  
5 that green line.

6 Q. So that green line delineates the city limits, but  
7 it could also be a road for our purposes?

8 A. Yes, sir.

9 Q. So when you said you measured from Covington Court  
10 to Bank and Beaver Dam, you are talking about right  
11 there?

12 A. From this location right here to this location.

13 Q. That location right there. And you measured that  
14 as 1.1 miles; is that correct?

15 A. Yes, sir.

16 Q. I just wanted to be clear. I couldn't tell on the  
17 picture. Thank you very much.

18 MR. EVERHART: Now, Judge, if the Court  
19 would allow, I'd like to ask some questions about --  
20 if the Court would allow me under Rule 611(b) to ask  
21 some questions about Evette Newby. I asked Mr. Novak  
22 about that yesterday instead of recalling Special  
23 Agent Ritchie another time.

24 THE COURT: What's your position?

25 MR. NOVAK: Judge, for expedience, I won't

1 object.

2 MR. EVERHART: Thank you, Your Honor. Thank  
3 you, Mr. Novak.

4 BY MR. EVERHART:

5 Q. Special Agent Ritchie, as you testified yesterday,  
6 you picked up the federal investigation in this case  
7 in early 1999 or late 1999?

8 A. December '99.

9 Q. And, obviously, you are very familiar with the  
10 facts and investigation of this case, correct?

11 A. Yes, sir.

12 Q. You are aware that Evette Newby, who testified  
13 yesterday, made numerous statements regarding this  
14 incident.

15 A. Yes, sir.

16 Q. Now, on January the 19th of 2000, she gave you a  
17 statement, which, in essence, is what she testified to  
18 yesterday. Am I correct on that?

19 A. That's correct.

20 Q. Are you aware of any statements she made to police  
21 investigators prior to January 19, 2000, in which she  
22 implicated my client, Ferrone Claiborne?

23 A. To other -- any other investigator?

24 Q. Any police investigator.

25 A. Any police investigator, yes.

1 Q. Where would that be?

2 A. That would be the Sussex County Sheriff's  
3 Department and the state police.

4 Q. Which date is that?

5 A. I don't recall the exact date when she spoke with  
6 those investigators. I'd have to look at copies of  
7 the reports to tell you specifically.

8 MR. NOVAK: Judge, that would all be  
9 hearsay. I would object to that. He's asking  
10 something that's consistent with her testimony and  
11 something he didn't even prepare. If he has something  
12 that she told Agent Ritchie --

13 THE COURT: What are you doing, offering a  
14 prior consistent statement?

15 MR. EVERHART: No, I'm not.

16 THE COURT: Okay. A prior inconsistent  
17 statement, because there isn't a predicate for it.

18 MR. EVERHART: Judge, if you would like me  
19 to answer the question best -- if it would be easier  
20 to approach so I say it outside the presence of the  
21 jury, if that's okay with the Court. If you want my  
22 honest answer, then I will happy to approach and tell  
23 Your Honor.

24 THE COURT: Are you familiar with the rule?  
25 Why don't you just give me the rule you are proceeding

1 under, 801(d) what, (a) or (b)?

2 MR. EVERHART: Judge --

3 THE COURT: All right. Come up and let me  
4 hear. Come up here.

5

6 BENCH CONFERENCE:

7

8 THE COURT: You're offering it as a prior  
9 inconsistent statement or --

10 MR. EVERHART: No, Judge. Quite frankly, I  
11 expected his answer to be no because in the Jencks  
12 material and all the discovery we've been provided, I  
13 have five statements from Evette Newby. One is from  
14 Trooper Turner. That was on April 25th. One is on  
15 April 25th --

16 THE COURT: It doesn't make any difference  
17 at this point for my purposes. Are you saying you  
18 have five in which she didn't say that?

19 MR. EVERHART: I have four in which she  
20 didn't mention Mr. Claiborne.

21 THE COURT: Do you remember the other two  
22 that he is talking about?

23 MR. EVERHART: No, I don't. That's why I  
24 was taken by surprise by the answer.

25 THE COURT: Well, just a minute. Are there

1 any other statements?

2 MR. NOVAK: I can't read his mind. But what  
3 I -- the only thing I can think about what he's  
4 talking about is we turned over a statement that  
5 actually is captioned with her son's name at the top  
6 where --

7 THE COURT: Her what?

8 MR. NOVAK: Her son's name. He talked to  
9 her son. I think that's what Agent Ritchie is talking  
10 about. They have a copy. We gave that in discovery.

11 MR. EVERHART: That's true.

12 THE COURT: I thought he said there were two  
13 of them, one to the -- was it Sussex? Didn't he in  
14 his answer just on the stand, didn't he say to the  
15 Sussex police and the state police?

16 MR. EVERHART: That's why I didn't want to  
17 say it in front of the jury.

18 THE COURT: I understand. I'm just trying  
19 to figure out -- well, I don't know how -- What do you  
20 want to do with it?

21 MR. EVERHART: I think what I will do is  
22 leave it. It seems to me that's the smarter thing to  
23 do at this point and --

24 MR. NOVAK: As to one --

25 THE COURT: Easy. She can't get both of

1 you.

2 MR. EVERHART: I wasn't accusing him of  
3 lying. I just was caught off guard trying to address  
4 it.

5 THE COURT: So you are not offering --

6 MR. EVERHART: I'm not offering it.

7 THE COURT: Any other questions about the  
8 substance of any of the statements?

9 MR. EVERHART: I would like to ask about the  
10 substance of the January 19, 2000, statement to him.

11 MR. NOVAK: I agree to that to save time  
12 because I'm trying to save time.

13 THE COURT: Good. Hold on a minute.

14 MR. BOATWRIGHT: I would like to ask the  
15 Court's permission, I realize Mr. Everhart has got  
16 started, but I neglected to ask about three distance  
17 questions of Agent Ritchie.

18 THE COURT: You can do them after he's  
19 finished.

20 MR. BOATWRIGHT: Thank you.

21

22 END BENCH CONFERENCE

23

24 BY MR. EVERHART:

25 Q. Special Agent Ritchie, if I could ask you to



1 recollect, as best you are able, the statement that  
2 Miss Newby gave you on January 19th of 2000. If you'd  
3 like to take a glance at this if it would help refresh  
4 your recollection.

5 A. Yes, sir.

6 Q. And I've highlighted a couple parts that I will  
7 ask you questions about that will help you even more.  
8 Actually, Special Agent Ritchie, I can tell you. You  
9 are welcome to read it. I will ask you questions  
10 about things on the front. Thank you.

11 Now, she spoke with you, as I said, on  
12 January 19th. She made a statement about what she had  
13 observed that day, correct?

14 A. That's correct.

15 Q. She told you she had seen a group of black males  
16 hanging out by the utility box that was mentioned  
17 several times during her questioning yesterday,  
18 correct?

19 A. Yes, sir.

20 Q. Because you were here in the courtroom for her  
21 questioning by both sides?

22 A. Yes, sir.

23 Q. And she told you that in that group she recognized  
24 Ferrone Claiborne, my client?

25 A. That's correct.

1 Q. Terence Richardson, Mr. Boatwright and Mr.  
2 HuYoung's client. She mentioned several other  
3 individuals by name, correct?

4 A. Yes.

5 Q. Including Shawn Wooden?

6 A. Yes.

7 Q. And including Fred Smith, Larry Stith and Coop  
8 Falls, correct?

9 A. Correct.

10 Q. She told you that the officer that -- am I correct  
11 that she said that Officer Gibson came up in his  
12 police car and he stopped and had a brief conversation  
13 with those young men?

14 THE COURT: You mean in November -- in the  
15 January 19th statement?

16 BY MR. EVERHART:

17 Q. In the January 19th statement, didn't she tell you  
18 -- yes, Your Honor, thank you -- that the -- I think  
19 she said, actually, the police car came in and had a  
20 brief conversation with the young men.

21 A. I believe she is referring to back in the woods at  
22 that point.

23 Q. Do me a favor. I don't want to put words in your  
24 mouth. Read the second little highlighted sentence  
25 there at the top, actually, the second full

1 paragraph. That's it.

2 A. She does indicate that the first time that the  
3 police cruiser came in that they had a conversation  
4 with the group of men at the utility box.

5 Q. She meaning Officer Gibson, obviously. That's his  
6 car.

7 A. Yes.

8 Q. Then she says that about five minutes later the  
9 police officer came back in his vehicle.

10 A. That's correct.

11 Q. And, as she testified, parks, etcetera. Now, she  
12 also told you that as she was looking out the back  
13 window, she saw Mr. Claiborne and Mr. Richardson  
14 speaking with Officer Gibson back in the woods,  
15 correct?

16 A. That's correct.

17 Q. She said that's when the struggle occurred.

18 A. Yes, sir.

19 Q. I'm sorry. You measured, also, I believe -- you  
20 provided us with distances in Waverly, correct?

21 A. Yes, sir.

22 Q. You're the author of that paper?

23 A. Yes.

24 Q. You measured the distance from Covington Court to  
25 Dobie's walking up Main Street. You measured that as

1 nine-tenths of a mile; is that right? I just want to  
2 make sure I'm reading it right.

3 A. Covington to Dobie via Main Street is nine-tenths  
4 of a mile.

5 Q. Of course, Main Street we remember is the one that  
6 runs kind of like that, part of that triangle Mr.  
7 Novak, I think, mentioned, correct?

8 A. Yes, that's correct.

9 Q. If we could maybe have the diagram, please. The  
10 jury probably knows it better than I do, but just to  
11 help me, if you could just show with the pointer or  
12 with your finger, whatever is best for you.

13 A. Main Street runs east to west right through the  
14 center of Waverly.

15 Q. Yes, sir. If you'd just show me again from  
16 Covington Court to Dobie's via Main you said.

17 A. Covington Court, which is here on Beaver Dam, you  
18 come down Beaver Dam, come onto East Main Street, come  
19 across 460 onto Railroad Avenue, and Dobie's store  
20 would be right here.

21 Q. And did you measure -- you measured from Dobie's  
22 store to Waverly Village I note is seven-tenths of a  
23 mile. What route is that?

24 A. Dobie's store to Dogwood to Middle to Amherst.

25 Q. That's by vehicle then?

1 A. Yes, sir.

2 Q. With a car. Thank you very much.

3 MR. EVERHART: Could I have one second, Your  
4 Honor, to ask Mr. Gavin some questions?

5

6 (Discussion off the record.)

7

8 MR. EVERHART: Thank you.

9 THE COURT: Mr. Boatwright, you have a  
10 couple distances you wanted to cover that you didn't.

11 MR. BOATWRIGHT: Yes, sir, and locations.

12

13 CROSS EXAMINATION BY MR. BOATWRIGHT:

14

15 Q. You've got on there, Special Agent Ritchie, a  
16 photograph of what was then Shawn Wooden's trailer,  
17 correct?

18 A. Correct, right here.

19 Q. And when you see the red dot on there, what street  
20 is that on?

21 A. Robert Wilkins Avenue.

22 Q. And have you measured by road how far it is from  
23 there to Waverly Village?

24 A. Robert Wilkins Avenue -- would you like me to give  
25 you the direction I traveled?

1 Q. Sure.

2 A. Robert Wilkins Avenue from Mr. Wooden's trailer to  
3 West Main Street to Railroad Avenue to Dogwood Avenue  
4 to Middle street to Amherst Lane to Waverly Village  
5 Apartments was 1.6 miles.

6 Q. Okay. Now, you indicated -- I think you were  
7 trying to indicate, if I'm not mistaken, that there  
8 might be an alternate way to travel on foot from  
9 Waverly Village to that location; is that right?

10 A. Waverly Village to Robert Wilkins?

11 Q. Right.

12 A. There is -- if you look, you see this picture of  
13 the radio tower, which is here on Cobble Hawk, that  
14 radio tower, as you're looking at that, is located  
15 directly behind where Mr. Wooden's trailer was on  
16 Robert Wilkins. And there is a cut that goes through  
17 from Cobble Hawk over to that radio tower that they  
18 use as like to access that, and you could possibly  
19 travel through that area.

20 Q. Did you walk that distance?

21 A. No, sir.

22 Q. You walked some others but not that one?

23 A. That's correct.

24 Q. So you don't know how--

25 THE COURT: No. If he didn't walk it, he

1 doesn't know.

2 BY MR. BOATWRIGHT:

3 Q. You don't know?

4 A. I don't know.

5 MR. BOATWRIGHT: All right. Thank you a  
6 lot.

7 THE COURT: Any questions?

8 MR. NOVAK: No. Thank you, Judge.

9 THE COURT: All right. Mr. Ritchie, you may  
10 step down.

11 THE WITNESS: Thank you, Your Honor.

12

13 (The witness was excused from the witness  
14 stand)

15

16 MR. NOVAK: Shawn Wooden, please.

17 THE COURT: Shawn Wooden.

18

19 SHAWN WOODEN, having first been duly sworn,  
20 was examined and testified as follows:

21

22 MR. NOVAK: May I proceed, Your Honor?

23 THE COURT: Please.

24

25

1 DIRECT EXAMINATION BY MR. NOVAK:  
2

3 Q. Sir, do you want to tell the ladies and gentlemen  
4 what your name is?

5 A. Shawn Wooden, Sr.

6 Q. Mr. Wooden, do you want to tell the folks how old  
7 you are?

8 A. Twenty-eight.

9 Q. Now, you are currently in jail; is that right?

10 A. Yes.

11 Q. And what type of -- you pled guilty to an offense?

12 A. Yes.

13 Q. What type of offense have you pled guilty to?

14 A. Obstruction of justice.

15 Q. That's for lying; is that right?

16 A. Yes.

17 Q. And were you sentenced by Judge Payne in that  
18 case?

19 A. Yes.

20 Q. And what were you sentenced to?

21 A. Ten years.

22 Q. Ten years in the federal penitentiary?

23 A. Yes, sir.

24 Q. Now, did you plead guilty pursuant to a plea  
25 agreement with the United States?



1 A. Yes.

2 Q. And are you obligated to testify?

3 A. Yes.

4 Q. What are you obligated -- what kind of testimony  
5 are you obligated to perform?

6 A. To tell the truth.

7 Q. Now, you want something out of that; is that  
8 right?

9 A. Yes.

10 Q. What do you hope to get out of it by testifying?

11 A. Less time.

12 Q. And who makes -- how is it that you go about  
13 getting a possible reduction on your sentence if there  
14 is to be one?

15 A. You could have a motion and the judge decides.

16 Q. It's up to the judge; is that right?

17 A. Yes.

18 Q. Have I told you that if you tell the truth that I  
19 would file such a motion?

20 A. Yes.

21 Q. But, ultimately, at the end of the day, it's up to  
22 the judge as to whether you are to get a reduction; is  
23 that right?

24 A. Yes.

25 Q. Has anybody promised you that you are going to get

1 any type of reduction?

2 A. No.

3 Q. Now, in addition to that conviction, you also were  
4 convicted in 1999 of unauthorized use of an automobile  
5 in Hopewell; is that right?

6 A. Yes.

7 Q. You also were convicted in the past of larceny of  
8 an auto; is that right?

9 A. Yes.

10 Q. Now, where were you raised at, sir?

11 A. Surrey County.

12 Q. By your grandmother?

13 A. And my aunt and grandmother.

14 Q. At some point did you -- when did you graduate  
15 from high school?

16 A. '91.

17 Q. At some point, thereafter, did you start going to  
18 Waverly?

19 A. Yes.

20 Q. And why was it that you started going to Waverly?

21 A. To stay with my grandmother.

22 Q. Where was she initially living at when -- she  
23 moved to Waverly at some point?

24 A. Yes. When she first moved to Waverly, she moved  
25 on New Street.

1 Q. And then where did she move to?

2 A. Later she moved to Dogwood.

3 Q. And would you visit her then on Dogwood Street  
4 regularly?

5 A. Yes.

6 Q. Around by the time in 1994, had you started living  
7 with your grandmother then on Dogwood Street?

8 A. Yes.

9 Q. Do you know the defendant, Ferrone Claiborne?

10 A. Yes.

11 Q. How do you know him?

12 A. I first met him a long time ago at a family  
13 reunion when we was kids.

14 Q. His father was dating one of your relatives; is  
15 that right?

16 A. Yes.

17 Q. So you have known him a good part of your life; is  
18 that right?

19 A. Yes.

20 Q. Now, when you got out of high school, when you  
21 started going to Waverly, would you see Ferrone then?

22 A. Yes.

23 Q. And where would you hang out at?

24 A. Ronald Williams' house.

25 Q. And does he have a nickname?

1 A. Yes.

2 Q. What's his nickname?

3 A. Booty.

4 Q. Did Booty have any brothers?

5 A. Yes, Brevard and Tim and John.

6 Q. Did they also live there on Dogwood Street?

7 A. Yes.

8 Q. Do you know the defendant, Terence Richardson?

9 A. Yes.

10 Q. How do you know the defendant?

11 A. I met him through Ronald Williams and Brevard.

12 Q. When was it approximately that you met him?

13 A. It was about '93, '94.

14 Q. Now, when you first started hanging around this  
15 fellow Booty's house and the people that you  
16 described, were any of those people involved in  
17 selling any type of drugs?

18 A. Yes.

19 Q. And who was involved in selling drugs?

20 A. Ronald Williams, Brevard, Lewis Langford.

21 THE COURT: Lewis who?

22 THE WITNESS: Langford.

23 BY MR. NOVAK:

24 Q. Lewis Langford, okay. Anybody else?

25 A. Terence Richardson.

1 Q. This defendant?

2 A. Yes.

3 Q. Okay. Anybody else?

4 A. Ferrone Claiborne.

5 Q. Were they all selling together?

6 A. They was all -- I think they was selling on their  
7 own. But they was, you know, be together, but they  
8 was selling for their self.

9 Q. What were they selling, what type of drugs?

10 A. Crack cocaine.

11 Q. Where were they selling?

12 A. Locust -- I think it's Locust Drive or Locust  
13 Avenue.

14 Q. How often would you see them out there selling?

15 A. Like mostly on the weekends.

16 Q. And this went on from 1993 till when?

17 A. '93 to -- I left and came back.

18 Q. Meaning you left Waverly for awhile?

19 A. Yes.

20 Q. When did you leave Waverly?

21 A. I left Waverly in '95. I got incarcerated.

22 Q. So until the point that you were incarcerated in  
23 1995, you were aware that they were involved in that  
24 basically; is that right?

25 A. Yes.

1 Q. Now, when -- before you got incarcerated would you  
2 -- strike that.

3 Before you started -- before you were  
4 arrested in 1995, did you hang out with either of  
5 these two defendants?

6 A. Yes.

7 Q. Which one or both of them?

8 A. I hung out with Terence more.

9 Q. How long would you see him then?

10 A. Terence I seen just about every day.

11 Q. You would just socialize with him; is that right?

12 A. Yes.

13 Q. And he was living where in relation to your  
14 grandmother?

15 A. Across the street on Dogwood; not exactly across  
16 the street, but on the opposite side, a little ways  
17 up.

18 Q. Now, before you got arrested and went to jail in  
19 1995, had you started using crack cocaine?

20 A. Yes.

21 Q. And did you become addicted to crack cocaine?

22 A. Yes.

23 Q. Have you remained addicted to crack cocaine until  
24 you were arrested on the federal charges?

25 A. I have went to rehab.

1 Q. When was that?

2 A. In '99.

3 Q. When did you stop using -- did you stop using  
4 crack cocaine then, or did you revert back to using  
5 some?

6 A. I stopped after I got -- after I got locked up.  
7 Right after I went to rehab, I got locked up. I  
8 hadn't used it since then.

9 Q. Now, directing your attention to approximately  
10 1996 and 1997, did you have an occasion to move to  
11 Spring Grove?

12 A. Yes.

13 Q. Once you got out of jail; is that right?

14 A. Yes.

15 Q. Did you have a girlfriend back then?

16 A. In '96, yes.

17 Q. Do you know Jovanna Jones?

18 A. Yes.

19 Q. Who is she?

20 A. She was my girlfriend at that time, and now she is  
21 just my child's mother.

22 Q. Back then you were living with her then; is that  
23 right?

24 A. Yes.

25 Q. At some point in the summer of 1997, did you move

1 to the town of Waverly?

2 A. Yes, to Robert Wilkins.

3 Q. Robert Wilkins Avenue?

4 A. Yes.

5 MR. NOVAK: Judge, if we could show the  
6 witness P-7, please.

7 BY MR. NOVAK:

8 Q. Do you recognize what's depicted there on the  
9 monitor, sir?

10 A. Yes.

11 Q. What is that a photograph of?

12 A. The trailer me and Jovanna Jones was staying at.

13 Q. Who was else was living at that trailer other than  
14 yourself and Jovanna Jones?

15 A. Jovanna Jones and her kids.

16 Q. How many kids did she have?

17 A. There were two staying there with her.

18 Q. How old were they back in '97 and '98,  
19 approximately? Were they young?

20 A. Yes, maybe four and eight.

21 Q. Now, once you moved there, did you start using  
22 crack cocaine again?

23 A. Yes.

24 Q. Buying it from various dealers in Waverly?

25 A. Yes.



1 Q. And in December of 1997, did you then get arrested  
2 for not paying some kind of restitution on one of  
3 those earlier charges that you had?

4 A. Yes.

5 Q. You went to jail for a while; is that right?

6 A. Yes.

7 Q. Did you get out in March of '98?

8 A. Yes.

9 Q. When you got out in March of '98, did you go back  
10 to living at that trailer where you were living with  
11 Jovanna Jones?

12 A. Yes, sir.

13 Q. Do you know a fellow by the name of Joe Mack?

14 A. Yes.

15 Q. That's his nickname; is that right?

16 A. Yes.

17 Q. Who is Joe Mack?

18 A. He's a drug dealer, and he was my neighbor.

19 Q. That's where his mother lived; is that right, near  
20 you?

21 A. Excuse me?

22 Q. Did his mother live near you?

23 A. Yes.

24 Q. Where in relation to you, how far away?

25 A. The next trailer down.

1 Q. Now, would you ever receive drugs from him?

2 A. Yes.

3 Q. And what kind of drugs were you getting from him?

4 A. Crack cocaine.

5 Q. And would you perform any service for him in  
6 return for the crack?

7 A. Yes.

8 Q. What would you do?

9 A. Driving him around.

10 Q. To where?

11 A. Different places.

12 Q. Now, do you know the nickname of his girlfriend?

13 A. Yes, Nuke.

14 Q. And Nuke lived in Sussex Trace apartments; is that  
15 right?

16 A. Yes.

17 Q. Would Nuke ever call over to your place and ask  
18 you to go get Joe Mack?

19 A. Yes.

20 Q. Did Joe Mack have a telephone at his mother's  
21 house?

22 A. No, sir.

23 Q. Do you know a fellow they call Daddy-O, Raoul  
24 Johnson?

25 A. Raoul, yes.

1 Q. If we could show you on the screen Exhibit P-6,  
2 could you tell us whether you recognize that location?

3 A. I can't really -- the cut of it looks -- yes, now,  
4 I can see the carport, yes.

5 Q. What is that a photograph of, sir?

6 A. Raoul's house.

7 Q. Can you tell us, who is Raoul?

8 A. He's a smoker, and he runs like a crack house.

9 Q. A smoker is somebody like you, somebody who uses  
10 crack cocaine; is that right?

11 A. Yes, sir.

12 Q. Have you ever been over to his house?

13 A. A lot, yes.

14 Q. Would it be fair to say that a lot -- a number of  
15 drug addicts go to that location?

16 A. Yes.

17 Q. It's basically a crack house in Waverly; is that  
18 right?

19 A. Yes.

20 Q. And could you tell us how it is that you met  
21 Raoul?

22 A. I met him through Terence Richardson. He went to  
23 sell some drugs over there.

24 Q. When was that, approximately?

25 A. Like the early part of '90, when I first started

1 going to Raoul's house.

2 Q. Where is that -- I'm sorry. Where is Raoul  
3 Johnson's house?

4 THE COURT: Can you pull that microphone a  
5 little bit to you and keep your voice up?

6 BY MR. NOVAK:

7 Q. Where is Raoul Johnson's house in relation to  
8 where your grandmother lived and Terence Richardson's  
9 dad lived on Dogwood?

10 A. Across the street.

11 Q. On Locus street?

12 A. Yes.

13 Q. So you could walk right over there; is that right?

14 A. Yes. There is a path. You go up across through  
15 the path to the street.

16 Q. Now, I will ask some questions about the day of  
17 the officer getting killed. You are, obviously,  
18 familiar with that; is that right?

19 A. Yes, sir.

20 Q. In fact, the crime you pled guilty to, obstruction  
21 of justice, relates to you lying about that; is that  
22 right?

23 A. Yes.

24 Q. In the week before that Saturday when the officer  
25 was killed, had you seen Terence Richardson during

1 that week?

2 A. Yes.

3 Q. Where had you seen him?

4 A. At Fred Smith's house.

5 Q. At some point, did he come and start staying with  
6 you?

7 A. Yes, sir.

8 Q. When, approximately, before that Saturday was it  
9 that he started staying with you?

10 A. It was the beginning of the week.

11 Q. Okay. Were you talking about Monday, Tuesday,  
12 something like that?

13 A. Yes.

14 Q. And how many days did he stay with you at your  
15 trailer?

16 A. Up until he was picked up on that Sunday.

17 Q. Now, during that time period, could you tell us,  
18 generally speaking, what did you all do during that  
19 week? Did you go to work or anything like that?

20 A. No. Well, the beginning of the week, we went to  
21 Williamsburg, and I used my cousin's car, and we went  
22 to Petersburg and --

23 Q. Where did you go in Petersburg?

24 A. To the Ramada Inn.

25 Q. Why did you go to the Ramada Inn?

1 A. Because Terence wanted to go see Lewis Langford.

2 Q. What does Lewis Langford have to do with the  
3 Ramada Inn?

4 A. He was working there. He had a job there, and he  
5 also had drugs there.

6 Q. Would it be fair to say you would all go down to  
7 that hotel to party?

8 A. Yes, not really party but --

9 Q. Well, what did you do? You tell us. What did you  
10 do when you went to the hotel?

11 A. Talk and, you know, smoke weed and drink.

12 Q. You as well as Mr. Richardson?

13 A. Yes, sir.

14 Q. Would that basically describe what you did with  
15 Mr. Richardson most of that week, drank and got high?

16 A. Yes.

17 Q. In terms of getting high, what type of drugs were  
18 you using during that week?

19 A. The whole week mostly crack cocaine.

20 Q. And was Mr. Richardson also using drugs?

21 A. Yes.

22 Q. What kind of drugs was he using that week?

23 A. Marijuana and crack cocaine.

24 Q. Now, let me ask you this. During the week that  
25 Mr. Richardson was staying with you at your trailer,

1 did he bring a suitcase with all these different  
2 clothes or was he wearing the same type of clothes?  
3 What was he doing in terms of his clothing?

4 A. He had the same clothes on. He didn't bring any  
5 clothes with him.

6 Q. So basically wearing the same stuff every day?

7 A. Yes, sir.

8 Q. I want to direct your attention to the Friday  
9 before the murder, the day before the murder, and ask  
10 you if Terence Richardson was still staying with you  
11 then?

12 A. Yes, sir.

13 Q. You spent some portion of Friday with him at  
14 least?

15 A. Yes.

16 Q. Did you have an occasion to see what type of  
17 clothing he was wearing on the Friday beforehand?

18 A. The Friday, beforehand, yes.

19 Q. The day before the murder.

20 A. Yes.

21 Q. All right. What was he wearing back then?

22 A. He had a plaid shirt, a T-shirt with a marijuana  
23 leaf on it and some blue jeans.

24 Q. Let me show you RS-1, if I could. Do you  
25 recognize this item that's been marked RS-1?

1 A. Yes, sir.

2 Q. Where do you recognize this item from?

3 A. From Terence Richardson had it on in my house.

4 Q. Okay. On what day? Are you talking -- this is  
5 the T-shirt you are talking about that Friday?

6 A. Friday, yes.

7 Q. If I could show this to the witness, RS-4,  
8 please. Do you recognize what's been marked RS-4?  
9 You can hold it up if you want.

10 A. Uh-huh.

11 Q. Where do you recognize that from?

12 A. From Terence Richardson.

13 Q. And was he wearing that in addition to the T-shirt  
14 throughout parts of that week?

15 A. Yes.

16 Q. That's the plaid shirt you just spoke of?

17 A. Yes, sir.

18 MR. NOVAK: All right. Judge, I'd move for  
19 the admission of RS-4. I don't think we moved to  
20 enter that. I do think we entered RS-1, as I recall.

21 THE COURT: RS-4 is admitted.

22

23 (Government's Exhibit Number RS-4 was  
24 received in evidence)

25



1 BY MR. NOVAK:

2 Q. Could you tell us, Mr. Wooden, what was the  
3 hairstyle that Mr. Richardson had back then on the  
4 Friday before the murder?

5 A. Corn rows with hair braided close, parted one or  
6 two back.

7 Q. Do you recall if Mr. Richardson was wearing  
8 anything on his head?

9 A. At one point in time at my house he had a bandana  
10 on his head.

11 Q. And what color was that?

12 A. Like a cream color.

13 Q. Now, could you tell us what it is that you all did  
14 on that Friday before the murder?

15 A. That Friday we was supposed to cut the grass at  
16 the trailer.

17 Q. At your trailer; is that right?

18 A. Yes.

19 Q. Did you cut the grass?

20 A. No.

21 Q. What did you do instead?

22 A. Drank.

23 Q. That's you and who else?

24 A. Me and Terence.

25 Q. Where is Miss Jones at this point?

1 A. She's at work.

2 Q. All right. So she's at work and you guys are  
3 sitting home drinking basically; is that right?

4 A. Yes, sir.

5 Q. Now, at some point do you leave the trailer during  
6 the afternoon of that Friday?

7 A. Yes.

8 Q. And do you leave with Mr. Richardson?

9 A. Yes, sir.

10 Q. Where did the two of you go to?

11 A. I know we go to the store. We go to Josiah. I  
12 remember going to Josiah later on that night.

13 THE COURT: Where is Joe side?

14 THE WITNESS: It's a store.

15 THE COURT: Joe --

16 THE WITNESS: Josiah Dobie's.

17 BY MR. NOVAK:

18 Q. The full name of the convenience store Dobie's is  
19 Josiah Dobie's; is that correct?

20 A. Yes, sir.

21 Q. Apparently, there was a fellow named Josiah Dobie  
22 at some point who owned this store; is that basically  
23 it?

24 A. His name is Josiah Dobie, I guess. That's just  
25 the name we call it, Josiah Dobie's.

1 Q. The folks that live down in Waverly, they all  
2 refer to it as Josiah Dobie's; is that right?

3 A. Yes.

4 Q. Now, so when you went over to Dobie's store that  
5 afternoon, at some point during that day, did you come  
6 in contact with Ferrone Claiborne?

7 A. Yes, sir.

8 Q. Approximately, when was that that you came in  
9 contact with Ferrone Claiborne, to the best of your  
10 recollection?

11 A. It was Friday night.

12 Q. Approximately when on Friday night? Was it dark?

13 A. Yes, sir.

14 Q. And could you tell us, were you with Mr.  
15 Richardson when you came in contact with Mr.  
16 Claiborne?

17 A. Yes, sir.

18 Q. Could you tell us what happened when you came in  
19 contact with Mr. Claiborne?

20 A. It is still that Friday night when I came in  
21 contact with Ferrone Claiborne. He asked me could I  
22 give him a ride so I could take him to get some crack  
23 cocaine.

24 Q. What did you say?

25 A. I was like, I don't think I can get nobody's car.

1 Q. You didn't have your own car; is that right?

2 A. No.

3 Q. Whose car were you using to drive Joe Mack around  
4 to drop off drugs?

5 A. Joe Mack's.

6 Q. Would you ever have access to either -- did your  
7 girlfriend have a car?

8 A. No, sir.

9 Q. Did your grandmother have a car?

10 A. Yes, sir.

11 Q. What kind of car did she have?

12 A. She had a Honda Accord and a Ford, I believe it's  
13 a Tempo.

14 Q. Would your grandmother be kind enough to let you  
15 use her car on occasions?

16 A. She would let my girlfriend use it. And then I  
17 would just get it from my girlfriend.

18 Q. You didn't have access to that car that Friday  
19 night though; is that right?

20 A. No, sir.

21 Q. Did Mr. Claiborne tell you the amount -- well,  
22 first of all, the type of drugs he was going to get in  
23 Petersburg?

24 A. Yes.

25 Q. What was what?

1 A. Crack cocaine.

2 Q. Did he tell you how much crack cocaine he thought  
3 that he was going to be able to pick up?

4 A. No, sir.

5 Q. Now, did you tell him then that you could not  
6 drive him?

7 A. Yes.

8 Q. Now, also, at some point on that evening at  
9 Dobie's, did you run into a fellow called Skeeter?

10 A. Yes.

11 Q. And can you tell us who Skeeter is?

12 A. His name is Reggie Wilson. He is a local drug  
13 dealer.

14 Q. Somebody you are familiar with; is that right?

15 A. Yes.

16 Q. Did you buy drugs off of him in the past?

17 A. A lot of times.

18 Q. Did you see him there as well?

19 A. Yes. He came up while I was at the store.

20 Q. Was Mr. Claiborne present when he was there?

21 A. Yes.

22 Q. Now, at some point did Mr. Richardson and Mr.  
23 Claiborne go off and talk alone?

24 A. Yes, while I was talking to Skeeter.

25 Q. So you don't know what they were talking about,

1 obviously; is that right?

2 A. No, sir.

3 Q. Now, after the store, can you tell where it is  
4 that you went to?

5 A. After the store, I went in the store and bought  
6 some beer, left from there and went on Robert Wilkins  
7 Avenue to my trailer.

8 Q. Now, did you go back there to drink?

9 A. Yes.

10 Q. Did Mr. Richardson join you?

11 A. Yes.

12 Q. During the time that you went back there, did Mr.  
13 Richardson indicate to you anything about what he  
14 wanted to do in relation to Mr. Claiborne the next  
15 day?

16 A. Yes.

17 Q. What did he tell you?

18 A. That he wanted to meet Ferrone on Saturday morning  
19 to pick up some drugs.

20 Q. And did he ask you if you would accompany him?

21 A. Yes.

22 Q. Did you agree?

23 A. Not then, not Friday night, no.

24 Q. You agreed the next day; is that right?

25 A. Yes.

1 Q. So what did you all do then that Friday night?

2 A. Sit around and drink, played cards and rolled some  
3 marijuana with some crack cocaine and smoked it.

4 Q. I want to direct your attention to the next  
5 morning. Well, let me ask you, did Terence Richardson  
6 spend the night then at your trailer then that Friday  
7 night?

8 A. Yes.

9 Q. And you all woke up the next morning at some  
10 point; is that right?

11 A. Yes.

12 Q. What time did you wake up on Saturday, April 25th?

13 A. I believe it was nine-something, I believe.

14 Q. And where is it that you slept that night in the  
15 trailer?

16 A. At the far end of the trailer with Jovanna.

17 Q. Your girlfriend; is that right?

18 A. Yes.

19 Q. Was there a separate room for the kids?

20 A. Yes.

21 Q. And where did Terence Richardson sleep?

22 A. In the living room.

23 Q. Now, when you woke up that morning, that Saturday  
24 morning, did you go into the living room area?

25 A. Yes, sir.

1 Q. Was Terence Richardson there?

2 A. Yes.

3 Q. Did he have any clothes on?

4 A. Yes. He was fully dressed.

5 Q. What clothing was he wearing?

6 A. He had on jeans, the shirt with the marijuana leaf  
7 on the front and a plaid shirt.

8 Q. The same clothes he had on the day before?

9 A. Yes.

10 Q. What was he doing when you all woke up or when you  
11 walked out there and you saw him?

12 A. He was up with the TV on, watching TV.

13 Q. Now, at some point did you all leave the trailer?

14 A. Yes.

15 Q. And approximately when was it that you left?

16 A. I don't know the exact time, but it was right  
17 after I came in the living room that morning, I talked  
18 to him.

19 Q. And what did he say?

20 A. He asked then would I go with him to meet Ferrone.

21 Q. What did you say?

22 A. I was like, I don't know. So then I came back and  
23 I said, okay, we're gonna come right back before  
24 Jovanna, you know, wakes up.

25 Q. Jovanna was still asleep in bed then?



1 A. Yes.

2 Q. Were you able to get out of the bed without waking  
3 her?

4 A. Yes.

5 Q. Now, how is it that you left your trailer? Were  
6 you driving, running, jogging, walking?

7 A. No, on a bicycle.

8 Q. And how many bicycles were the two of you on?

9 A. I had one bike. I was doubling him on the  
10 handlebars.

11 Q. And for those of us that are too old to remember  
12 what doubling means on a bicycle; what does that mean?

13 A. I had him sitting on the handlebars, and I was  
14 pedaling the bike.

15 Q. Where did you motor that bike to?

16 A. From my trailer on Robert Wilkins --

17 THE COURT: Where?

18 THE WITNESS: From my trailer, which is  
19 located on Robert Wilkins, to Main Street. From Main  
20 Street to Railroad Avenue.

21 BY MR. NOVAK:

22 Q. And where did you go to then?

23 A. Proceeded down Railroad Avenue where we met  
24 Ferrone.

25 MR. NOVAK: Judge, maybe the easier thing to

1 do is use CH-4, if we could have the easel.

2 BY MR. NOVAK:

3 Q. Mr. Wooden, do you recognize --

4 MR. NOVAK: I'm sorry, Judge. May I  
5 proceed?

6 THE COURT: Yes.

7 BY MR. NOVAK:

8 Q. Mr. Wooden, do you recognize the exhibit that's  
9 been marked CH-4?

10 A. Yes.

11 Q. And you have a pointer there in front of you. Do  
12 you see that?

13 A. Yes.

14 Q. Can you show us where it is that your trailer is?

15 A. Right here.

16 Q. Does that follow to a red line to something called  
17 Robert Wilkins Avenue?

18 A. Yes.

19 Q. Now, can you take us from there over to where you  
20 and Mr. Richardson traveled on that bike?

21 A. We went from here to Main Street, from Main Street  
22 to here.

23 Q. Which is Railroad Avenue; is that right?

24 A. Yes.

25 Q. Do you see Dobie's store pictured on there?

1 A. Yes.

2 Q. And do you see where that is depicted there on  
3 Railroad Avenue?

4 A. Yes, right here.

5 Q. Now, did you go past -- is there a place called  
6 Peace Funeral Home?

7 A. Yes.

8 Q. And where is that located at in relation to  
9 Dobie's?

10 A. Keep past Josiah Dobie's and going to Dogwood  
11 Street.

12 Q. And it's on Railroad Avenue?

13 A. Yes.

14 Q. Now, when you got to near -- after you left  
15 Dobie's, before you get to the Peace Funeral Home, do  
16 you have any contact with Ferrone Claiborne?

17 A. We meet Ferrone there, but I didn't talk to him.

18 Q. Okay. Who does?

19 A. Terence talked to him.

20 Q. Why don't you tell us what happened there.

21 A. Well, we meet Ferrone. I stopped the bike.  
22 Terence got off the handlebars, and him and Terence  
23 -- Terence and Ferrone were walking and talking. I'm  
24 riding behind them on the bike. So I went past them  
25 like pedaling the bike backwards and pedaling, you

1 know, forward, going past them and they would be  
2 talking. So we keep going until we go up to Dogwood  
3 Street.

4 Q. Now, you are not able to hear what they're talking  
5 about; is that right?

6 A. No, sir.

7 Q. At any point do you learn at all where you are  
8 going to?

9 A. Do I learn where we are going to?

10 Q. Yeah. You are just -- how do you know where to  
11 pedal your bike to?

12 A. I'm just following them.

13 Q. Now, where do you follow them to?

14 A. Dogwood Street.

15 Q. On the day of the murder, was your grandmother  
16 still living there?

17 A. Yes.

18 Q. Do you stop at your grandmother's place at some  
19 point?

20 A. Yes.

21 Q. Now, what happened after that? Do you hook back  
22 up with Mr. Richardson and Mr. Claiborne?

23 A. Yes.

24 Q. Where do you hook back with them, referring to the  
25 map? Do you see where Dogwood Avenue is?

1 A. Yes.

2 Q. And just tell us what you did and show us on the  
3 map.

4 A. From Dogwood Street I meet up with them on Amherst  
5 Street.

6 Q. Is that before you get to the Waverly Village  
7 Apartments?

8 A. Yes.

9 Q. Is it still just the two of them and you?

10 A. Yes.

11 Q. And you are still on your bike?

12 A. Yes.

13 Q. And where do you go from there then?

14 A. From there proceed to the apartments.

15 Q. The Waverly Village Apartments?

16 A. Yes.

17 MR. NOVAK: Judge, if we might put down CH-4  
18 and use CS-3 now.

19 BY MR. NOVAK:

20 Q. Okay. Do you recognize the photograph depicted as  
21 CS-3?

22 A. Yes.

23 Q. And what is that a photograph of?

24 A. Waverly Village Apartments.

25 Q. I'm sorry?

1 A. Waverly Village Apartments.

2 Q. Could you tell us, did you go to the Waverly  
3 Village Apartments?

4 A. Yes.

5 Q. I would like you to, using the photograph and the  
6 pointer, tell us where it is you were and Mr.  
7 Claiborne and Mr. Richardson were.

8 A. Well, I was still riding the bike, so we -- the  
9 three of us coming through there. Them two walking;  
10 I'm on the bike.

11 Q. You're going to have to keep your voice up real  
12 loud.

13 THE COURT: You can move the mike on this  
14 side now.

15 BY MR. NOVAK:

16 Q. Actually, before we start that path, let me ask  
17 you one other question. Do you recall what Mr.  
18 Claiborne was wearing?

19 A. I cannot remember what he was wearing.

20 Q. Okay. Now, so the three -- I was rude and I cut  
21 you off. I'm sorry. Could you just take us now from  
22 the Village Apartments where the three of you all went  
23 and explain to the jury what you all did.

24 A. Well, the three us proceeded down Amherst to the  
25 Waverly Village Apartments. I'm still on the

1 bicycle. Terence and Ferrone they were walking.

2 There is a path that goes behind the main  
3 office to go to this little path right here. And I  
4 parked the bike behind the office, and we walked down  
5 the path like towards the playground, which is located  
6 here, and it's --

7 Q. Were there other people out there then?

8 A. Not that I saw.

9 Q. What happened next?

10 A. So we get to this little green-like box. I guess  
11 it was a phone or electricity box or something. We  
12 were right there. Terence and Ferrone was talking.

13 So --

14 Q. Did you hear what they said?

15 A. No.

16 Q. What happened next?

17 A. So Ferrone, he goes around the front to this  
18 apartment here.

19 Q. Okay. Where do you go?

20 A. Terence and me come here. He meets Ferrone.  
21 Ferrone got some dope.

22 Q. Okay.

23 A. So we go behind these two apartments here.

24 Q. Now, why are you going back there now?

25 A. I'm just following Terence.

- 1 Q. Did he tell you why it is you are going back to  
2 the -- back that way?
- 3 A. No, sir.
- 4 Q. So you are just following because you want the  
5 dope, too, right?
- 6 A. Yes.
- 7 Q. Dope referring to the crack; is that right?
- 8 A. Yes, sir.
- 9 Q. So you and Terence Richardson go where?
- 10 A. We go along behind here, behind these two  
11 apartments here, which come around here.
- 12 Q. Okay. Now, where did you go then?
- 13 A. From here we going through here. We meet  
14 Ferrone. He comes around the apartment, which is  
15 here.
- 16 Q. Okay. Where do you see him at for the first time  
17 then?
- 18 A. Behind this apartment.
- 19 Q. Okay. Where did the three of you all go?
- 20 A. A little cut or path in the woods here.
- 21 Q. Had you ever been back there before?
- 22 A. That was my first time ever.
- 23 Q. Okay. And could you tell -- I'm sorry. I cut you  
24 off again. Tell us where you went then.
- 25 A. We go in the path here in the woods. We go like



1 to the left in the woods, but it is an embankment and  
2 so we go back there. And Terence and Ferrone are  
3 talking.

4 That's when Terence -- I mean, Ferrone  
5 pulled out some crack cocaine.

6 Q. Were you able to see the crack cocaine?

7 A. Yes.

8 Q. You are obviously somebody who used crack for a  
9 long period of time. So you are familiar with what it  
10 looks like; is that right?

11 A. Yes.

12 Q. Approximately, how much crack cocaine did Ferrone  
13 Claiborne have in his hands?

14 A. I would say about a quarter or a little more.

15 Q. Quarter of a what?

16 A. Quarter of an ounce.

17 Q. So that would be about seven grams of crack; is  
18 that right, if my math is okay?

19 A. I mean I use -- I don't know by the grams.

20 Q. Did you ever learn in school that there are  
21 28 grams in an ounce?

22 A. Yes. I forgot all that now.

23 Q. All right. I'm sorry. So Mr. Claiborne has got  
24 this quarter ounce of crack in his hands. What does  
25 he do with it?

1 A. Well, while he's taking it out and him and Terence  
2 are talking, I said, give me a piece so I can try it.

3 Q. You said that?

4 A. Yes.

5 Q. Okay. You are going to test it; is that right?

6 A. Yes.

7 Q. And does he give you some crack?

8 A. Yes.

9 Q. Who gives you the crack?

10 A. Ferrone.

11 Q. How much does he give you?

12 A. A little over a 20.

13 Q. And what did you do then?

14 A. I proceeded over to this -- back to the right of  
15 the path, and I take the lighter out and the crack  
16 pipe --

17 Q. Do you have a crack pipe on you?

18 A. Yes.

19 Q. For those of us who don't use crack, why don't you  
20 explain to us how it is that you, as a crack addict,  
21 would use that. How do you use crack?

22 A. Well, you would take the crack, put it on the stem  
23 on the crack pipe, and you have to take the fire from  
24 the lighter to melt it. And once you melt it, you  
25 take the pipe and put it in your mouth and you inhale

1 the smoke.

2 Q. And do you start doing that then?

3 A. Yes.

4 Q. What happened when you started doing that?

5 A. At that time I heard the police say "halt."

6 THE COURT: Heard what?

7 THE WITNESS: A police officer, I heard a  
8 voice say "halt." When I turned around, I saw a  
9 police officer.

10 BY MR. NOVAK:

11 Q. Now, did you know who that officer was?

12 A. When I saw him.

13 Q. All right. You had seen him in the past?

14 A. Yes.

15 Q. And did you know his name as Officer Gibson?

16 A. I didn't know his name at the time.

17 Q. You now know it to be Officer Gibson though; is  
18 that right?

19 A. Yes.

20 Q. Now, when you saw Officer Gibson, what's the next  
21 thing that you saw? What happened next?

22 A. Well, he grabbed Terence Richardson.

23 Q. All right. And what happened after he grabbed  
24 Terence Richardson?

25 A. At the time he grabbed Terence Richardson and when

1 Terence was trying to get away from him, Ferrone  
2 grabbed him and tried to help Terence get away.

3 Q. And what were they doing?

4 A. They was both grabbing, struggling with the police  
5 officer.

6 Q. And where was that occurring at?

7 A. Back over here in the woods behind the spot right  
8 here.

9 Q. Off the middle path?

10 A. Yes, sir.

11 Q. And you can put that pointer down and just look to  
12 the jury. How long did they struggle with the police  
13 officer?

14 A. I don't know approximately the time.

15 Q. Now, was the officer in uniform?

16 A. Yes.

17 Q. Did you have an occasion to see if he had a  
18 weapon?

19 A. Well, when they was struggling, I couldn't see  
20 then because they was like blocking.

21 Q. Okay. What were they doing, describe for us --  
22 you keep saying struggle. What were they doing with  
23 the officer?

24 A. They was grabbing him, grabbing on him. He had a  
25 hold of Terence Richardson.

1 Q. How did he have a hold of Terence Richardson?

2 A. By his shoulder.

3 Q. Okay. Referring to his right shoulder?

4 A. Yes, sir.

5 Q. And could you tell us where was Ferrone Claiborne  
6 in relation to the officer?

7 A. He was on the other side of him, which left the  
8 officer like in the middle.

9 Q. So on the officer's back was Ferrone Claiborne; is  
10 that right?

11 A. Yes, sir.

12 Q. And what is Ferrone Claiborne doing?

13 A. He is trying to pull him away.

14 Q. Now, what happened next then?

15 A. Well, at that time I think he was going -- or he  
16 might have already had his hand on his gun because he  
17 had one hand on his shoulder.

18 Q. Okay.

19 A. And at that time --

20 Q. You are referring to --

21 A. The officer.

22 Q. You are saying he, the officer, had one hand on  
23 Mr. Richardson's shoulder. Is that what are you are  
24 saying, right?

25 A. Yes.

1 Q. Now, what did the officer do then?

2 A. And at that time when Ferrone was pulling him, he  
3 was reaching, you know, reaching for his gun.

4 THE COURT: Who was reaching?

5 THE WITNESS: The officer.

6 BY MR. NOVAK:

7 Q. Okay. What happened?

8 A. So they still doing the struggle, and somehow  
9 Terence Richardson get his hand on the gun, and I  
10 heard the gun when it goes off.

11 Q. And when you heard the gun -- you didn't actually  
12 see the shot; is that right?

13 A. No, sir.

14 Q. Did you see who had the firearm right after the  
15 shot?

16 A. After the officer had went down, Terence was  
17 standing with the gun in his hand.

18 Q. How many times was the officer shot?

19 A. I only heard one shot.

20 Q. Now, after the shot, you said Terence Richardson  
21 was standing there with a gun in his hand; is that  
22 right?

23 A. Yes.

24 Q. What do you do?

25 A. I take off running.

- 1 Q. Why don't you show us on CS-3 where you ran to?
- 2 A. I leave the path. I go this way, which is the  
3 ditch line, which is here. I run down this line, this  
4 ditch line here.
- 5 Q. Referring towards the front of the Waverly Village  
6 Apartments?
- 7 A. Yes, I come back out towards the front.
- 8 Q. Now, before you ran, do you know what did Ferrone  
9 Claiborne do?
- 10 A. He was proceeding to run, but I don't know which  
11 direction he went backwards.
- 12 Q. You didn't see where he ran to; is that right?
- 13 A. No.
- 14 Q. He just ran backwards?
- 15 A. Yes. He ran backwards, back into the woods.
- 16 Q. Did you see where Terence Richardson went?
- 17 A. No, sir.
- 18 Q. You just got out -- you wanted to get out of  
19 there; is that right?
- 20 A. Yes. I was scared.
- 21 Q. So where did you go to then?
- 22 A. I came down this ditch line here, which I got on  
23 the -- came back behind the main office where I left  
24 the bike, and I got on the bicycle and went back on  
25 Amherst. From Amherst, I went back to Dogwood and

1 went back to my grandmother's house.

2 Q. What did you do at your grandmother's house on  
3 Dogwood Street?

4 A. I went inside the house.

5 Q. Then at some point did you get rid of your crack  
6 pipe?

7 A. Yes.

8 Q. Where did you lose that at?

9 A. After I left my grandmother's house --

10 Q. I'm sorry. How long were you at your  
11 grandmother's house?

12 A. I left -- After I left my grandmother's house, I  
13 left it on Railroad Avenue. I threw it where the  
14 railroad tracks was at, the embankment where the grass  
15 is.

16 Q. I'm sorry. I think it's my fault. I went out of  
17 order. You went to your grandmother's house, right?

18 A. Yes.

19 Q. How long were you at your grandmother's house?

20 A. Seemed like awhile to me.

21 Q. What were you doing there?

22 A. Trying to get myself together.

23 Q. You knew you were in trouble; is that right?

24 A. Yes.

25 Q. So at some point though, you leave your



1 grandmother's house; is that right?

2 A. Yes.

3 Q. Where do you go to?

4 A. I leave, and I go back home, back on Robert  
5 Wilkins Avenue.

6 Q. To the trailer?

7 A. Yes.

8 Q. And it's during that time that you get rid of the  
9 crack pipe; is that right?

10 A. Yes. In the time going there, I threw the crack  
11 pipe on Railroad Avenue where the railroad tracks and  
12 the rocks hit because it was a glass pipe.

13 Q. When you got back to the trailer, was there  
14 anybody else in the trailer?

15 A. Yes.

16 Q. Who was still at the trailer?

17 A. Jovanna Jones and her two daughters.

18 Q. Where was your girlfriend at in the trailer?

19 A. In the bed.

20 Q. She was still asleep?

21 A. Yes, sir.

22 Q. What did you do when you entered the trailer?

23 A. Took off my clothes and got back into the bed.

24 Q. Do you want to tell us why you did that?

25 A. Yes.

1 Q. Why?

2 A. Because I was scared, and I didn't want nobody to  
3 know that I had left the house. I didn't want Jovanna  
4 Jones to know that I had left the house either.

5 Q. So you were acting like you had still been in bed;  
6 is that right?

7 A. Yes.

8 Q. Now, at some point does Terence Richardson show up  
9 at your trailer?

10 A. Yes, sir.

11 Q. How long after you got back to the trailer did Mr.  
12 Richardson show up?

13 A. It was awhile. I don't know the approximate  
14 time.

15 Q. Now, after he showed up, do you recall what he was  
16 wearing at that point? Had he changed his clothes in  
17 any fashion?

18 A. Yes, sir.

19 Q. In what manner had he changed his clothes?

20 A. He didn't have on the T-shirt that he had on at  
21 first.

22 Q. Now, by the way, that T-shirt -- if I could have  
23 RS-1 again for a second. Before this incident, Mr.  
24 Wooden -- would it be fair to say this was an old beat  
25 up shirt to begin with?

1 A. Yes, sir.

2 Q. You see this right shoulder area, was it torn  
3 before this incident like that?

4 A. No, it wasn't torn.

5 Q. Was it a shirt such that somebody could actually  
6 wear it on their body without it falling down past  
7 their chest?

8 A. Yes, sir.

9 Q. Did you know when Mr. Richardson came back to your  
10 trailer then after the incident what he had done with  
11 the shirt?

12 A. No.

13 Q. Now, tell us what happened when Mr. Richardson  
14 returned to your trailer.

15 A. He come back in the trailer. I opened the door  
16 for him. He comes in the living room, and he is  
17 really shaken up at the time. He's nervous. I had a  
18 beer that was half drank in the ice box, and I started  
19 drinking it, and I give him some. We sit there, he  
20 drinking the beer.

21 And I asked him, man, said what are you  
22 going to do? And he was like, he was like scared. He  
23 was scared. And I said, well, you need to leave  
24 here. You need to go to Williamsburg to your mother's  
25 house.

1 THE COURT: You said what?

2 THE WITNESS: I told him he should go to his  
3 mother's house in Williamsburg. And he told me if I  
4 tell anybody, he was going to get somebody to do  
5 something to me.

6 BY MR. NOVAK:

7 Q. Were you afraid of him?

8 A. Yes, after then, yes.

9 Q. So what happened then? Did you call the police or  
10 anything?

11 A. No.

12 Q. So what happened then?

13 A. He stayed up in the house for awhile. And at that  
14 time Jovanna Jones, she get up.

15 Q. Had she been asleep the entire morning up to this  
16 point?

17 A. Yes.

18 Q. Now, at some point, is there a phone call to your  
19 house from this girl, Nuke?

20 A. Yes, sir.

21 MR. NOVAK: If I could show the witness WI-1  
22 please.

23 BY MR. NOVAK:

24 Q. Mr. Wooden, the day after this incident, the state  
25 police came to your trailer; is that right?

1 A. The police came there.

2 Q. The police came; is that right?

3 A. Yes.

4 Q. At that time did you allow them to look at your  
5 caller I.D. information that was on your -- that was  
6 on your caller I.D. for your telephone?

7 A. Yes, sir.

8 Q. Now, do you recognize -- take a look at 12:27  
9 p.m., the phone number of (804) 834-8366, and the name  
10 Leola Murphy. Do you want to tell us who Leola Murphy  
11 was?

12 A. Yes.

13 Q. Who was that?

14 A. She was the girl that I call Nuke, which is Joe  
15 Mack's girlfriend.

16 Q. Is that the first time Nuke called your house  
17 then?

18 A. Well, at 12 --

19 Q. At 12:27.

20 A. That day, yes.

21 Q. You can't independently recall when people call  
22 your house what dates and times they are; is that  
23 right?

24 A. No.

25 Q. But if that's the information on your caller I.D.,

1 does that refresh your recollection as to when it was  
2 approximately she called?

3 A. Yes.

4 Q. Can you tell us what happened when Nuke called  
5 your apartment at 12:27?

6 A. She called and when she first called, she asked  
7 me, had I seen Joe Mack.

8 Q. What did you say?

9 A. I said, no. She asked me, could I go see was he  
10 at home to get him to come to the telephone.

11 Q. And do you agree to do that?

12 A. I said, yes.

13 Q. Now, did you send one of Jovanna's kids over to  
14 get him?

15 A. Yes.

16 Q. At some point does Joe Mack then come over to your  
17 trailer?

18 A. Yes.

19 Q. Now, does Nuke call back at some point then after  
20 Joe Mack is there?

21 A. Yes. She called -- when she called back the  
22 second time, that's when he comes over.

23 Q. I want to direct your attention again to the  
24 Exhibit WI-1. Do you recognize the indication  
25 1:00 p.m. on that chart?

1 A. Yes.

2 Q. Was that approximately when it was that she called  
3 back?

4 A. Yes.

5 Q. Could you tell us what happened when Nuke called  
6 back?

7 A. When she called back, I sent Jovanna's daughter to  
8 go over to Joe Mack's mother's house to get him. When  
9 he comes over, I'm in the living room. I have my  
10 boxer shorts on, you know, and a T-shirt like I just  
11 got out of bed.

12 Q. Does Joe Mack talk on the telephone to Nuke?

13 A. Yes.

14 Q. Now, when he gets off the phone, does he speak or  
15 speak to -- while he was on the phone, actually, does  
16 he speak to Terence Richardson and you?

17 A. Yes.

18 Q. What does he say and what does Terence say in  
19 response?

20 A. Well, while he was talking to Nuke, he put the  
21 phone down and said a police officer got killed in  
22 Waverly, and I just looked at him.

23 Q. You already knew that at that point; is that  
24 right?

25 A. Yes.

1 Q. Go ahead.

2 A. So Terence said some nickname, he said Hillbilly  
3 or something.

4 Q. Who said the word Hillbilly?

5 A. Terence.

6 Q. Had Joe Mack said anything to Terence about who it  
7 was before that?

8 A. No, sir.

9 Q. Now, did anything else happen during that  
10 conversation?

11 A. That's what I remember.

12 Q. Did Joe Mack get back on the phone with Nuke then,  
13 for example?

14 A. Yes. They started talking on the phone.

15 Q. Now, what happened after that? Did Joe Mack leave  
16 then?

17 A. No, not right then.

18 Q. How long did he stay there for?

19 A. Stayed there like a couple of minutes after he got  
20 off the phone.

21 Q. After Joe Mack left, could you tell us what it is  
22 that you and Terence Richardson did?

23 A. After Joe Mack left, I went and put on my clothes,  
24 put on my clothes and stuff, and Terence was like,  
25 let's go down there to the Village to make like we



1 just somebody just being nosey.

2 Q. Okay. And do you do that?

3 A. Yes.

4 Q. And who goes to the Village then?

5 A. Me and Terence Richardson.

6 Q. How do you get there?

7 A. On the bike.

8 Q. How many bikes?

9 A. Two.

10 Q. Where did you get the second bike now?

11 A. It's the little kid from down the street, her  
12 sister got a bike.

13 Q. So you got the kids' bikes. The two of you ride.  
14 Where do you ride to?

15 A. We ride back down Robert Wilkins back to Main  
16 Street.

17 Q. Okay.

18 A. Down Railroad Avenue and down Locust Drive.

19 Q. Do you eventually get over then to the Waverly  
20 Village Apartments?

21 A. Yes.

22 Q. What happens when you get over to the Waverly  
23 Village Apartments?

24 A. We get to the Waverly Village Apartments, there's  
25 like a whole lot of people outside in the front, and

1 there is police cars and stuff everywhere.

2 Q. Mr. Wooden, how come you didn't go over -- did you  
3 go over and tell the police that you knew about this  
4 murder then?

5 A. No.

6 Q. Do you want to tell the ladies and gentlemen why  
7 you didn't tell the police then?

8 A. I had two reasons I didn't tell them. One, I was  
9 scared what Terence's family might do. And the other  
10 reason I was scared is because I didn't want to be  
11 involved in it, and I didn't want to get charged and  
12 in trouble with it.

13 Q. You didn't want to get locked up yourself, right?

14 A. Yes.

15 Q. Now, did you go into the Village then?

16 A. Yes.

17 Q. What did you all do there?

18 A. When we go to the Village in the front section of  
19 the apartments where the office at. It's a mailbox at  
20 the end. So I sit there at the mailbox on the bike.  
21 Terence Richardson was talking to his cousin, I  
22 believe.

23 Q. Which cousin is that; do you know?

24 A. Alonzo.

25 Q. And then what occurs? Let me ask you this. At

1 some point, do you call back to the trailer and speak  
2 to Jovanna Jones?

3 A. Yes. She pages me.

4 Q. Okay. Referring to the chart, do you see on the  
5 bottom of the chart a phone call at 2:34 p.m.?

6 A. Yes.

7 Q. And that's from a pay phone in the Village  
8 Apartments; is that right?

9 A. Yes.

10 Q. And are you the person that made that phone call?

11 A. Yes. I called Jovanna.

12 Q. Okay. That's when you are still with Terence  
13 Richardson at the Village; is that right?

14 A. Yes.

15 Q. How long did you stay at the Village?

16 A. I can't say exactly how long.

17 Q. Now, at some point do you leave there then?

18 A. Yes.

19 Q. Where do you go to?

20 A. Back down Locus Drive.

21 Q. And where do you head to?

22 A. We stop by Fred Smith's house.

23 Q. Okay. And who is Fred Smith?

24 A. He's a friend that I met through Terence.

25 Q. He also lives on Dogwood Street or Locus?

1 A. Lives on Locus.

2 Q. Was anybody else present there other than Fred  
3 Smith?

4 A. Yes.

5 Q. Who?

6 A. A guy named Fernando.

7 Q. Do you all call him Tito?

8 A. Yes.

9 Q. Can you tell us what happens when you run into the  
10 two of them? Is there some conversation between Tito  
11 and Terence Richardson?

12 A. Yes.

13 Q. What conversation is that?

14 A. Well, Terence, he's acting nervous, you know. And  
15 so Fernando had ask him just -- I don't know if he was  
16 joking, well, did you shoot the police.

17 Q. And what did he say?

18 A. And at that time, I don't remember exactly what he  
19 said because they was moving away, and I was going to  
20 the edge of the street.

21 Q. Okay.

22 A. Because there was a guy that I knew that was  
23 coming down the street, so I started talking to him.

24 Q. Now, from there where do you go to? Do you leave  
25 that location, Fred Smith's house at some point?

1 A. Yes.

2 Q. Where do you go to?

3 A. Around Dogwood.

4 Q. And by the way, the fellow you referred to as  
5 Booty early on in your testimony, did you have  
6 occasion to run into Booty at some point?

7 A. Yes.

8 Q. And where did you run into Booty at?

9 A. Over his house.

10 Q. And was Booty nervous because he had some drugs on  
11 him at that point?

12 A. Yes.

13 Q. Because there were police everywhere at this  
14 point; is that right?

15 A. Yes.

16 Q. Now, from there did you have occasion to go to  
17 Dobie's store later that afternoon?

18 A. Yes, sir.

19 Q. And who went to Dobie's store?

20 A. Me and Terence.

21 Q. And could you tell us what it is you did at  
22 Dobie's?

23 A. I went and I bought some beer.

24 Q. Did you all just hang out there for awhile?

25 A. Not that I can recall.

1 Q. Well, what did you do? Tell us what you did.

2 A. Went in the store and I got two 40s, and we left  
3 from there.

4 Q. You're still with Terence Richardson?

5 A. Yeah.

6 Q. And where do you go then?

7 A. We go back to my house.

8 Q. And do you stay there then for -- do you  
9 personally stay there for the rest of the night?

10 A. For a little while.

11 Q. Do you leave at some point with Jovanna?

12 A. I don't recall if I left with Jovanna or not, but  
13 I know me and Terence leave again.

14 Q. When do you leave?

15 A. Like later on, later on that night we leave.

16 Q. Where do you go to?

17 A. We go back to Dobie's.

18 Q. For what?

19 A. Some more to drink.

20 Q. All right. Then where did you go from there?

21 A. And at that time I leave because Terence is in the  
22 store talking to a guy named Steve, Steve Vaughan.

23 Q. Okay. And you leave?

24 A. Yes.

25 Q. Does Terence go with you?

1 A. He stayed there talking.

2 Q. So he doesn't go -- Do you go back to your  
3 trailer?

4 A. Yes.

5 Q. And he doesn't go with you then; is that right?

6 A. No.

7 Q. At some point do you go to bed that night,  
8 Saturday night?

9 A. Yes.

10 Q. While you were asleep, is there a knock at the  
11 door?

12 A. Yes, late.

13 Q. I'm sorry?

14 A. Very late at night.

15 Q. Okay. Who was it at the door?

16 A. Terence Richardson.

17 Q. And what kind of condition was he in when you saw  
18 him then?

19 A. He was sloppy drunk.

20 Q. All right. And did he ask you to say at your  
21 place then that night?

22 A. Yes.

23 Q. And did you agree to let him stay there?

24 A. Yes.

25 Q. Do you know how he got to your house? Did anybody

1 drive him?

2 A. Yes.

3 Q. Who drove him?

4 A. When I opened the door, Steve Vaughan's car was  
5 still out there with the headlights on. So he had  
6 waited until I let him in before he pulled off.

7 Q. Okay. So you saw Steve Vaughan's car; is that  
8 correct?

9 A. Yes.

10 Q. Now, then Terence Richardson stayed the night then  
11 at your trailer after you let him in there in the  
12 middle of the night?

13 A. Yes, sir.

14 Q. You went back to sleep; is that right?

15 A. Yes.

16 Q. Now, let's take it -- direct your attention to the  
17 next day then, Sunday. At some point you woke up then  
18 on that Sunday; is that right?

19 A. Yes.

20 Q. And what type of clothing when you woke up -- was  
21 Terence still at your trailer when you woke up?

22 A. Yes.

23 Q. What type of clothing was he wearing then?

24 A. I believe jeans and a plaid shirt.

25 Q. Now, where --



1 THE COURT: Mr. Novak, excuse me, how much  
2 longer do you have of this witness?

3 MR. NOVAK: About fifteen minutes at the  
4 most.

5 THE COURT: Well, I think probably it's just  
6 as well to go on and take the morning recess at this  
7 time. Just take your pads with you, ladies and  
8 gentlemen.

9  
10 (The jury was excused to the jury room)

11  
12 THE COURT: All right. We will take a  
13 twenty minute recess by that clock.

14  
15 (At 11:10 a.m. a recess was taken. At  
16 11:35 a.m. the proceedings continued.)

17  
18 THE COURT: Mr. Wooden, I remind you, you  
19 are under the same oath that you took earlier today.

20 MR. NOVAK: May I continue, Your Honor?

21 THE COURT: Please.

22 BY MR. NOVAK:

23 Q. Mr. Wooden, I think we stopped at that Sunday  
24 morning, and I think you woke up and Terence  
25 Richardson was there; is that right?

1 A. Yes.

2 Q. He had stayed over that night, that Saturday  
3 night. You just described that. When you all woke  
4 up, did Terence ask you to go to Dobie's to get some  
5 more beer?

6 A. Yes. He wanted -- No. First, he wanted to go  
7 home to change clothes.

8 Q. Okay. Before you left, did you have a  
9 conversation your girlfriend Jovanna Jones?

10 A. Yes.

11 Q. Did you give her any instructions about what to  
12 say about where you were yesterday, the previous day,  
13 if anybody asked?

14 A. Not at that time, no.

15 Q. At some point did you?

16 A. Yes.

17 Q. When did you give her those instructions?

18 A. It was later on. It was later on -- it was later  
19 on that day.

20 Q. What did you tell her to say?

21 A. That if the police asked any questions --

22 THE COURT: I can't follow that. Say again,  
23 please.

24 THE WITNESS: If the police asked any  
25 questions about my whereabouts that I was home all

1 day, that Terence was home with me all day.

2 BY MR. NOVAK:

3 Q. Did she ask you why?

4 A. No, not at the time, no.

5 Q. So did you and Terence then leave at some point  
6 the trailer on that Sunday?

7 A. Yes.

8 Q. Where did you go to?

9 A. We went -- I think it's M Street.

10 Q. You met some people you know over there and hung  
11 out for awhile basically; is that right?

12 A. Yes.

13 Q. Thereafter, later on, did you eventually motor on  
14 over to Dobie's store?

15 A. Yes, sir.

16 Q. And can you tell us what happened over at Dobie's?

17 A. Well, we go to Josiah Dobie's. We go in, and  
18 Terence wanted me to buy beer.

19 Q. Do you have any money at that point?

20 A. Yes.

21 Q. Where are you getting your money at by the way?  
22 Where do you get your money at to buy your drugs and  
23 beer and stuff?

24 A. Well, I get some from Jovanna, and I also get some  
25 when I help my father do some like mechanic work and

1 stuff.

2 Q. I'm sorry. I interrupted. Go ahead and tell us  
3 what happened at Dobie's.

4 A. So I can't spend any more money because I need the  
5 money for the bills or whatever at the house we have  
6 to take care of.

7 Q. Okay.

8 A. So at that time Sharon Smith and some other guy  
9 was in the store.

10 Q. Sharon Smith works there; is that right?

11 A. Yes. She says something about the police  
12 incident, and Terence Richardson said to her that you  
13 need to kill a whole lot more of them.

14 THE COURT: Said what?

15 THE WITNESS: Need to kill a whole lot more  
16 of them.

17 BY MR. NOVAK:

18 Q. Now, at some point you all left that store; is  
19 that right?

20 A. Yes.

21 Q. And later that afternoon, were you present when  
22 the defendant, Mr. Richardson, was arrested by Deputy  
23 Moe Williams and Greg Russell?

24 A. Yes.

25 Q. Did they separate the two of you then, the police?

1 A. Yes.

2 Q. And they took him away; is that right?

3 A. Yes.

4 Q. And they took him to the Waverly Police  
5 Department?

6 A. Yes.

7 Q. Where did you go to?

8 A. They was taking me to the Waverly Police  
9 Department, too, but they put me off like Colin  
10 Brothers Cement place or someplace, you know, Colin  
11 Brothers.

12 Q. Okay.

13 A. Because I think the camera people, the news people  
14 were there.

15 Q. A lot of press out there; is that right?

16 A. Yes. They told me to walk over there to the  
17 police station.

18 Q. So you eventually got to the police station and  
19 were interviewed by the police; is that right?

20 A. Yes.

21 Q. At the time did you tell them the story you have  
22 told us today?

23 A. No, sir.

24 Q. What did you tell them then?

25 A. That Terence Richardson was at my house.

1 Q. You lied to them; is that right?

2 A. Yes.

3 Q. Do you want to tell the folks why it is you lied  
4 to the police when you were first interviewed about  
5 this?

6 A. Yes.

7 Q. Why?

8 A. I lied to them because, like I said, I was scared  
9 for my safety. And I also was scared about getting in  
10 trouble with being involved in it because I had seen  
11 what happened.

12 Q. So that day you left the police station and  
13 telling them that he was with you the whole time; is  
14 that right?

15 A. Yes.

16 Q. Now, a couple days later, did you go down to that  
17 Ramada Inn and see Lewis Langford, who also uses the  
18 name Khalid Abdullah?

19 A. Yes, sir.

20 Q. Who do you go there with?

21 A. My brother.

22 Q. Did you have an occasion to talk to the person you  
23 call Lewis Langford about whether Terence Richardson  
24 was guilty of the murder or not?

25 A. Yes.

1 Q. And you told him that --

2 MR. BOATWRIGHT: Objection, leading form of  
3 the statement.

4 THE COURT: I didn't hear the objection, I'm  
5 sorry.

6 MR. NOVAK: He's right. I will withdraw.

7 MR. BOATWRIGHT: It was leading.

8 MR. NOVAK: I was leading.

9 THE COURT: Thank you. I was rendered  
10 unnecessary.

11 MR. NOVAK: I was just trying to save time,  
12 Judge, but he's right.

13 BY MR. NOVAK:

14 Q. What, if anything, did you tell Lewis Langford,  
15 Khalid Abdullah, at the hotel?

16 A. He was asking me did Terence Richardson do it.

17 Q. Okay.

18 A. And I told him no.

19 Q. Why did you do that? Why did you tell him no?

20 A. Because I didn't want him to -- if I tell him,  
21 he'd go telling people that I'm snitching on him. And  
22 I still didn't want it to get out there that I had  
23 seen what happened.

24 Q. Why don't you want people to think that you're a  
25 snitch?

1 A. Because of my safety.

2 Q. Now, the police interviewed you again then on May  
3 11th, a couple weeks after the murder then; is that  
4 right?

5 A. They interviewed me again, but I don't know the  
6 exact date.

7 Q. A couple weeks after, whatever it was, a couple of  
8 weeks after the murder?

9 A. Yes.

10 Q. And where did that interview occur at?

11 A. In I believe it was Chesapeake, I believe.

12 Q. And at that time, did you change your story and  
13 give any information about who you knew the assailants  
14 to be?

15 A. Yes.

16 Q. And who did you tell the police at that time  
17 committed this crime?

18 A. Terence Richardson and Ferrone Claiborne.

19 Q. Now, did you tell them exactly the same story  
20 though that you told us today?

21 A. No, sir.

22 Q. Tell the ladies and gentlemen how your stories  
23 differed when you told the police that Mr. Richardson  
24 and Mr. Claiborne had participated in this crime?  
25 What was the difference between today?



1 A. I left out the part of me being back there seeing  
2 what happened.

3 Q. Where did you tell them that you were at the time  
4 of the crime?

5 A. I told them that was in the -- I was in the front  
6 of the apartment building being the lookout.

7 Q. Was that true?

8 A. Not about me being in the front, no.

9 Q. You were actually in the back; is that right?

10 A. Yes.

11 Q. At the time of the murder; is that right?

12 A. Yes.

13 Q. Could you tell the ladies and gentlemen why it is  
14 that you minimized your role and said you were in the  
15 front of the apartments, not back there in the back at  
16 the time of the murder?

17 A. Because I didn't want to be involved. I didn't  
18 want to be involved in knowing what had went on, being  
19 an accessory.

20 Q. You thought you could get charged with murder; is  
21 that right?

22 A. Yes, sir.

23 Q. And you didn't want any part of that; is that  
24 right?

25 A. No, I didn't.

1 Q. In fact, thereafter, you testified -- you were  
2 called to testify at the preliminary hearing for these  
3 defendants down in Sussex County court on October 15th  
4 of 1998; is that right?

5 A. Yes.

6 Q. And at the time, do you want to tell the ladies  
7 and gentlemen what you told the judge as to what  
8 occurred?

9 A. I told them the same story I told today except for  
10 I told them that I was in the front being a lookout.

11 Q. You told them the lookout story, basically; is  
12 that right?

13 A. Yes.

14 Q. Did you still say that Terence and Ferrone had  
15 done it?

16 A. Yes.

17 Q. You just said that you weren't at the back; is  
18 that right?

19 A. Yes, sir.

20 Q. That was a lie; is that right?

21 A. Yes.

22 Q. Did you -- were you placed under oath at that time  
23 that you said that?

24 A. Yes.

25 Q. Do you want to tell the ladies and gentlemen why

1 you lied when you were under oath at that time?

2 A. Because I didn't want to be charged in the murder.

3 Q. Now, during this time, did the police -- when this  
4 case was being investigated in the state system, did  
5 you receive any type of help from the police in terms  
6 of charges that you had against you?

7 A. No.

8 Q. Well, let me ask you, did you have a charge of car  
9 jacking dismissed at some point in Prince George  
10 County?

11 A. Yes, sir.

12 Q. And do you know if the investigators down in  
13 Sussex helped you out on that charge at all?

14 A. Not that I know anything about.

15 Q. Did they help you get out on bond or do anything  
16 else like that for you?

17 A. Not that I know anything about.

18 Q. They did help you get a job though; is that right?

19 A. Yes.

20 Q. Where did they help you get a job at?

21 A. At the box plant.

22 Q. They were trying to get you cleaned up; is that  
23 right?

24 A. Yes.

25 Q. You were still using crack back then; is that

1 right?

2 A. Yes.

3 Q. Did you lose that job?

4 A. Yes. I lost it twice.

5 Q. And they helped you get the job the second time,  
6 right?

7 A. Yes.

8 Q. Then you lost it the second time, right?

9 A. Yes.

10 Q. Now, after these defendants pled guilty down in  
11 Sussex County, you were contacted by Agent Ritchie and  
12 interviewed by him; is that right?

13 A. Yes, sir.

14 Q. And at first did you tell him the lookout story as  
15 well?

16 A. Yes, sir.

17 Q. Did you tell him, look, I don't know anything  
18 about it. I don't want to be involved anymore.

19 A. Yes.

20 Q. Then after that you eventually admitted to the  
21 story that you gave today; is that correct?

22 A. Yes, sir.

23 Q. And because you admitted that, then you were  
24 charged with obstruction of justice; is that right?

25 A. Yes, sir.

1 Q. And because of the obstruction of justice, you're  
2 now serving ten years in the federal penitentiary.  
3 Well, you're going to serve ten years in the federal  
4 penitentiary; is that right?

5 A. Yes, sir.

6 Q. Do you know if there is -- I think you've already  
7 covered this. The only way that that could be changed  
8 is if Judge Payne reduces your sentence; is that  
9 right?

10 A. Yes.

11 MR. NOVAK: Judge, I have no further  
12 questions.

13 THE COURT: All right.

14

15 CROSS EXAMINATION BY MR. BOATWRIGHT:

16

17 Q. Mr. Wooden, when you testified in the Sussex  
18 County General District Court in the cases involving  
19 Mr. Richardson and Mr. Claiborne, did you take an  
20 oath, pretty much the oath that you took when you came  
21 in here today?

22 A. Yes.

23 Q. You swore to tell the truth?

24 A. Yes.

25 Q. You did not tell the truth?

1 A. Not all of it, no.

2 Q. That was a fairly significant piece of thing you  
3 lied about; isn't that true?

4 A. Yes.

5 Q. Am I correct, it took you about two weeks to say  
6 that Ferrone and Terence were involved; is that right?

7 A. I can't recall exactly how long it took.

8 Q. Well, two, three weeks, somewhere in that range;  
9 is that fair to say?

10 A. Yes.

11 Q. So you attempted for a long, long time to keep  
12 you, that is, your presence after what you say  
13 occurred, took you a long, long time to say that,  
14 true?

15 THE COURT: I don't know that he understands  
16 that.

17 BY MR. BOATWRIGHT:

18 Q. Let me try again. It wasn't for a long time after  
19 April -- the day that the officer was killed that you  
20 finally held up your hand and said, yes, in fact, I  
21 saw this occur. It was a long time before you said  
22 that; isn't that true?

23 A. Yes.

24 Q. Did that occur before or after you were charged  
25 with obstruction of justice?

1 A. I think I told the truth before I was charged with  
2 it.

3 Q. Well, are you sure about that?

4 A. I said I think. I don't know if I told it before  
5 or after.

6 Q. You can't recall now what the sequence of events  
7 was; is that right?

8 A. Well, my telling, no.

9 Q. Now, Mr. Novak asked you -- you were convicted of  
10 the felony of grand larceny of an automobile in 1995,  
11 true?

12 A. '95, yes.

13 Q. Did you go to jail for that?

14 A. Yes.

15 Q. How did you like being in jail?

16 A. I didn't like it.

17 Q. How do you like being in there now?

18 A. I still don't like it.

19 Q. You were convicted of another felony in 1999 of  
20 unauthorized use of someone's automobile, correct?

21 A. Yes.

22 Q. Did you go to jail then?

23 A. Yes.

24 Q. Did you like it then?

25 A. No.

1 Q. And you've been convicted of a third felony, which  
2 is the obstruction of justice charge here in this  
3 courthouse, correct?

4 A. Yes.

5 Q. And you went, obviously, to jail for that again?

6 A. Yes.

7 Q. Do you have any suspended time relating to either  
8 of your two felony convictions in the state court  
9 system?

10 A. I don't think so.

11 Q. Do you know?

12 A. I don't know.

13 Q. You have been helped in the past by the Sussex  
14 County Sheriff's Department in getting bond on  
15 occasions when you have been arrested; isn't that  
16 true?

17 A. What do you mean by them helping me get a bond?

18 Q. I'm told by the Government that you have received  
19 assistance from the Sussex County Sheriff's Department  
20 or members of the Sussex County Sheriff's Department  
21 in receiving bond on multiple occasions.

22 Did anyone from Sussex County, the sheriff's  
23 department, put in a good word for you with the  
24 magistrate or the judge in an effort to help you get  
25 out on bond on any occasion?



1 A. Not that I know anything about, no.

2 Q. Is it true that people from the Sussex County  
3 Sheriff's Department told the Commonwealth's  
4 Attorney's Office in Prince George County and in  
5 Sussex County that you were helping them out with the  
6 investigation regarding Officer Gibson's death?

7 A. I don't know what they told them.

8 Q. You have no idea?

9 A. No.

10 Q. Mr. Novak asked you about the process by which  
11 your sentence might possibly end up being reduced.  
12 I'm referring to your federal sentence, correct?

13 A. Yes.

14 Q. The first step in that process is the U.S.  
15 Attorney's Office filing a motion with the court,  
16 correct?

17 A. Yes.

18 Q. That must occur before Judge Payne could even have  
19 the opportunity to consider reducing your sentence;  
20 isn't that true?

21 A. Yes.

22 Q. Your lawyer can't do that for you, correct?

23 A. Correct.

24 Q. Only Mr. Novak's office, true?

25 A. As far as I understand, yes.

1 Q. And you very much want him to do that, don't you?

2 A. Yes.

3 Q. You'd like to get your sentence reduced as much as  
4 you possibly can, correct?

5 A. Yes.

6 Q. You would like to go home today if that were  
7 possible, wouldn't your?

8 A. Yes.

9 Q. You mentioned that you were possibly afraid of  
10 what Mr. Richardson's family might do to you, didn't  
11 you?

12 A. Yes.

13 Q. Mr. Richardson is an only child; isn't that true?

14 A. Yes.

15 Q. His mother lives in Williamsburg; isn't that  
16 right?

17 A. Yes.

18 Q. You know her, don't you?

19 A. Yes.

20 Q. She has helped you get a job; isn't that true?

21 A. No.

22 Q. She didn't get you a job at one of the motels  
23 where she works?

24 A. My cousin got me the job there.

25 Q. She had nothing to do with it then?

1 A. I got a job from him. He was the assistant  
2 housekeeper or whatever you call it.

3 Q. Working under Mrs. Westbrook; is that right?

4 A. Yes.

5 Q. Did Mrs. Westbrook make the decision to hire you?

6 A. I went to my cousin for the job.

7 Q. So you don't know who made the decision to hire  
8 you?

9 A. I think he made the decision.

10 Q. Where does Mr. Richardson's father live; do you  
11 know?

12 A. He was living on Dogwood Street.

13 Q. You know he doesn't live there anymore, isn't that  
14 right?

15 A. Excuse me?

16 Q. You know he doesn't live there anymore; isn't that  
17 true?

18 A. No.

19 Q. You don't know. All right. Who was it in Mr.  
20 Richardson's family that you were afraid of?

21 A. His family's cousins.

22 Q. Who, I'm asking you names in other words.

23 A. His cousin, Craig, and his cousin, Joe, and their  
24 friends that they hang with, the people that they  
25 associate with.

1 Q. They've never done anything to you, have they?

2 A. No.

3 Q. I mean, you were out on the street for a long  
4 time, weren't you, until you got arrested for the  
5 obstruction of justice; isn't that right?

6 A. No. I was locked up part of the time.

7 Q. When was the -- after April 25, 1998, when was the  
8 next time that you were locked up for any period of  
9 time longer than a day or two?

10 A. '99, 2000.

11 Q. What late '99 or early 2000; is that what you're  
12 trying to say?

13 A. Yes.

14 Q. So well over a year and a half after Officer  
15 Gibson's death, you were walking around as a free man,  
16 correct?

17 A. Yes. I was a free man.

18 Q. And nobody did anything to you, did they?

19 A. No.

20 Q. None of those people you talked about threatened  
21 you or did anything to you, did they?

22 A. No.

23 Q. So you came to understand that nothing was going  
24 to happen to you from Mr. Richardson's family; isn't  
25 that true?

1 A. I still didn't know.

2 Q. Did Mr. Richardson spend the Thursday night of  
3 that week, before the Saturday, April 25th, at his  
4 father's home?

5 A. Excuse me, what, the week before?

6 Q. Saturday, April 25th is the day the officer was  
7 killed. You said that Mr. Richardson spent the Friday  
8 night and the Saturday morning at your trailer, true?

9 A. Yes.

10 Q. The night before that, Thursday night into Friday  
11 morning, that would be the 23rd into the 24th, did he  
12 spend the night with you or did he spend the night at  
13 his father's home?

14 A. With me.

15 Q. Are you sure about that?

16 A. Yes.

17 Q. Was Jovanna there?

18 A. Yes.

19 Q. Now, you told the ladies and gentlemen of the jury  
20 that Jovanna was still asleep when you got home on  
21 Saturday, April 25th, when you returned back from  
22 Waverly Village; is that right?

23 A. Yes.

24 Q. You see on that Exhibit W-1 that there are listed  
25 five phone calls before Leola Murphy a/k/a Nuke

- 1 called; do you see them?
- 2 A. Yes.
- 3 Q. Who John T. Sprague?
- 4 A. That's someone my grandmother worked for.
- 5 Q. Who is Louise Purham?
- 6 A. I don't know.
- 7 Q. Who is Raymond Purham?
- 8 A. I don't know.
- 9 Q. Who is Vernard L. Jones?
- 10 A. He runs a towing or tows cars and stuff.
- 11 Q. Why would he be calling your house?
- 12 A. Because Joe Mack, he give the number to people for
- 13 him. He had a car that he had towed for him.
- 14 Q. Who, Vernard had towed Joe Mack's car?
- 15 A. Yes.
- 16 Q. And I believe you said you sort of served as a
- 17 message center for Joe Mack, correct?
- 18 A. Yes.
- 19 Q. Well, were you there at 11:49 a.m.?
- 20 A. No.
- 21 Q. You didn't take that call?
- 22 A. No.
- 23 Q. I take it you took none of the earlier calls?
- 24 A. No.
- 25 Q. Were you there at 12:03 p.m. when David Harris

1 called or somewhere calling from David Harris' number  
2 called?

3 A. Not that I recall, no.

4 Q. Who is David Harris?

5 A. Someone that my aunt -- my aunt and several of my  
6 family members work for.

7 Q. Do you know -- you were not there when any of  
8 those five calls range into your home; am I right?

9 A. Yes, I was there earlier.

10 Q. That's what I'm trying to get at. Were you  
11 present for any of those five phone calls?

12 A. I didn't answer any of them.

13 Q. All right. But I'm saying, were you there when  
14 the phone range is what I'm asking you.

15 A. Yes.

16 Q. All right. Which ones?

17 A. I was there when the phone rang at 9:15.

18 Q. Who answered the phone?

19 A. I don't recall picking the phone up.

20 Q. Are you saying the phone rang but nobody answered?

21 A. That's what I'm saying. I don't recall picking it  
22 up.

23 Q. So you didn't talk, and as far as you know,  
24 Jovanna didn't either?

25 A. Right.

1 Q. Were you still in bed at that time?

2 A. Yes.

3 Q. So you just let it ring?

4 A. Yes.

5 Q. What about the 9:32 call, were you there when that  
6 came in?

7 A. Yes.

8 Q. Same thing again. You just let it ring, didn't  
9 pick it up?

10 A. Yes.

11 Q. Were you there for the 10:49 call?

12 A. No.

13 Q. Are you positive?

14 A. Yes. I don't remember being there.

15 Q. You said that the condition that has been placed  
16 upon the Government's filing the motion to initiate  
17 the possible reduction of your sentence depends on you  
18 telling the truth; is that right?

19 A. Yes.

20 Q. As far as you understand from your plea agreement  
21 that the Government makes the determination in the  
22 first instance as to whether you have told the truth  
23 and that determines whether they will file the motion  
24 at all, correct?

25 A. Yes.



1 Q. So you are talking about specifically Mr. Novak  
2 here, correct?

3 A. Yes.

4 Q. You understand that from your plea agreement and  
5 what's been told to you, right?

6 A. Yes.

7 MR. BOATWRIGHT: Could I speak to Mr. Novak  
8 for just a minute to make sure I don't make a  
9 misstep?

10

11 (Discussion off the record)

12

13 BY MR. BOATWRIGHT:

14 Q. I'm looking at a copy of your plea agreement and  
15 there is a provision in your plea agreement -- which  
16 you have read, correct?

17 A. Yes.

18 Q. You've read the whole thing, didn't you?

19 A. Yes.

20 Q. Before you signed it?

21 A. I went over it with my lawyer, yes.

22 Q. Right. And you agree that if the Government  
23 requested that you will agree to take a polygraph or  
24 lie detector examination, correct?

25 A. Yes.

1 Q. You have agreed to do that?

2 A. Yes.

3 Q. Have you been asked to do that since you signed  
4 this agreement? Listen to me carefully. Have you  
5 been asked to do that since you signed this agreement?

6 A. You mean since I signed this have I been asked to  
7 go take one?

8 Q. Right.

9 A. No.

10 Q. Now, you began using crack cocaine in the early  
11 Nineties, true?

12 A. Yes.

13 Q. And is it for you like it is for most people that  
14 you started using it a little bit, but got to using it  
15 a lot pretty quickly?

16 A. I started using a lot gradually as time went on.

17 Q. It didn't take a long time for it to be a lot, did  
18 it?

19 A. I would say so.

20 Q. Crack is a -- it's a very addictive substance;  
21 isn't that true?

22 A. Yes.

23 Q. And it's real hard to give it up; isn't that  
24 right?

25 A. Yes.

1 Q. Did you try to give it up a couple of times along  
2 the way?

3 A. Not really.

4 Q. Because you liked it, right?

5 A. Yes.

6 Q. You liked getting high, correct?

7 A. Yes.

8 Q. It's a pleasurable feeling for a short period of  
9 time; isn't that right?

10 A. Yes.

11 Q. Once it wears off, what's the next thing you want  
12 to do?

13 A. Get some more.

14 Q. Now, how much does crack cost typically on the  
15 street?

16 A. Depends.

17 Q. Well, you can buy like a 20, right?

18 A. Yes.

19 Q. A 20 rock, some people call it that; isn't that  
20 right?

21 A. Yes.

22 Q. And that's a personal use quantity; isn't that  
23 right?

24 A. Yes.

25 Q. You could buy a 50, correct?

1 A. Yes.

2 Q. Again, it's a larger quantity, but still pretty  
3 much personal use quantity; isn't that true?

4 A. Yes.

5 Q. Is that the type of amounts that you were buying  
6 from time to time?

7 A. Yes.

8 Q. Were you ever selling crack so that you could have  
9 money to or have money for crack left over?

10 A. No.

11 Q. You never once sold crack?

12 A. I didn't keep it long enough to sell.

13 Q. Once you got it, you smoked it?

14 A. Yes.

15 Q. How old are you now, sir?

16 A. Twenty-eight.

17 Q. The first time you were asked by anybody connected  
18 with law enforcement about anything relating to  
19 Officer Gibson's death was the day after, that Sunday,  
20 April 26th; is that right?

21 A. Yes.

22 Q. That's right after Mr. Richardson was picked up by  
23 Moe Williams, correct? Would you tell the ladies and  
24 gentlemen of the jury, by the way, I think you  
25 mentioned his name, who is Moe Williams?

1 A. He's a law enforcement agent in Sussex County.

2 Q. He's a higher up kind of guy in the Sussex County  
3 Sheriff's Department; isn't that true?

4 A. Yes.

5 Q. He's a pretty well known person around Waverly and  
6 Sussex; isn't that true?

7 A. Yes, sir.

8 Q. Who was Craig Russell?

9 A. He's another law enforcement agent for Sussex  
10 County.

11 Q. Those are the two people who arrested Mr.  
12 Richardson, correct?

13 A. Yes.

14 Q. On Railroad Avenue on Sunday, April 26th?

15 A. Yes, sir.

16 Q. On May 11, 1998, you were asked to give a  
17 statement about what took place with relationship to  
18 the killing of Officer Gibson; isn't that true?

19 A. I was asked some day. I don't know the exact day,  
20 but I was asked.

21 Q. Okay. It was three weeks after the killing,  
22 correct?

23 A. (No verbal response).

24 Q. That's when you told the story about being a  
25 lookout for the first time; is that right?

1 A. Yes.

2 Q. Didn't you also tell whoever it was that took the  
3 statement from you that Mr. Richardson had told you  
4 that he and Mr. Claiborne were trying to trade  
5 something to a guy from Hopewell in return for some  
6 crack cocaine?

7 A. Yes.

8 Q. That wasn't true either, was it?

9 A. No.

10 Q. But you told whoever was questioning you that  
11 there was a person present at Waverly Village from  
12 Hopewell who was going to sell crack; isn't that true?

13 A. Yes.

14 Q. And that just wasn't the case at all; is that what  
15 you're saying?

16 A. That wasn't true.

17 Q. So that was a lie?

18 A. Yes.

19 Q. And you went on to give some details about, I  
20 can't remember what they called the guy, but he was  
21 with Shanetta; is that right?

22 A. Yes.

23 Q. That wasn't true, either?

24 A. No.

25 Q. You said something about you thought that she was

1 -- stayed in Petersburg, correct?

2 A. Yes.

3 Q. That also wasn't true?

4 A. Thinking she stayed in Petersburg?

5 Q. Uh-huh.

6 A. That was true. I thought she stayed in  
7 Petersburg.

8 Q. But before you told the police that, on that very  
9 same day you told them a whole series of lies in which  
10 you said you didn't know anything about the  
11 circumstance of Officer Gibson's death; isn't that  
12 true?

13 A. Yes. Before I told them that, I said I didn't  
14 know nothing.

15 Q. You told them you got up at noon on Saturday,  
16 April 25th, right?

17 A. Yes.

18 Q. Because the phone rang or something like that,  
19 right?

20 A. Yes.

21 Q. You were asked if you knew who shot the officer,  
22 and you said no, correct?

23 A. Yes.

24 Q. And you were asked if you shot the officer, and  
25 you said no, correct?

1 A. Yes.

2 Q. You said, I might do a little crazy stuff back in  
3 the day, but now I got to be a family man. I  
4 straightened up now. Isn't that true?

5 A. Yes.

6 Q. That was a lie, wasn't it?

7 A. I lied about my straightening up?

8 Q. Right.

9 A. It wasn't a lie. That wasn't a lie.

10 Q. You were still using crack cocaine then, weren't  
11 you?

12 A. Yeah.

13 Q. You also told the police maybe that they ought to  
14 take a look at someone named Leonard Newby; isn't that  
15 true?

16 A. Yes.

17 Q. And you told them that Leonard Newby has dreads  
18 and a pony tail; isn't that right?

19 A. Yes.

20 Q. Now, that was true, correct, that he had that  
21 hairstyle?

22 A. I don't know that he had it or not then. I just  
23 threw his name out there because I hadn't seen him.

24 Q. You knew Leonard Newby, didn't you?

25 A. Yeah.



1 Q. And you knew that at least at one time he had  
2 dreads and a pony tail, correct?

3 A. Yes.

4 Q. That's why that came in your head, right?

5 A. Yes.

6 Q. And you said, hey, he's cut his hair off, right?

7 A. Yes.

8 Q. And that sort of surprised you because you knew he  
9 really liked that hairstyle. He liked his dreads;  
10 isn't that true?

11 A. I only said that because that was what I heard.  
12 So I just used that to say that.

13 Q. So that nobody would suspect you having anything  
14 to do with this, correct?

15 A. What you mean?

16 Q. You didn't want anybody to think for one second  
17 that you had anything to do with the killing of  
18 Officer Gibson, did you?

19 A. I didn't want to be involved with it.

20 Q. Right. But you knew you were involved in it,  
21 according to what you told us today, correct?

22 A. Yes, sir.

23 Q. Now, were you going to get some drugs from Ferrone  
24 Claiborne back there in the woods on April 25th?

25 A. Excuse me?

1 Q. Were you going to get some drugs from Leonard  
2 Newby back there in the woods on April 25, 1998?

3 A. No.

4 Q. Well, he gave you some, didn't he?

5 A. Leonard didn't give me nothing.

6 Q. I'm not talking about Leonard.

7 THE COURT: Yes, you did.

8 MR. BOATWRIGHT: I know. I made a mistake.

9 THE COURT: He answered the question though.  
10 He's not supposed to know what your question is. All  
11 right.

12 BY MR. BOATWRIGHT:

13 Q. Let me try this one more time. Were you supposed  
14 to get any drugs from Ferrone Claiborne back there in  
15 the woods on April 25th?

16 A. Terence Richardson was supposed to get some drugs.

17 Q. I understand that you said that. I'm asking, were  
18 you going to get some, too?

19 A. Oh, if he had some, I was going to get me some.

20 Q. In fact, you said Mr. Claiborne gave you some to  
21 try, right?

22 A. Yes.

23 Q. Was that for you to determine whether it was good  
24 or not?

25 A. I was testing it and for my own use, too.

1 Q. Because you were going to get some, right?

2 A. Well, if Terence would have got it, I was going to  
3 smoke it if he brought it back to my house.

4 Q. You have not been charged with any involvement in  
5 Officer Gibson's homicide, have you?

6 A. No.

7 Q. Has anybody threatened you with being charged with  
8 being involved in the Officer Gibson homicide?

9 A. No.

10 Q. You had your crack pipe with you that day when you  
11 left your trailer, right?

12 A. Yes.

13 Q. That's because you knew or suspected that you were  
14 going to get some drugs while you were out; isn't that  
15 right?

16 A. Well, most of the time I'm out, I had one with me.

17 Q. What do you make your crack pipe out of?

18 A. I made them out of cellophane.

19 Q. I'm talking about the one you had that day.

20 THE COURT: What difference does that make  
21 to this case? There are a lot of questions that may  
22 be of interest, but I'm not sure they have pertinence  
23 to the case.

24 MR. BOATWRIGHT: All right, sir. I will  
25 move on.

1 BY MR. BOATWRIGHT:

2 Q. So you spoke to the police back in May of '98 and  
3 told them things we've already discussed, right?

4 A. Excuse me?

5 Q. Never mind.

6 MR. BOATWRIGHT: Once again, let me ask Mr.  
7 Novak one quick question.

8

9 (Discussion off the record.)

10

11 BY MR. BOATWRIGHT:

12 Q. So you went in October of '98 to the preliminary  
13 hearing and testified there, correct?

14 A. I think -- I don't know if it was '98 or what year  
15 it was, but I went in and testified.

16 Q. All right. And then right before Christmas in  
17 1999, you made Special Agent Ritchie's acquaintance,  
18 true?

19 A. I guess it was December. I met him in that year.

20 Q. All right. It was the late part of the year,  
21 wasn't it?

22 A. Yes.

23 Q. Now, you told him the story about the drug dealer  
24 from Hopewell, too, didn't you?

25 A. Yes.

1 Q. That was a lie, wasn't it?

2 A. Yes.

3 Q. And then you also told him that when you got to  
4 Waverly Village that while Mr. Claiborne and Mr.  
5 Richardson were doing whatever it is they were going  
6 to do, you went off to see if you could find this girl  
7 you thought might have sex with you; isn't that true?

8 A. Yes.

9 Q. That was a lie, wasn't it?

10 A. Yes.

11 Q. Then you told him again the lookout story,  
12 correct?

13 A. Yes.

14 Q. Another lie, right?

15 A. Yes, sir.

16 Q. You also told Special Agent Ritchie on that  
17 occasion that Mr. Richardson told you when he came  
18 back to your trailer that he had gotten into a fight  
19 with the police and accidentally killed him, true?

20 A. Yes.

21 Q. What you're saying today is that's a lie, correct?

22 A. About him telling me?

23 Q. Right.

24 A. Yes, that's a lie.

25 Q. Oh, when you got back to the trailer when -- and

1 I'm talking about not what you told anybody, but what  
2 really happened when you got back to the trailer, were  
3 the kids awake or asleep?

4 A. I believe the kids were still in the bed, in the  
5 bedroom.

6 Q. You say you believe that. Are you --

7 A. I can't remember if they was.

8 THE COURT: Don't guess, if you don't know.

9 THE WITNESS: I can't remember.

10 BY MR. BOATWRIGHT:

11 Q. If you don't know, you don't know. Are you saying  
12 you don't know?

13 A. I don't remember.

14 Q. All right. Now, a couple of months passed and you  
15 find yourself sitting in the Sussex County Jail in  
16 March of the year 2000, correct?

17 A. I was in jail. I don't know what year.

18 Q. Let's put it this way. There came a time when you  
19 were interviewed by Special Agent Ritchie in the  
20 Sussex County Jail, correct?

21 A. Yes.

22 Q. And he and the other agent came down to see you;  
23 isn't that right?

24 A. Yes.

25 Q. Now, you told him that you were not really

1 comfortable talking with him while you were in the  
2 Sussex County Jail, correct?

3 A. Correct.

4 Q. But you did manage to tell him that you wanted to  
5 straighten things out and say that -- and tell him  
6 that you had made the whole story regarding Officer  
7 Gibson's homicide up, correct?

8 A. Yes.

9 Q. And you say today that that's a lie, correct?

10 A. Yes.

11 Q. You explained that to Agent Ritchie by saying that  
12 Deputy Chief Moe Williams had threatened to charge you  
13 with the homicide if you didn't admit to being a  
14 lookout when the homicide took place; isn't that true?

15 A. That's what I said, but it was a lie.

16 Q. Then later that month, you saw Mr. Ritchie again;  
17 isn't that right?

18 A. Yes, I seen him again.

19 Q. Now, this time you're at the FBI office; isn't  
20 that right?

21 A. I believe so.

22 Q. And, again, Mr. Talbert was present with him;  
23 isn't that right?

24 A. Yes.

25 Q. I'm just trying to make sure I get this straight.

1 This is when you essentially told Mr. Ritchie the  
2 things that you have told these ladies and gentlemen  
3 here today; isn't that right?

4 A. Yes. I went on --

5 Q. That's all I'm asking really is for a yes or no.

6 THE COURT: Well, I'm not sure what the  
7 question is.

8 THE WITNESS: Could you repeat the  
9 question?

10 BY MR. BOATWRIGHT:

11 Q. On that occasion is when you first told anyone the  
12 account about Officer Gibson's death that you told the  
13 ladies and gentlemen here today, isn't it?

14 A. I don't think so.

15 Q. You think you told somebody prior to that time?

16 A. No. But I don't know if I told them the truth  
17 then or it was later after that.

18 Q. Let me check something then. Just hold on one  
19 second. Oh, on that occasion while you were in the  
20 FBI office though, you gave a different version of  
21 what took place during the struggle than what you told  
22 the ladies and gentlemen here today, didn't you?

23 Let me help you. Let me see if this  
24 refreshes your memory. Didn't you tell Mr. Ritchie  
25 that Ferrone Claiborne grabbed the officer by the back



1 of the shoulder, while Mr. Richardson went at him from  
2 the front? Didn't you tell him that?

3 A. I don't remember.

4 Q. In August of last year, that's the year 2000, Mr.  
5 Talbert and Mr. Ritchie came and arrested you for  
6 obstruction of justice; isn't that right?

7 A. Yes.

8 Q. And then in October of the year 2000, last  
9 October, that's when you told them essentially what  
10 you told these ladies and gentlemen here today; isn't  
11 that true?

12 A. I'm not sure -- I'm not sure the date when I told  
13 the truth.

14 Q. All right. Well, let's not worry about what month  
15 it was. But after you had been indicted and arrested  
16 for obstruction of justice is when you told Special  
17 Agent Ritchie and Special Agent Talbert the same  
18 account that you have given these ladies and gentlemen  
19 here today; is that right?

20 A. Yes.

21 Q. And then you had a later conversation with them in  
22 which your lawyer was present and now Mr. Novak was  
23 present, correct?

24 A. I believe so.

25 Q. Have you ever been to Waverly Village Apartments

1 prior to the day that Officer Gibson was killed?

2 A. Have I been there before then?

3 Q. Uh-huh.

4 A. Yes, in the past, yes.

5 Q. A number of times, correct?

6 A. Yes.

7 Q. There was no particular reason why anyone would  
8 need to go into the woods to do a crack cocaine  
9 transaction, is there?

10 A. It wasn't my idea to go back there.

11 Q. But you bought crack cocaine in all sorts of  
12 locations around Waverly; isn't that true?

13 A. Yes.

14 Q. You bought on New Street?

15 A. Yes.

16 Q. You bought at Waverly Village?

17 A. No.

18 Q. You bought at Dobie's?

19 A. Yes.

20 Q. And when you do that, it's just a matter of a  
21 quick exchange. They give you the rock. You give  
22 them the money. That's it; isn't that right?

23 A. Yes.

24 Q. You do it as quickly as possible so that nobody  
25 sees it, right?

1 A. Yes.

2 Q. Now, how tall are you and how much do you weigh?

3 A. Six even.

4 Q. Six even, is that what you said?

5 A. Yes.

6 Q. Terence is considerably shorter than you; isn't  
7 that right?

8 A. Yes.

9 Q. If Jovanna Jones was asleep, as it appears from  
10 your testimony you say she was, all the time that you  
11 were gone over to Waverly Village and coming back, why  
12 did you need to tell her to say that the two of you  
13 had been there the whole time?

14 A. I told her after Terence was arrested -- I think  
15 after he was arrested, I talked to her about it, just  
16 if the police come asking any questions to say that I  
17 was at home. I figured that I would need an alibi  
18 that I was home. That's why.

19 Q. The fact is, as far as you were concerned, she  
20 didn't know any different anyway; isn't that right?  
21 She had been asleep, right?

22 A. Yes, she was asleep.

23 Q. And she never said anything different to you, like  
24 she woke up and found that you all weren't there, did  
25 she?

1 A. No, she didn't tell me that.

2 Q. Now, the source of your income during all this  
3 period of time was money from your girlfriend, right?

4 A. Yes.

5 Q. And occasionally your father would give you money  
6 for helping him out working on cars and things like  
7 that?

8 A. Yes. And also I had some money back from income  
9 tax collection, too.

10 MR. BOATWRIGHT: If I could consult with Mr.  
11 HuYoung for just a moment.

12  
13 (Discussion off the record)

14  
15 BY MR. BOATWRIGHT:

16 Q. Is there anything you wouldn't do to assist  
17 yourself in getting your sentence reduced?

18 A. Anything I wouldn't do?

19 Q. Right.

20 A. I'm not going to lie anymore.

21 Q. Anything you wouldn't do?

22 MR. NOVAK: I think he answered the  
23 question.

24 THE COURT: Sustained.

25 MR. BOATWRIGHT: Thank you.

## CROSS EXAMINATION BY MR. EVERHART:

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Q. Good afternoon, sir. My name is Jeff Everhart, and I represent Ferrone Claiborne. How are you doing?

A. All right.

Q. You said you're about 6 feet tall?

A. Yes.

Q. You think so? How much do you think you weigh, Shawn?

THE COURT: Mr. Wooden.

BY MR. EVERHART:

Q. I'm sorry. Mr. Wooden, how much do you think you weigh?

A. About 140.

Q. Back in April of 1998, can you give us some idea the length of your hair?

A. Maybe a little longer than this.

Q. You told the --

MR. NOVAK: Excuse me. I think the record should reflect that he's got a relatively close cropped haircut.

THE COURT: All right.

MR. NOVAK: Is that fair, Mr. Everhart?

THE COURT: That's a fair description.

MR. EVERHART: I'd say it's --

1 THE COURT: Well, it's not any longer than a  
2 quarter of an inch, if that.

3 MR. EVERHART: I agree.

4 BY MR. EVERHART:

5 Q. Back on April the 25th of 1998, do you recall what  
6 you were wearing, that being the day that Officer

7 Gibson was shot, what you were wearing?

8 A. I had on jeans, and I don't know what color shirt  
9 I had on, but I had jeans.

10 Q. Maybe a white T-shirt?

11 A. No.

12 Q. Blue?

13 A. (No response).

14 Q. You just don't remember?

15 A. No, I don't -- I don't have blue T-shirts. I  
16 know I didn't have a blue T-shirt on.

17 Q. Do you own some white T-shirts?

18 A. Yes, I own plain white T-shirts.

19 Q. You just don't recall what you were wearing that  
20 day you are saying?

21 A. I know that I didn't have on a white T-shirt.

22 Q. Now, you have made during the course of -- let me  
23 rephrase it. Since April 26th when you first spoke to  
24 law enforcement personnel involved in this matter, you  
25 made a number of statements, correct?

1 A. Yes.

2 Q. I know you don't recollect the exact dates, but  
3 assume that the dates I give you are correct for the  
4 purpose of our discussion. Will you do that for me?

5 A. Yes.

6 Q. The day after the murder, you spoke with law  
7 enforcement and you gave the "I wasn't there"  
8 statement, right?

9 A. Yes.

10 Q. That was on April 26th. Now, May 11th, you were  
11 down in Chesapeake talking to the state police and you  
12 gave the "lookout" story for the first time, right?

13 A. Yes.

14 Q. On December -- pardon me. On October 15th of  
15 1998, you testified at the preliminary hearing,  
16 correct?

17 A. Yes.

18 Q. You were either in the courtroom or came to the  
19 front. You raised your right hand, and you swore to  
20 tell the truth, whole truth, and nothing but the  
21 truth, correct?

22 A. Yes.

23 Q. You perjured yourself that day?

24 A. Yes.

25 Q. Now, you've never been charged with perjury in

1 state court, right?

2 A. No.

3 Q. December 29th of -- pardon me, December 22nd of  
4 1999, I believe was probably the first time you spoke  
5 with perhaps Special Agent Ritchie or Special Agent  
6 Talbert. Do you remember when they were the ones that  
7 started talking to you?

8 A. I don't remember the exact day when they talked to  
9 me, but I remember talking to them.

10 Q. Like I said, I'm not going to mislead you on the  
11 dates, I promise. If you do, Mr. Novak will correct  
12 me.

13 But for the sake of argument, you remember  
14 the time that Special Agent Ritchie and Special Agent  
15 Talbert or the time that they interviewed you,  
16 correct?

17 A. Yes, sir, I remember.

18 Q. December 22nd of '99, if you met with them, you  
19 remember telling them the lookout story again, right?

20 A. Yes, sir. I told them the lookout story.

21 Q. You told them you were a lookout?

22 A. Yes.

23 Q. Now, on March 8th you told them that the whole  
24 thing was made up, right?

25 A. Yes, I told them that.



1 Q. March 8, 2000, I'm sorry. You said, Moe Williams  
2 scared me. It was all a lie. I wasn't there,  
3 period.

4 A. I told them that story.

5 Q. Yes, sir. Now, on May -- pardon me, on March 21st  
6 of 2000, that's when you started giving a rendition  
7 that is mostly consistent with what you said today,  
8 right?

9 A. Excuse me?

10 Q. March 21st of 2000, that's about the time you  
11 started telling something consistent with what you  
12 told the jury today, right?

13 A. Telling a story similar to what I told them.

14 Q. Yes.

15 A. Pretty soon.

16 Q. Do you recall during that version, if you will,  
17 telling -- do you remember a gentleman named -- no,  
18 I'm sorry. Do you remember you were interviewed on  
19 that occasion by Special Agent Ritchie, just him, here  
20 in Richmond, Virginia? Does that ring a bell?

21 A. I don't remember just me and him, where it was  
22 just him.

23 Q. Was there somebody else named Hofstead, with  
24 you? Does that ring a bell?

25 A. No.

1 Q. You remember talking to Special Agent Ritchie  
2 though, right?

3 A. I remember talking to him a couple of times.

4 Q. Several times. Do you remember telling him that  
5 when Officer Gibson interrupted this alleged meeting  
6 that you started to run away? You took a couple of  
7 steps. You heard a gunshot, and when you turned, the  
8 officer was slumping to the ground. Ferrone Claiborne  
9 was running the other way. Do you remember saying  
10 that?

11 A. Yes.

12 Q. He was, according to what you said then -- never  
13 mind.

14 Now, at some point after that, you were  
15 charged with the obstruction, correct?

16 A. Yes.

17 Q. And Peter Eliades was your attorney, right?

18 A. Yes.

19 Q. Now, on October 25th of 2000, that's the day you  
20 pled guilty to the obstruction, right?

21 A. Yes.

22 Q. And you have seen -- you remember your copy of the  
23 plea agreement that I think either Mr. Novak or Mr.  
24 Boatwright showed you?

25 A. Yes.

1 Q. And you remember all the provisions, and your  
2 attorney, Mr. Eliades, explained all that to you,  
3 right?

4 A. Yes.

5 Q. You're still in touch with Mr. Eliades?

6 A. Yes, sir.

7 Q. And he assures you that if you tell the truth, I  
8 think is what you told your agreement was, that  
9 everybody was hopeful, at least on your side, that the  
10 Government will file a motion, correct?

11 A. He said it's up to Novak.

12 Q. Up to the U.S. Attorney?

13 A. Yes.

14 Q. Assistant United States Attorney. Obviously, Mr.  
15 Novak is the one that gets to make that determination  
16 whether you're telling the truth or not, right?

17 A. I believe it's up to the judge to make a decision.

18 Q. Ultimately, the judge rules on the motion. But  
19 the threshold issue is, I think, as you said awhile  
20 ago, you telling the truth, right?

21 A. Yes.

22 Q. And you agree Mr. Novak is the determiner of that?

23 A. To me telling the truth?

24 Q. Uh-huh.

25 A. Yes.

1 MR. EVERHART: Could I have one second,  
2 please?

3  
4 (Discussion off the record)

5  
6 MR. EVERHART: Thank you, Your Honor. Thank  
7 you, Mr. Wooden. I'm sorry, Mr. Boatwright has  
8 something he wants to tell me. Is that all right with  
9 the Court?

10  
11 (Discussion off the record)

12  
13 MR. EVERHART: One question, please, Your  
14 Honor, and I will be through.

15 BY MR. EVERHART:

16 Q. Mr. Wooden, sorry. I asked you earlier had you  
17 ever been charged with perjury in the state court.  
18 Has anyone ever even threatened you with perjury,  
19 being charged with perjury at the state level?

20 A. Nobody threatened me but I -- nobody threatened  
21 me.

22 MR. EVERHART: Thank you. Thank you, Your  
23 Honor

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## REDIRECT EXAMINATION BY MR. NOVAK:

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Q. But you did plead guilty to obstruction of justice here for the lies; is that right?

A. Yes.

Q. Now, I want to ask you a couple of questions. Referring to that chart over there. Your caller I.D. box at your trailer, back then did somebody actually have to pick up the telephone in order for a phone call to register on your caller I.D.?

A. No, sir.

Q. So if you all were sleeping and it rang, it would still show up?

A. Yes.

Q. Now, the other thing is, when you saw Mr. Claiborne, you and Mr. Richardson hooked up with Mr. Claiborne --

THE COURT: Do you all want some time to talk?

MR. BOATWRIGHT: No, sir.

THE COURT: I didn't hear the question.

Start again.

BY MR. NOVAK:

Q. When you and Mr. Richardson hooked up with Mr. Claiborne before you went to Waverly Village

1 Apartments to do the drug deal, did you know where Mr.  
2 Claiborne had his drugs?

3 A. No, sir.

4 Q. Did you know if he had them on him or not?

5 A. I didn't know.

6 Q. Do you know if he had a stash location in the  
7 Waverly Village Apartments?

8 MR. EVERHART: Judge, I think this is beyond  
9 -- certainly beyond the scope of my cross.

10 MR. NOVAK: Well, it's not.

11 THE COURT: Well, I don't think it's beyond  
12 the scope of Mr. Boatwright's.

13 MR. EVERHART: Of course, I represent Mr.  
14 Claiborne.

15 THE COURT: Well, I understand that. But by  
16 the same token, I do think it's probably within the  
17 scope of yours, in part, as I understand it. So the  
18 objection is overruled.

19 MR. EVERHART: Thank you, Your Honor.

20 BY MR. NOVAK:

21 Q. This is the last thing I want to ask you, Mr.  
22 Wooden. Mr. Boatwright was asking you this. After  
23 you pled guilty -- you pled guilty to a plea agreement  
24 that they were showing you, the plea agreement that  
25 you have with the Government in this case.

1 A. Yes, sir.

2 Q. You agreed to take a polygraph in the future if  
3 asked; is that right?

4 A. Yes, sir.

5 Q. So, conceptually, when this trial is over, the  
6 Government -- I could make you take a polygraph; is  
7 that right?

8 A. Yes, sir.

9 Q. A lie detector test, right?

10 A. Yes.

11 Q. And if you lie during this trial, what's going to  
12 happen to your chances of getting a sentence reduction  
13 motion from Judge Payne?

14 A. I won't get one, and I will get five years.

15 MR. EVERHART: I'm going to object. I think  
16 that's too speculative unless he -- he doesn't know  
17 what's going to happen.

18 THE COURT: I think his objection to the  
19 form of the question is correct because he doesn't  
20 know what's going to happen. But he can be asked what  
21 is his understanding of what will happen because that  
22 goes to his state of mind.

23 BY MR. NOVAK:

24 Q. What do you believe would happen to you if you  
25 were to lie to these people today?

1 A. That I will won't get my time cut and that I would  
2 be charged with perjury and get five more years added.

3 Q. And we can check that by giving you a lie detector  
4 test if we want to; isn't that right?

5 MR. EVERHART: Judge --

6 THE COURT: Don't answer the question.

7 MR. EVERHART: I object to that.

8 THE COURT: And the reason for the  
9 objection?

10 MR. EVERHART: I think, first of all, it's a  
11 misstatement of the law. Just because a lie detector

12 --

13 THE COURT: He didn't ask him a question of  
14 law.

15 MR. EVERHART: Well, no. He said, if you  
16 lie -- he said, what's your understanding if you lie  
17 to these ladies and gentlemen. He says, my  
18 understanding is I can be charged with perjury and  
19 then get five more years. I think he was talking  
20 about if he fails the polygraph.

21 THE COURT: The question was if he lied.

22 MR. EVERHART: Well, Judge --

23 THE COURT: We are beyond that question.  
24 The question was, we can ask you to take polygraph to  
25 determine the lie, and that's your --



1 MR. EVERHART: That's my objection. To  
2 follow that the inference is being given, if you fail  
3 the polygraph, by virtue of that, we've got enough to  
4 convict of perjury. And I'd suggest to the Court that  
5 that's not -- our laws won't allow it.

6 THE COURT: I think that the law doesn't  
7 proceed in that fashion anyway. But I suppose your  
8 objection is that the particular question isn't  
9 relevant, and I sustain the objection to that  
10 particular question.

11 MR. NOVAK: That's fine. I have no further  
12 questions. Thank you, Mr. Wooden.

13  
14 THE COURT: All right. You may step down.

15  
16 (The witness was excused from the witness  
17 stand)

18  
19 THE COURT: Ladies and gentlemen, I will  
20 give you instructions on this later. But under the  
21 sentencing law that is in effect in the United States  
22 courts, the United States is permitted to -- after a  
23 defendant pleads guilty to something and is sentenced  
24 and then comes to testify in court in another matter,  
25 the United States is permitted to make a motion to the

1 court to ask that the particular person's sentence, in  
2 this case Mr. Wooden or anybody else in this  
3 situation, be reduced.

4 That process is this, that the motion in the  
5 first instance must be made by the United States. The  
6 ultimate decision on the motion -- the motion just  
7 says to the court, Court, this man has given  
8 substantial assistance -- and I will tell you what  
9 that means -- in the prosecution of someone else, and,  
10 therefore, we recommend that his sentence be reduced.

11 Whether that motion is granted is up to the  
12 sentencing judge. And the judge considers, among  
13 other things, the truthfulness of the testimony, the  
14 recommendation of the United States as to whether it  
15 believes the testimony is truthful, any input from the  
16 lawyer for the person, such as Mr. Wooden's lawyer,  
17 and a number of other factors.

18 And that is a permissible procedure or that  
19 is basically the procedure that they are referring to  
20 here. And I'm allowing it to come into evidence here  
21 because, obviously, it is something that you can take  
22 into account in determining the credibility of a  
23 witness who is in that situation.

24 I will give you some more instructions on  
25 that later. Excuse me, go ahead.

1 MR. NOVAK: That's fine. Agent Martell.

2

3 ALAN MARTELL, having first been duly sworn,  
4 was examined and testified as follows:

5

6 MR. NOVAK: May I proceed, Your Honor?

7 THE COURT: Please.

8

9 DIRECT EXAMINATION BY MR. NOVAK:

10

11 Q. Sir, do you want to introduce yourself to the  
12 ladies and gentlemen?

13 A. Yes. My name is Alan Martell. I'm a special  
14 agent with the Virginia State Police.

15 Q. How long have you been a special agent with the  
16 Virginia State Police?

17 A. Eleven and a half years.

18 Q. And you're currently assigned to the Criminal  
19 Investigation Division?

20 A. Yes, I am.

21 Q. Were you assigned to that division back in 1998?

22 A. Yes, I was.

23 Q. Were you assigned to help out on the investigation  
24 into the murder of Officer Allen Gibson on April 25,  
25 1998?

1 A. Yes, I was.

2 Q. As part of your role supporting that  
3 investigation, did you have an occasion on Sunday,  
4 April 26, 1998, at approximately 1:00 a.m. to go to  
5 223 Dogwood Street?

6 A. Yes, I did.

7 Q. And whose residence was that?

8 A. It was the residence of a Terence Richardson, and  
9 the person that was there was Mr. Westbrook, who said  
10 he was his stepfather.

11 Q. His father?

12 A. Stepfather.

13 Q. Stepfather.

14 MR. NOVAK: Judge, if we can look at the  
15 monitor and show P-11 please. I think I may have  
16 thrown a curve ball to Ms. Bishop.

17 THE COURT: You may have thrown it, but it  
18 didn't get by her.

19 MR. NOVAK: She's carrying me, Judge, the  
20 story of my life.

21 BY MR. NOVAK:

22 Q. Do you recognize that location?

23 A. Yes. That's the address.

24 Q. Can you tell us why it is that you went to that  
25 location?

1 A. On the 25th I had spoken to an individual by the  
2 name of Joseph Jones.

3 Q. Without -- you're not permitted to go into what he  
4 told you. Based upon what he told you, Agent Martell,  
5 you decided to go to that residence; is that right?

6 A. Yes, I did.

7 Q. Now, when you went to that residence was Terence  
8 Richardson there?

9 A. No, he was not.

10 Q. Now, did his father give you consent to search  
11 Terence Richardson's bedroom?

12 A. Yes, he did.

13 Q. And did you then conduct a search of his bedroom?

14 A. Yes, I did.

15 Q. If I could show you Government's Exhibit RS-1,  
16 please.

17 MR. NOVAK: Judge, if I might just hold it  
18 up just for a second.

19 BY MR. NOVAK:

20 Q. Do you recognize what I'm trying to hold up here?

21 A. Yes, I do.

22 Q. What do you recognize that from?

23 A. That's a T-shirt that I secured from Mr.  
24 Richardson's bedroom.

25 Q. And where did you find it exactly in his bedroom?

1 A. It was located in a stereo cabinet in the bottom  
2 tucked in on the bottom of the stereo cabinet.

3 Q. Now, can you tell us, taking a look at this  
4 T-shirt -- well, first of all, can you describe for  
5 the ladies and gentlemen the condition of the T-shirt  
6 when you found it?

7 A. Well, when I found it, I noticed it had been  
8 torn. As you can see on the right-hand side, it was  
9 torn.

10 Q. Referring to the sleeve part area over here?

11 A. Yes.

12 Q. Was that the condition that it was in when you  
13 found it like that?

14 A. Yes.

15 Q. Now, there are a number of little holes with  
16 markings, circles and squares around it. Were those  
17 there back then?

18 A. I don't recall those being there.

19 Q. Is that how your lab takes parts of clothing to  
20 test it?

21 A. Yes, sir.

22 Q. So the shirt was whole there. Where the circles  
23 and squares are, that was the whole shirt there?

24 A. Yes.

25 Q. This sleeve was torn off; is that right?

1 A. Yes.

2 Q. Can you tell us what else -- anything else about  
3 the condition of the shirt when you found it?

4 A. It was damp also and soiled, as you can see, just  
5 as you see it now. It was soiled, but it was also  
6 very damp.

7 Q. So all these dirty marks on both sides, for  
8 example, on the back of the T-shirt, are you calling  
9 those, what appear to be dirt marks, to be soil?

10 A. Yes, sir.

11 Q. Were all those marks on the back of that T-shirt  
12 when you found it?

13 A. As far as I can recall, yes, sir.

14 Q. Were they on the front of the T-shirt?

15 A. Yes.

16 Q. Did you do anything to the T-shirt after you  
17 seized it? Did you harm it in any fashion, tear it,  
18 rip it, cut it up, do anything to it?

19 A. No, sir.

20 Q. At that time did you all take photographs of the  
21 shirt where you found it and then laid it out in the  
22 bedroom?

23 A. I didn't photograph it, but I had an evidence  
24 technician that was with me photograph it.

25 Q. Now, have you all gone back to try to find those

1 photographs?

2 A. Yes.

3 Q. Have you been able to find the photographs?

4 A. No.

5 Q. They were misplaced; is that right?

6 A. Yes.

7 Q. Now, you've gone back, actually, a number of you  
8 have gone back to look for those; is that right?

9 A. Yes, sir.

10 Q. Now, after that shirt was seized, could you tell  
11 us what it is, if anything, that you did with that  
12 shirt?

13 A. I didn't personally do anything with it. Steve  
14 Jones, who is a special agent also with me, I had him  
15 photograph it and then also package it, since he was  
16 the evidence technician. He packaged it and took  
17 photographs of it, of the shirt.

18 Q. Those are the missing photographs we just spoke  
19 of; is that right?

20 A. Yes. From there he took custody of the package.

21 Q. The assigned detective at the time, the lead  
22 investigator for this case was Tommy Cheeks from  
23 Sussex County; is that right?

24 A. It was either Tommy Cheeks or Moe Williams.

25 Q. And under your all's protocol between the state



1 police and the local police department, whoever the  
2 lead investigator is, they're supposed to get all the  
3 evidence; is that right?

4 A. Yes, sir.

5 Q. That's why you all turned it over to Tommy Cheeks;  
6 is that right?

7 A. Yes.

8 Q. That's how somewhere in-between the turning it  
9 over, you all lost the photos; is that right?

10 A. Yes.

11 Q. I want to direct your attention to later on that  
12 day, Sunday, again, April 26th, at about 5:30 in the  
13 afternoon and ask if you had an occasion to go to  
14 Shawn Wooden's trailer at 229 Robert Wilkins Avenue in  
15 the city of -- in the town of Waverly?

16 A. Yes, sir, I did.

17 Q. Now, while you were there were you given an  
18 opportunity to review his caller I.D. box?

19 A. Yes.

20 Q. And did you mark down all the phone numbers that  
21 were still on the caller I.D. box that you observed?

22 A. Yes, sir, I did.

23 Q. You put that in a report; is that right?

24 A. Yes, sir.

25 Q. If I could show you WI-1. Let me ask you this,

1 Agent Martell. Taking a look at WI-1, do you  
2 recognize that item?

3 A. Yes, sir, I do.

4 Q. Does that chart fairly and accurately represent  
5 the information that you personally observed with your  
6 eyes on the caller I.D. box?

7 A. Yes, sir, except for the name. It would have been  
8 backward. It would have been Sprague, I believe, and  
9 then it would have been John T.

10 Q. Okay.

11 A. And the same thing with Purham. It would have  
12 been Purham, Louise.

13 Q. So on the caller I.D., it said the last name, then  
14 the first name?

15 A. Yes.

16 Q. It's inverted. But the substance of the  
17 information though it's all correct?

18 A. Yes, sir.

19 Q. And I gather the items that you are looking at in  
20 your hands is a report that you wrote that day; is  
21 that correct?

22 A. Yes, sir.

23 Q. There is no way you can remember that back that  
24 long ago; is that right?

25 A. Yes, sir.

1 MR. NOVAK: Judge, I'd move for the  
2 admission of WI-1 at this time.

3 MR. HUYOUNG: No objection.

4 MR. EVERHART: No, objection.

5 MR. NOVAK: I have no further questions of  
6 Agent Martell.

7 (Government's Exhibit Number WI-1 was  
8 received in evidence.)

9  
10 CROSS EXAMINATION MR. HUYOUNG:

11  
12 Q. Good morning, sir. On the day in question when  
13 you went to -- this is Mr. Nathan Westbrook's  
14 residence; is that correct?

15 A. I didn't know him as -- I just knew him as Mr.  
16 Westbrook.

17 Q. And you say that's his stepfather or father?

18 A. He told me he was the stepfather. I asked him  
19 what relation that he was, what relation Mr.  
20 Richardson was to him, and he said he was his stepson.

21 Q. Okay. That's what he said?

22 A. Yes, sir.

23 Q. And you took that on your notes?

24 A. Yes, sir.

25 Q. You searched the room and you found this T-shirt?

1 A. Yes.

2 Q. It was in a stereo cabinet in plain view pretty  
3 much; was it not?

4 A. Yes, sir.

5 Q. You didn't find any baseball cap or any other  
6 clothing there, did you?

7 A. Not that I can recall, no, sir.

8 Q. That's the only thing that you saw?

9 A. Yes, sir.

10 Q. These photographs that were taken, do you recall  
11 who the tech person was that took the photographs?

12 A. Yes. His name was Steve Jones.

13 Q. Steve Jones?

14 A. He is also a special agent with the state police.

15 Q. Do you know how many photographs were taken?

16 A. No, sir.

17 Q. More than -- was it more than one; would you know?

18 A. Yes, it would be more than one.

19 Q. And usually when you seize items of evidence, such  
20 as this T-shirt, you label it and put it in a bag?

21 A. I wouldn't label it. Because he's the evidence  
22 technician, he would have, but that's what he would  
23 do.

24 Q. Were you present when he did that?

25 A. Yes, sir.

1 Q. And these photographs, usually they are kept in  
2 some file, some envelope?

3 A. No. Once the photographs were taken, the roll is  
4 actually given to -- in our case it would be the case  
5 agent who was working the case since we were not the  
6 ones, we were assisting the other agency. At that  
7 time protocol would have been for him to give the film  
8 to the lead investigator, which was either Moe  
9 Williams or --

10 Q. Either Moe Williams or Tommy Cheeks?

11 A. Yes, sir.

12 Q. And somehow they just can't be found?

13 A. Right, yes, sir.

14 Q. And you have done everything you can to try to  
15 find them?

16 A. Yes, sir, because if we would have had it, we also  
17 would have had the negatives on file in Richmond.

18 Q. When those photos were taken, was that shirt laid  
19 out on a bed?

20 A. On a bed, yes, sir.

21 Q. And photos were taken?

22 A. Yes, sir.

23 Q. And you specifically recall the condition of the  
24 shirt. You had no reason to believe anything about  
25 the tear of the shirt. It was not significant to you,

1 was it?

2 A. No, it wasn't at that time, no.

3 Q. And were there other tear marks that you could  
4 make note of?

5 A. The only one I recall was the tear on the  
6 right-hand side.

7 Q. Did you write that down on a form or a sheet of  
8 paper saying this is where it was torn?

9 A. No, sir, because I had the photographs.

10 Q. Those caller I.D.s, are you familiar with how that  
11 caller I.D. works, that specific one? If you are not,  
12 you are not.

13 A. That specific one, no, sir.

14 Q. Okay. All right. Let me ask this. If you know  
15 the answer to it, you can answer. If not -- If  
16 someone calls and picks up, like there is a telephone  
17 conversation, would it register on that?

18 A. Yes, sir.

19 Q. You stated that you took a statement -- the reason  
20 why you went to Mr. Westbrook's house was you took a  
21 statement from Joe Jones; is that correct?

22 A. Yes, sir.

23 Q. You made a note of that conversation with Joseph  
24 Jones, correct?

25 A. Yes, sir.

1 Q. Isn't it true that when you took that statement,  
2 Mr. Jones was intoxicated?

3 A. Yes, sir, he was.

4 Q. Also, he stated that he was at Waverly Village  
5 when he wasn't even there.

6 A. That's true.

7 Q. And he was hesitant to give you any other  
8 information.

9 A. At the beginning.

10 MR. HUYOUNG: No further questions, Your  
11 Honor.

12 MR. GAVIN: We have no questions, Judge.

13 MR. NOVAK: Judge, I have some redirect.

14

15 REDIRECT EXAMINATION BY MR. NOVAK:

16

17 Q. Talking about Mr. Jones, Agent Martell, when he  
18 came in to see you that night, at first he said he was  
19 at the Waverly Village Apartments; is that right?

20 A. Yes.

21 Q. Then he told you that he had been at Dobie's and  
22 heard a conversation; is that right?

23 A. Not that same evening. It was on another time  
24 that I interviewed him.

25 Q. Well, at some point that night -- the reason that

1 you went to Mr. Richardson's residence is because Mr.  
2 Jones told you to look at Mr. Richardson and Mr.  
3 Wooden as being involved in the murder?

4 A. Yes, sir.

5 Q. And that's how you found the shirt; is that right?

6 A. Yes.

7 Q. Based upon what Mr. Jones told you then?

8 A. Yes, sir.

9 Q. He may have been drunk, but was he cooperative  
10 then?

11 A. Yes, sir.

12 MR. NOVAK: Thank you. I have no further  
13 questions.

14 THE COURT: May he be excused?

15 MR. NOVAK: Please.

16 MR. HUYOUNG: Yes, sir.

17 MR. GAVIN: Yes, sir.

18 THE COURT: Thank you. You may be excused  
19 to go about your business, Agent Martell.

20

21 (The witness was excused from the witness  
22 stand)

23

24 MR. NOVAK: Brian Covington, please.

25



1                   BRIAN COVINGTON, having first been duly  
2 sworn, was examined and testified as follows:

3  
4                   MR. NOVAK: Judge, before I get started, I  
5 just wanted to ask the Court for leave to do one thing  
6 and that's this. Mr. Covington is a DNA expert.  
7 That's already been stipulated to. We will talk to  
8 him a little bit about his DNA findings. But the  
9 parties have spent a substantial amount of time  
10 working out stipulations so we didn't have to spend  
11 two or three days talking about DNA.

12                   I'm going to read those at some point. But  
13 since -- I'm going to read some, and Mr. HuYoung is  
14 going to read some later on. But in order that the  
15 jury has just a fundamental understanding of what the  
16 heck we're talking about with this DNA, we would ask  
17 to be allowed to ask a couple foundation questions  
18 before I read the stipulations.

19                   THE COURT: Sure.

20                   MR. NOVAK: Thank you, Judge.

21  
22                   DIRECT EXAMINATION BY MR. NOVAK:

23  
24                   Q. Now, I've told everybody who you, but why don't  
25 you go ahead and tell them anyhow.

1 A. My name is Brian Covington. I'm a forensic  
2 scientists. I work in the forensic biology section of  
3 the Virginia Division of Forensic Science, which is  
4 the state crime lab system for the state of Virginia.

5 Q. And how long have you been doing it?

6 A. I have been a forensic biologist for approximately  
7 five years.

8 MR. NOVAK: Judge, I think the agreement is  
9 that he is an expert in forensic biology, which  
10 includes an expertise involving body fluids and DNA  
11 analysis.

12 THE COURT: Is that so agreed?

13 MR. HUYOUNG: Yes, sir.

14 MR. GAVIN: Yes, sir.

15 THE COURT: All right. He's an expert in  
16 that area.

17 BY MR. NOVAK:

18 Q. Mr. Covington, were you working at the lab in your  
19 capacity as a DNA analyst back on April 27th of 1998?

20 A. Yes, sir, I was.

21 Q. Did you have occasion to receive a white T-shirt  
22 that was submitted to you by Detective Tommy Cheeks?

23 A. I received that evidence on April 28th of 1998.

24 MR. NOVAK: May I show the witness RS-1?

25 BY MR. NOVAK:

1 Q. Do you recognize the item --

2 MR. NOVAK: May I step forward, Judge, just  
3 for a second?

4 BY MR. NOVAK:

5 Q. Do you recognize this item that's been marked  
6 RS-1?

7 A. Yes, I do.

8 Q. Now, could you describe for the ladies and  
9 gentlemen the condition of the shirt when you received  
10 it?

11 MR. NOVAK: Perhaps, actually, may I pass it  
12 to him and let him hold it up?

13 THE COURT: Sure.

14 BY MR. NOVAK:

15 Q. Why don't you tell us what you did and what  
16 condition you found it in and use the shirt as the  
17 example.

18 A. I'll put gloves on. When I originally examined  
19 this item of evidence, I was looking for the presence  
20 of blood. And my initial exam is a visual examine to  
21 document the condition of the evidence as I received  
22 it.

23 And what I noted originally upon looking at  
24 the evidence were numerous dark stains over the shirt  
25 and also a couple of fabric separations that I noted

1 mainly through the collar here, down the right side of  
2 the shirt and also two along the left sleeve.

3 Q. Can we talk about the right sleeve area. Could  
4 you illustrate for the jury what it is that you -- the  
5 condition of that right sleeve area when you initially  
6 examined it when it got to your lab?

7 A. I initially -- when I initially examined it, I,  
8 like I said, I noted a fabric separation along the  
9 right side, and it was consistent with what is here  
10 today, in this condition as it is right now.

11 Q. So that whole sleeve was torn off like that. You  
12 didn't tear it, basically?

13 A. No, I did not.

14 Q. I'm sorry, what else did you note then when you  
15 first did your initial evaluation?

16 A. Like I said, I noted the dark colored stains  
17 within the body of the shirt. What I did then was to  
18 check those stains for the presence of blood and found  
19 none.

20 Q. How do you do that?

21 A. We have a chemical test that I employ. I add a  
22 series of chemicals to a portion of the stain that I  
23 suspect has blood. What I'm looking for is a specific  
24 color reaction with the actual stain itself.

25 The color reaction that I initially will see

1 is a pink color. When I see that, I will add an  
2 additional chemical and it will turn that pink color  
3 to green. So when I get that pink to green color  
4 change, that gives me an indication that blood is  
5 present.

6 Q. None was found; is that right?

7 A. Right.

8 Q. Now, were you also tasked with examining that  
9 shirt for DNA?

10 A. I was. This shirt was resubmitted to my lab, and  
11 I was asked to look for the presence of DNA from other  
12 sources, such as perspiration or saliva, and I did  
13 that.

14 Q. Before we get to the results on that, which we  
15 will talk about for a second, could you just, in a  
16 very summary fashion, explain to the good folks what  
17 DNA is and what it is that you are looking for?

18 A. Okay. Well, DNA stands for deoxyribonucleic acid.  
19 And, basically, that's just a long word, but it means  
20 our genetic blueprint. It makes us who we are, what  
21 we are, codes for things such as eye color, hair  
22 color, our height, our weight, things like that. So  
23 that's what I'm looking for.

24 Q. Are those factors unique per individual?

25 A. Yes, they are.

1 Q. So, basically, it's our genetic fingerprint?

2 A. Yes.

3 Q. And you are looking to see if any of that DNA  
4 genetic fingerprint exists on that shirt; is that  
5 right?

6 A. Yes.

7 Q. Now, when you test for the DNA, do you take  
8 samples from the shirt?

9 A. Yes. Yes, I do. I need to remove a portion of  
10 possible stain areas or areas where DNA may be present  
11 in an effort to remove DNA from those stains.

12 Q. So how is it that we are able to tell what changes  
13 you made to the shirt during your testing? You cut  
14 the shirt, took samples; is that right?

15 A. Yes. Yes, I did. There's markings on the shirt,  
16 circles and squares, notations that I made, and I also  
17 labeled each of the areas that I made cuttings from  
18 with a letter.

19 Q. So anything that's got a circle or a square around  
20 it or a letter, that's something you created and it  
21 did not exist on the shirt when it got to the lab?

22 A. Yes.

23 Q. Now, after you performed your test, you prepared a  
24 report of your findings; is that right?

25 A. Yes, I did.

1 MR. NOVAK: Judge, I have the stipulation  
2 Number 4, if I could read it to the jury.

3 Stipulation Number 4 reads as follows: The  
4 white T-shirt, which has been marked as Government's  
5 Exhibit RS-1, recovered by Virginia State Police  
6 Special Agent Allen Martell on April 26, 1998, at  
7 approximately 1:00 a.m., from inside the residence of  
8 Terence Richardson's father at [REDACTED] Dogwood Street in  
9 Waverly, Virginia, was turned over to Virginia State  
10 Police Special Agent Steve Jones, who then turned it  
11 over to Sussex County Detective Tommy Cheeks, who then  
12 submitted the T-shirt to the Division of Forensic  
13 Science for the Commonwealth of Virginia for  
14 laboratory analysis.

15 Forensic scientist, Brian Covington, a  
16 properly trained and certified forensic scientist,  
17 then examined the T-shirt, which is Exhibit RS-1, for  
18 the possible presence of human DNA, which is an  
19 acronym for deoxyribonucleic acid, which is the  
20 genetic material that human beings inherit from their  
21 parents. Each human being has their own unique DNA.

22 The DNA testing performed by Scientist  
23 Covington in this case, PCR testing, is generally  
24 accepted in the scientific community as a valid and  
25 reliable method for determining the identity of a

1 person.

2 Scientist Covington collected cuttings from  
3 the T-shirt for his analysis. Scientist Covington  
4 marked each cutting by a circle or a square and  
5 labeled each cutting by a letter.

6 Scientist Covington found the presence of  
7 Terence Richardson's DNA in four stains in the white  
8 T-shirt, which is Exhibit RS-1. The stains are marked  
9 on the shirt as stains C, D, N and O.

10 Stain C was located in the arm pit area  
11 under where the right sleeve had been. Stain D was  
12 located in the shirt -- I'm sorry, in the center of  
13 the shirt next to the word "Blunt." Stain N was  
14 located in the right collar area of the shirt. Stain  
15 O was also located on the right collar area, but at  
16 the edge of the shirt where the right sleeve had been  
17 torn off. These stains could have come from either  
18 the perspiration or the saliva of Terence Richardson.

19 Scientist Covington also examined the white  
20 T-shirt for the DNA of Ferrone Claiborne and Officer  
21 Allen Gibson, but found none. No blood was found on  
22 the shirt.

23 BY MR. NOVAK:

24 Q. Now, Scientist Covington, I have just referenced  
25 the four areas that you found, C, D, N and O. If you



1 could just hold the shirt up and show the jury so they  
2 can see exactly where those locations are.

3 A. Area C is located here, D right here, N here, and  
4 O there.

5 Q. Now, we spoke a little bit about DNA. How does  
6 somebody get their DNA on clothing? How does it get  
7 transferred onto clothing?

8 A. In normal circumstances when you are wearing the  
9 clothing, there is going to be some transfer through  
10 the rubbing of the clothing with your skin. So you  
11 are going to have skin removed from your body onto the  
12 clothing and that can be also included in  
13 perspiration, should you sweat in a shirt. That will  
14 put genetic material on your clothing.

15 Q. So are human beings -- as a human being, our  
16 genetic material is contained in our skin; is that  
17 right?

18 A. That's one area. It's in the cells that make up  
19 your skin, as well as all the cells that make up your  
20 body, with the exception of the red blood cells.

21 Q. Would it include blood?

22 A. Yes.

23 Q. Now, you found no blood was transferred onto this  
24 one; is that correct?

25 A. Yes.

1 Q. And saliva; is that right?

2 A. Saliva is a possibility.

3 Q. As well as perspiration; is that correct?

4 A. Yes.

5 Q. So if I have not worn that shirt, for me to get my  
6 DNA onto that shirt, I have to have something  
7 transferred from my body onto that; is that correct?

8 A. Yes.

9 Q. Which would include all the things I just  
10 referenced, my body fluids or something like that; is  
11 that right?

12 A. Correct.

13 Q. So, for example, by me handling it today without  
14 gloves, would that indicate a possibility that some of  
15 my DNA would be passed on to that?

16 A. There is a possibility, yes.

17 Q. What goes into a determination about whether you  
18 would be able to find my DNA on that shirt after I  
19 handled it in the fashion that I did?

20 A. When you're looking for stains from perspiration,  
21 they are basically invisible to the naked eye. It's  
22 not something that I'm going to visibly look at, for  
23 instance, like a blood stain and be able to quickly  
24 identify it.

25 So in those circumstances, sometimes it's a

1 matter of picking and choosing the area of the shirt  
2 that you think will have the greatest possibility of  
3 giving you results when you're looking for such  
4 stains. And so that's a limiting factor as far as  
5 getting results from those types of stains.

6 Q. Is the amount of contact also relevant?

7 A. Yes. There needs to be a fairly significant  
8 amount of contact to get enough of the material  
9 transferred onto the shirt so that there will be some  
10 detection.

11 Q. Well, let me ask you this. Take, for example, the  
12 fact that I'm freezing in this courtroom today, and,  
13 therefore, I'm not sweating. Would that affect  
14 whether my perspiration would be transferred onto that  
15 T-shirt?

16 A. Well, if there is no sweating or perspiration to  
17 be transferred, then, of course, that would not be  
18 transferred.

19 Q. What of the fact that I'm not bleeding, that also  
20 eliminates a source of DNA being transferred onto that  
21 shirt; is that right?

22 A. Yes.

23 MR. NOVAK: Judge, in light of the  
24 stipulation, I have no further questions of Mr.  
25 Covington. I think we've already moved RS-1 into

1 evidence.

2 THE COURT: Yes.

3

4 CROSS EXAMINATION MR. HUYOUNG:

5

6 Q. Good morning.

7 A. Good morning.

8 Q. Dr. Covington, of course, DNA can stay on that  
9 shirt for a long period of time; is that correct?

10 A. Yes. Once it's on the shirt, really until it's  
11 washed thoroughly it will remain.

12 Q. That's why we hear stories about things coming up  
13 in the past and they can stay there for a long time?

14 A. Yes.

15 Q. The amounts of, I guess, samples that you found  
16 you cut certain parts of that shirt; is that correct?

17 A. Yes.

18 Q. Those are where you actually saw what you thought  
19 was possible places of DNA transfer?

20 A. The areas that are circled on the shirt are areas  
21 where I saw possible stain locations. The areas are  
22 squared off on the shirt. The N, O, P locations  
23 around the top here are areas that I chose basically  
24 at random as possible locations.

25 Q. Mr. Novak asked you the question, if it was cold,

1 like it is in here, there would not be as much  
2 perspiration transferred. How about on a hot day,  
3 sunny, would you -- if a person perspired a lot, would  
4 you anticipate that there will be more stains on that?

5 A. Well, if perspiration is present and is there to  
6 be transferred, sure, yes.

7 Q. So you were looking for that, correct?

8 A. Yes.

9 Q. And the only thing you found was where you made  
10 those cuts?

11 A. Right.

12 Q. You also stated that Mr. Novak had asked the  
13 question about handling the shirt. It doesn't -- DNA  
14 doesn't necessarily have to be transferred just by  
15 wearing it. It can be transferred by touching it?

16 A. Yes.

17 Q. By rubbing it against the body?

18 A. Yes.

19 Q. Rubbing it against other parts of the body or  
20 others; is that correct?

21 A. Yes.

22 MR. HUYOUNG: Just a second, please.

23

24 (Discussion off the record.)

25

1 MR. HUYOUNG: Judge, we are going to enter  
2 or have entered into some other stipulations about  
3 some other clothing that the doctor tested. I don't  
4 need to go into that --

5 THE COURT: As long as you stipulate.

6 MR. NOVAK: Just trying to save time.

7 MR. HUYOUNG: Thank you.

8

9 CROSS EXAMINATION BY MR. GAVIN:

10

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. It's fair to say DNA is just about as damning  
14 evidence as you can find; is that correct?

15 A. I don't know if that's a question for me to  
16 answer.

17 Q. Well --

18 THE COURT: Well, that was a very good  
19 objection. He's right.

20 MR. NOVAK: And I'll object to that.

21 BY MR. GAVIN:

22 Q. It certainly would indicate the presence of a  
23 specific individual if you had DNA on that shirt, for  
24 example, on the officer's shirt; is that correct?

25 A. Then that would indicate those individuals came in

1 contact.

2 Q. At some point?

3 A. Yes.

4 Q. And it would be no question about that?

5 A. Yes.

6 Q. In any of your dealings or investigation in this  
7 case, did you find any DNA evidence from Mr. Claiborne  
8 that was linked in any way to the officer's clothing?

9 A. No, I did not.

10 Q. And you took evidence from -- blood from Mr.  
11 Claiborne; is that correct?

12 A. Yes.

13 MR. GAVIN: I don't have anything else,  
14 Judge.

15 MR. NOVAK: Just briefly.

16

17 REDIRECT EXAMINATION BY MR. NOVAK:

18

19 Q. The fact that I have touched that shirt, does it  
20 necessarily mean now that you will find my DNA on  
21 there?

22 A. Again, with the limiting factors of not having a  
23 visible stain, I would have to first find the critical  
24 location where you had touched the shirt. And then  
25 also if there is not enough DNA present from the

1 manipulation that occurred and if it's below the  
2 detection limit of my testing, I'm not going to detect  
3 it.

4 Q. So it only raises that there is now a possibility  
5 that you could detect it at this point; is that  
6 right?

7 A. Yes.

8 Q. Not for certainty?

9 A. Right.

10 Q. And the amount of contact, I gather, with the  
11 shirt increases the likelihood of transferring it and  
12 your detection; is that right?

13 A. Yes.

14 MR. NOVAK: Thank you. I have no further  
15 questions.

16 MR. HUYOUNG: No further questions.

17 THE COURT: All right. May he be excused  
18 permanently?

19 MR. NOVAK: Please, Judge.

20 MR. HUYOUNG: Yes, Judge.

21 THE COURT: Agent Covington, you may be  
22 excused. We appreciate your giving us your evidence.

23

24 (The witness was excused from the witness  
25 stand)



1 THE COURT: I think probably it's a good  
2 time to have the luncheon recess. We will take lunch  
3 for one hour and be back at five minutes after 2:00 by  
4 that clock.

5 Give your note pads to Mr. Neal as you go  
6 out, and he'll keep them for you. If you want to get  
7 out and get some sunshine -- you all aren't as cold as  
8 Mr. Novak; is that correct, or Mr. HuYoung either?

9

10 (The jury was excused for the lunch recess)

11

12 THE COURT: All right. Is there anything we  
13 need to deal with before we go?

14 MR. NOVAK: I was going to tell you one  
15 thing, Judge. From here on in the pace is going to  
16 pick up significantly.

17 THE COURT: Good. Thank you very much.

18 MR. NOVAK: I don't know if I'm going to get  
19 it all done today. We are looking at resting sometime  
20 tomorrow. At the end of the day, I'll be able to give  
21 you a better --

22 THE COURT: That's all right. But I think  
23 we need to assess this by the end of the day. Are we  
24 going to -- is there some risk we are going to be in  
25 next week? If there is, I need to let the jury know

1 that. I'm not sure when we are going to tell them,  
2 but I think you all need to be thinking about that.

3 Have you gotten the instructions?

4 MR. NOVAK: Yes.

5 MR. EVERHART: Yes.

6 THE COURT: Maybe that's why I think maybe  
7 things are moving faster.

8 MR. NOVAK: They were a day late and then we  
9 lost a day.

10 THE COURT: All right. Anything else?  
11 Okay. We'll be in recess.

12

13 (At 1:10 p.m. the lunch recess was taken.

14 At 2:10 p.m. the proceedings continued.)

15

16 THE COURT: All right. Next witness.

17 MR. NOVAK: Mr. Gist, please.

18 THE COURT: What?

19 MR. NOVAK: Mr. Gist. Noting the incredible  
20 temperature in this room at this point for the  
21 record.

22 THE COURT: Somebody may need to consult a  
23 circulatory specialist.

24

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

-----  
UNITED STATES OF AMERICA, :  
 :  
 :  
-vs- : CRIMINAL ACTION  
 : NO. 3:00CR383  
TERENCE JEROME RICHARDSON :  
and FERRONE CLAIBORNE, :  
 : June 6, 2001  
 :  
Defendants :  
-----

VOLUME III (Part 2)

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

DAVID J. NOVAK, Assistant United States Attorney  
Richmond, Virginia  
  
Counsel on behalf of the United States

BOATWRIGHT & LINKA  
Richmond, Virginia  
BY: JOHN B. BOATWRIGHT, III, ESQ.

BARNES & BATZLI  
Richmond, Virginia  
BY: MICHAEL HUYOUNG, ESQ.  
  
Counsel on behalf of Defendant Richardson

SANDRA M. BEVERLY, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

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RICE, EVERHART & BABER  
Richmond, Virginia  
BY: JEFFREY L. EVERHART, ESQ.

WHITE, BLACKBURN & CONTE  
Richmond, Virginia  
CHARLES A. GAVIN, ESQ.

Counsel on behalf of Defendant Claiborne

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>On behalf of the United States:</u>				
Robert Ritchie	4	25	--	--
Shawn Wooden	58	127	167	--
Alan Martell	173	181	185	--
Brian Covington	187	198	201	--
Elmer Gist, Jr.	205	212	--	--
Shiela Jones	214	223	--	--
George Drew	228	248	260	--
Kieth Jackson	261	285	--	--
Jermont Perry	295	--	--	--
Steven Vaughan	303	314	--	--
Jermont Perry	319	331	--	--
Frankie Richardson	334	346	353	--
Eulanda Holloman	356	370	--	--

SANDRA M. BEVERLY, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

1                   ELMER GIST, JR., having first been duly  
2 sworn, was examined and testified as follows:

3  
4                   MR. NOVAK: Judge, may I proceed?

5                   THE COURT: Please.

6  
7                   DIRECT EXAMINATION BY MR. NOVAK:

8  
9                   Q. Sir, do you want to introduce yourself to the  
10 ladies and gentlemen?

11                  A. Yes, sir. My name is Elmer Gist, Jr.

12                  Q. Mr. Gist, by whom are you employed?

13                  A. I'm employed by the Division of Forensic Science,  
14 which is part of the Virginia crime laboratory  
15 system. My office is in Roanoke, Virginia.

16                  Q. And what do you do there for the Division of  
17 Forensic Science?

18                  A. I'm a forensic scientist. My area of expertise  
19 involves hair and fiber examination and fabric  
20 separation examinations.

21                  MR. NOVAK: Judge, I think that there is an  
22 agreement, I believe, that he is an expert in the area  
23 of fabric separation.

24                  MR. BOATWRIGHT: Absolutely, no question  
25 about it.

1 THE COURT: All right. He's accepted as an  
2 expert in that area.

3 BY MR. NOVAK:

4 Q. Why don't you tell us what an expert in fabric  
5 separation does for a living. What do you do?

6 A. I determine whether or not especially clothing has  
7 been cut or torn. Sometimes that's important in  
8 criminal investigations.

9 One example could be where a victim filed a  
10 false report and claims that an individual attacked  
11 her and tore her clothing. An examination conducted  
12 by me might well substantiate her story. It might  
13 well also be that I could determine that there was a  
14 scissor cut followed by a tear.

15 So it's important to be able to identify any  
16 fabric separations that are pertinent to criminal  
17 actions. One side is saying something is torn  
18 accidentally. The other side is saying they were  
19 attacked by a knife, and that becomes very important  
20 to determine whether a knife was used or whether it  
21 was torn or also whether the fabric separations are  
22 just a matter of normal wear.

23 Q. Mr. Gist, we put you to work in this case, didn't  
24 we?

25 A. That's correct.

1 Q. You had occasion to review a T-shirt that's been  
2 marked RS-1; is that right, this T-shirt here?

3 A. Yes, sir, I did.

4 MR. NOVAK: Judge, may I pass this?

5 BY MR. NOVAK:

6 Q. Do you need gloves, sir?

7 A. No.

8 Q. Now, Mr. Gist, you performed or you received this  
9 item on September the 16th; is that right?

10 A. That's correct.

11 Q. After Mr. Covington, who we have already heard  
12 testify, and Miss Davis and some of the other experts  
13 at your lab in Richmond had already checked it out for  
14 other things; is that right?

15 A. Yes, sir, that's correct.

16 Q. So by the time it got to you, there was already  
17 circles and squares already cut out of that shirt; is  
18 that right?

19 A. That's correct.

20 Q. Now, what is it that you exactly were looking for  
21 on that shirt?

22 A. I was to determine whether or not there were any  
23 fabric separations present and to identify the nature  
24 of the fabric separations.

25 Q. And did you prepare a report of that based upon

1 your analysis?

2 A. Yes, I did.

3 MR. NOVAK: May I show the witness LB-12,  
4 please.

5 BY MR. NOVAK:

6 Q. Do you recognize the Exhibit LB-12?

7 A. Yes. This is a copy of the certificate of  
8 analysis bearing my signature for this matter.

9 Q. If you don't mind, Mr. Gist, I would like to turn  
10 it over to you, and you tell these good folks exactly  
11 what you did to that shirt, what your conclusions were  
12 and how you reached those conclusions.

13 A. First of all, I examined the shirt for the  
14 presence of fabric separations, and I found numerous  
15 fabric separations, including the right sleeve, which  
16 had been removed. It's missing. When I received it,  
17 it was as you see it now in this condition.

18 I also noted a number of other fabric  
19 separations. And as to what I did was, I did test  
20 cuts and tears in this T-shirt to compare those to  
21 especially the area around the right sleeve, the right  
22 front and right rear. This was the fabric separation  
23 that was pertinent that was concluded on my initial  
24 examination of the T-shirt.

25 I found that by a visual examination, by low



1 power microscopic examination and a comparison with  
2 known test cuts and tears, which I performed on this  
3 T-shirt, that there were, in fact, extensive fabric  
4 separations in the right shoulder, upper right front  
5 and upper right rear of the T-shirt.

6 One of the fabric separations resulted in  
7 removal of the right sleeve, which is missing. The  
8 fabric separations were consistent with having been  
9 torn. I also found additional fabric separations in  
10 various locations, which were consistent with normal  
11 wear.

12 Q. Show us where the normal wear ones are that you  
13 are talking about.

14 A. There is an area here in the seam where the  
15 threads have just come apart, for example. Another  
16 area, a similar situation, threads have just come  
17 apart at the seam, very minor.

18 A fabric separation in the left shoulder  
19 area front is a seam separation again. That's  
20 consistent with normal wear. Just below that yet  
21 another fabric separation, which I believe that you  
22 can see, is also consistent with normal wear.

23 Q. Let's go to the sleeve then because that's what we  
24 are talking about here. Now, you indicated, I think  
25 you just testified, that that sleeve was damaged in a

1 fashion that it was torn; is that right?

2 A. That's correct.

3 Q. Are you able to tell the difference between when a  
4 fabric separation is caused by force, meaning it was  
5 torn, versus somebody cutting it with like scissors or  
6 a knife or something like that?

7 A. Yes, generally, I'm able to determine that.

8 Q. Why don't you tell the folks how it is you are  
9 able to tell that.

10 A. An examination of the item would reveal the  
11 following in a scissor cut. A scissor cut would be  
12 very smooth, crisp and even in its appearance,  
13 visually and microscopically. There will be certainly  
14 no stretching of the fabric.

15 In the case of a sharp knife, you will have  
16 a similar situation. The edges again will be fairly  
17 even. There will be no fabric stretching. But the  
18 edges won't be as crisp and even as a scissor cut.

19 In the case of a tear, there will be  
20 stretching of the fabric around the fabric separation  
21 itself. The fiber edges involving the separation will  
22 be stretched and elongated and irregular.

23 Q. Did you do test cuts with scissors and with a  
24 knife?

25 A. Yes, I did.

1 Q. So you could compare that to what was on the shirt  
2 then?

3 A. Absolutely. That's what I used in my examination.  
4 As I said, I did a visual, low power microscopic  
5 examination and an evaluation and comparison with  
6 known test cuts and tears.

7 Q. You have no idea how it was torn; is that right?

8 A. No, sir.

9 Q. You have no idea who tore it; is that right?

10 A. No.

11 Q. You can just say the sleeve was torn; is that  
12 right?

13 A. Yes.

14 Q. Did you take pictures in the lab of the shirt when  
15 you were doing all your various tests?

16 A. Yes. They were done at my direction.

17 MR. NOVAK: Judge, we have collectively  
18 marked these as RS-8(a) through (1). Frankly, I would  
19 move for their admission, but they're really not  
20 necessary for his testimony. I would just  
21 collectively move it in. If the jury wants to examine  
22 them, perhaps they could look at them then. But,  
23 otherwise, there is no reason to waste time showing it  
24 to them.

25 THE COURT: They are admitted without

1 objection.

2

3 (Government's Exhibits RS-8(a) through (l)  
4 were received in evidence.)

5

6 MR. NOVAK: Judge, I have no further  
7 questions.

8

9 CROSS EXAMINATION BY MR. BOATWRIGHT:

10

11 Q. Good afternoon, Mr. Gist.

12 A. Good afternoon, sir.

13 Q. I only have about three, maybe four questions for  
14 you. Number one, I believe you have already said you  
15 can't tell how it was torn.

16 A. That's right.

17 Q. You can't tell who tore it.

18 A. Absolutely not.

19 Q. You can't tell when it was torn.

20 A. Absolutely not.

21 Q. All you can say is that it, in fact, was torn.

22 A. That's correct.

23 Q. Were you ever asked to -- were you ever provided  
24 with something that would have resembled the missing  
25 right sleeve portion of that T-shirt?

1 A. No.

2 Q. Not at any time?

3 A. No, sir.

4 MR. BOATWRIGHT: All right, sir. That's all  
5 I have for you. Thank you.

6 MR. GAVIN: No questions, Judge.

7 THE COURT: May he be excused?

8 MR. BOATWRIGHT: Yes, he may.

9 THE COURT: Mr. Gist, thank you for being  
10 with us and giving us your testimony and you are  
11 excused.

12  
13 (The witness was excused from the witness  
14 stand)

15  
16 MR. NOVAK: Sheila Jones, please.

17  
18 SHEILA JONES, having first been duly sworn,  
19 was examined and testified as follows:

20

21 MR. NOVAK: May I proceed, Your Honor?

22 THE COURT: Please.

23

24

25

1 DIRECT EXAMINATION BY MR. NOVAK:  
2

3 Q. Good afternoon, ma'am.

4 A. Good afternoon.

5 Q. Ma'am, do you want to tell the ladies and  
6 gentlemen, are you employed?

7 A. Yes, I am.

8 Q. What do you do for a living?

9 A. Companions Keeper.

10 Q. And were you doing that back in 1998?

11 A. No, I wasn't.

12 Q. How long have you been doing that?

13 A. Nine months now.

14 Q. What were you doing for a living back in 1998?

15 A. Nothing.

16 Q. Where were you living at then?

17 A. The Waverly Village.

18 Q. Could we put CS-3 up there, please. While he's  
19 getting the picture, which is the photograph, Mr.  
20 Mack, of the apartments, could you tell us when it is  
21 approximately you moved in the Waverly Village  
22 Apartments?

23 A. Excuse me?

24 Q. Do you recognize that photograph?

25 THE COURT: I think we need to have the

1 microphone closer to her considerably. And, Miss  
2 Jones, you need to speak up loudly so the ladies and  
3 gentlemen of the jury can hear what you have to say.

4 THE WITNESS: Okay.

5 THE COURT: Thank you. When did you move  
6 into Waverly Village?

7 THE WITNESS: I think it was in '97.

8 BY MR. NOVAK:

9 Q. And how long did you live in Waverly Village?

10 A. From '97 and I'm still there.

11 Q. Okay. Do you want to show us where on -- do you  
12 recognize that photograph?

13 A. Yes, that's Waverly Village.

14 Q. Can you show us where you were living in the  
15 Waverly Village Apartments?

16 THE COURT: You can take that pointer there  
17 in front of you on your left and point to it if you'd  
18 like to.

19 THE WITNESS: This is the front of the  
20 Waverly Village. I stayed in the back.

21 BY MR. NOVAK:

22 Q. Would you have a first floor or second floor  
23 apartment?

24 A. Top.

25 Q. And who did you live there with?

1 A. My daughter.

2 Q. What's her name?

3 A. Sherry Jones. She is Sherry Morgan now.

4 Q. I'm sorry?

5 A. She is Sherry Morgan now.

6 Q. Oh, okay. She is married, right?

7 A. Yes.

8 Q. Back then she wasn't married though; is that  
9 right?

10 A. No.

11 Q. You remember the day the police officer was killed  
12 down in Waverly; is that right?

13 A. Yes.

14 Q. Now, you weren't home at the time of the murder;  
15 is that right?

16 A. That's right.

17 Q. But you had been living there up from '97 until  
18 then; is that right?

19 A. Right.

20 Q. During that time period did you ever see the  
21 Defendant Ferrone Claiborne in the Waverly Village  
22 apartments?

23 A. Yes, I did.

24 Q. And how often would you see him in the Waverly  
25 Village Apartments?



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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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UNITED STATES OF AMERICA, :  
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 :  
-vs- : CRIMINAL ACTION  
 : NO. 3:00CR383  
TERENCE JEROME RICHARDSON :  
and FERRONE CLAIBORNE, :  
 : June 6, 2001  
 :  
Defendants :  
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VOLUME III (Part 2)

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BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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SANDRA M. BEVERLY, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

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RICE, EVERHART & BABER  
Richmond, Virginia  
BY: JEFFREY L. EVERHART, ESQ.

WHITE, BLACKBURN & CONTE  
Richmond, Virginia  
CHARLES A. GAVIN, ESQ.

Counsel on behalf of Defendant Claiborne

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>On behalf of the United States:</u>				
Robert Ritchie	4	25	--	--
Shawn Wooden	58	127	167	--
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Eulanda Holloman	356	370	--	--

SANDRA M. BEVERLY, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

1                   ELMER GIST, JR., having first been duly  
2 sworn, was examined and testified as follows:

3  
4                   MR. NOVAK: Judge, may I proceed?

5                   THE COURT: Please.

6  
7                   DIRECT EXAMINATION BY MR. NOVAK:

8  
9                   Q. Sir, do you want to introduce yourself to the  
10 ladies and gentlemen?

11                  A. Yes, sir. My name is Elmer Gist, Jr.

12                  Q. Mr. Gist, by whom are you employed?

13                  A. I'm employed by the Division of Forensic Science,  
14 which is part of the Virginia crime laboratory  
15 system. My office is in Roanoke, Virginia.

16                  Q. And what do you do there for the Division of  
17 Forensic Science?

18                  A. I'm a forensic scientist. My area of expertise  
19 involves hair and fiber examination and fabric  
20 separation examinations.

21                  MR. NOVAK: Judge, I think that there is an  
22 agreement, I believe, that he is an expert in the area  
23 of fabric separation.

24                  MR. BOATWRIGHT: Absolutely, no question  
25 about it.

1 THE COURT: All right. He's accepted as an  
2 expert in that area.

3 BY MR. NOVAK:

4 Q. Why don't you tell us what an expert in fabric  
5 separation does for a living. What do you do?

6 A. I determine whether or not especially clothing has  
7 been cut or torn. Sometimes that's important in  
8 criminal investigations.

9 One example could be where a victim filed a  
10 false report and claims that an individual attacked  
11 her and tore her clothing. An examination conducted  
12 by me might well substantiate her story. It might  
13 well also be that I could determine that there was a  
14 scissor cut followed by a tear.

15 So it's important to be able to identify any  
16 fabric separations that are pertinent to criminal  
17 actions. One side is saying something is torn  
18 accidentally. The other side is saying they were  
19 attacked by a knife, and that becomes very important  
20 to determine whether a knife was used or whether it  
21 was torn or also whether the fabric separations are  
22 just a matter of normal wear.

23 Q. Mr. Gist, we put you to work in this case, didn't  
24 we?

25 A. That's correct.

1 Q. You had occasion to review a T-shirt that's been  
2 marked RS-1; is that right, this T-shirt here?

3 A. Yes, sir, I did.

4 MR. NOVAK: Judge, may I pass this?

5 BY MR. NOVAK:

6 Q. Do you need gloves, sir?

7 A. No.

8 Q. Now, Mr. Gist, you performed or you received this  
9 item on September the 16th; is that right?

10 A. That's correct.

11 Q. After Mr. Covington, who we have already heard  
12 testify, and Miss Davis and some of the other experts  
13 at your lab in Richmond had already checked it out for  
14 other things; is that right?

15 A. Yes, sir, that's correct.

16 Q. So by the time it got to you, there was already  
17 circles and squares already cut out of that shirt; is  
18 that right?

19 A. That's correct.

20 Q. Now, what is it that you exactly were looking for  
21 on that shirt?

22 A. I was to determine whether or not there were any  
23 fabric separations present and to identify the nature  
24 of the fabric separations.

25 Q. And did you prepare a report of that based upon

1 your analysis?

2 A. Yes, I did.

3 MR. NOVAK: May I show the witness LB-12,  
4 please.

5 BY MR. NOVAK:

6 Q. Do you recognize the Exhibit LB-12?

7 A. Yes. This is a copy of the certificate of  
8 analysis bearing my signature for this matter.

9 Q. If you don't mind, Mr. Gist, I would like to turn  
10 it over to you, and you tell these good folks exactly  
11 what you did to that shirt, what your conclusions were  
12 and how you reached those conclusions.

13 A. First of all, I examined the shirt for the  
14 presence of fabric separations, and I found numerous  
15 fabric separations, including the right sleeve, which  
16 had been removed. It's missing. When I received it,  
17 it was as you see it now in this condition.

18 I also noted a number of other fabric  
19 separations. And as to what I did was, I did test  
20 cuts and tears in this T-shirt to compare those to  
21 especially the area around the right sleeve, the right  
22 front and right rear. This was the fabric separation  
23 that was pertinent that was concluded on my initial  
24 examination of the T-shirt.

25 I found that by a visual examination, by low

1 MR. NOVAK: I called George Drew. The  
2 marshals are getting him.

3  
4 GEORGE DREW, having first been duly sworn,  
5 was examined and testified as follows:

6  
7 MR. NOVAK: May I proceed, Judge?

8 THE COURT: Please.

9  
10 DIRECT EXAMINATION BY MR. NOVAK:

11  
12 Q. Sir, do you want to tell the ladies and gentlemen  
13 what your name is?

14 A. George Arthur Drew.

15 Q. Mr. Drew, how old are you?

16 A. Thirty.

17 Q. You are currently in jail, right?

18 A. Yes.

19 Q. You have been sentenced to 188 months in prison;  
20 is that right?

21 A. Yes.

22 Q. Did you plead guilty in this very courtroom in  
23 front of the Judge Spencer, not Judge Payne, to  
24 distribution of crack cocaine?

25 A. Yes.

1 Q. Did you have a plea agreement with the United  
2 States?

3 A. Yes.

4 Q. And what does that obligate you to do in the plea  
5 agreement?

6 A. Basically to tell the truth on any matters that I  
7 might be called.

8 Q. Now, under the plea agreement, do you have the  
9 ability possibly to receive a sentence reduction?

10 A. Yes.

11 Q. Can you explain to the ladies and gentlemen how  
12 that would work if you were to qualify?

13 A. It works -- I tell the truth on anything -- any  
14 questions of my cooperation, and upon doing that you  
15 put in a motion to the judge recommending a sentence  
16 reduction.

17 Q. And who makes the ultimate decision about whether  
18 you get a sentence reduction?

19 A. The judge.

20 Q. In this instance, it will be Judge Spencer; is  
21 that right?

22 A. Yes.

23 Q. Has anybody promised you you're going to get any  
24 type of reduction?

25 A. No.



1 Q. At the end of the day, it's up to the judge; is  
2 that right?

3 A. Yes.

4 Q. Now, you have also been convicted of drug offenses  
5 on two prior occasions, two felony drug convictions in  
6 the past; is that right, in the state system?

7 A. Yes.

8 Q. You served your time on those two; is that right?

9 A. Yes.

10 Q. Now, when you got convicted on this occasion, the  
11 federal charge, did that also violate your probation  
12 on some probation you had received on the second  
13 offense in the second state charge you had?

14 A. Yes.

15 Q. That wasn't revoked; is that right?

16 A. It was revoked?

17 Q. You didn't have to do any come back time; is that  
18 right?

19 A. No.

20 Q. And the reason was because you had cooperated with  
21 the Sussex County Sheriff's Department; is that right;  
22 do you know?

23 A. No, I don't believe so.

24 Q. Okay. It just wasn't revoked.

25 A. The reason was, from the paper I got from my

1 lawyer, it was just that the time I had received from  
2 the federal system it just -- it wasn't worth them  
3 bothering to proceed with it.

4 Q. So you didn't get a break on this then?

5 A. No.

6 Q. All right. Now, did you live in Waverly a good  
7 part of your life?

8 A. Yes.

9 Q. Were you in the military at some point?

10 A. Yes.

11 Q. When did you get out of the military?

12 A. 1991.

13 Q. When you got out of the military in 1991, did you  
14 return to Waverly?

15 A. Yes.

16 Q. Did you get involved in selling drugs?

17 A. Briefly.

18 Q. How was it that you briefly got involved in  
19 selling drugs?

20 A. Through my cousin.

21 Q. Who is that?

22 A. Ronald Williams.

23 Q. Do they call him Booty?

24 A. Yes, Booty.

25 Q. Does Booty -- do you have other cousins that are

1 brothers of Booty?

2 A. Yes.

3 Q. What are Booty's brothers' names?

4 A. John and Brevard.

5 Q. And were they involved in selling drugs when you  
6 got out of the military?

7 A. Yes.

8 Q. Did you start selling drugs with them?

9 A. Yes.

10 Q. Did you know a woman called Roxie Allen?

11 A. Yes.

12 Q. And who is she?

13 A. At the time she was Booty's girlfriend.

14 Q. Was she involved at all in the selling of drugs?

15 A. Yes.

16 Q. What kind of drugs were you all selling?

17 A. Crack cocaine.

18 Q. Where were you selling the crack cocaine at?

19 A. Just in the Dogwood area.

20 Q. Now, do you know the Defendant Terence Richardson?

21 A. Yes.

22 Q. How do you know him?

23 A. I have known him most of my life.

24 Q. Did you go to school with him?

25 A. Yes.

1 Q. What, if any, affiliation did Terence Richardson  
2 have with Booty and the rest of the guys like yourself  
3 that were selling crack in the early 1990s?

4 A. Just friends.

5 Q. Did you ever observe him selling drugs?

6 A. Briefly.

7 Q. Okay. When was that?

8 A. During that period of time.

9 Q. When was that, I mean what --

10 A. During around '91, '92.

11 Q. Okay. And what type of drugs was he selling back  
12 then?

13 A. Same as us, crack.

14 Q. And what type of amounts -- was he selling the  
15 same amounts?

16 A. Yes, wasn't any large amount, just little small  
17 amounts.

18 Q. Okay. Well, tell us -- for those of us who are  
19 not involved in selling drugs, tell us what small  
20 amount means?

21 A. Maybe 10, \$20 worth.

22 Q. All right. And how often would you, first of all,  
23 would you be out there selling? Well, first of all --  
24 I'm sorry. Let me withdraw that.

25 You talk about \$10 to \$20 at a time worth of

1 A. A couple times.

2 Q. What type of drugs did you see him selling back  
3 then?

4 A. Same thing.

5 Q. Crack?

6 A. Yes.

7 Q. Where was he selling it?

8 A. Same area.

9 Q. You are all kind of a little group there selling  
10 in the Dogwood area basically?

11 A. Yes.

12 Q. All selling it together; is that right?

13 A. Yes.

14 Q. And who had the source of supply of crack back  
15 then?

16 A. Basically, it was -- well, I would get it from  
17 Booty. He would get it from either Roxie or this  
18 other guy.

19 THE COURT: Got it from who?

20 THE WITNESS: Either Roxie or I can't think  
21 of the guy's name. If I heard it, I would remember.

22 BY MR. NOVAK:

23 Q. Anyway, you were getting it from Booty; is that  
24 right?

25 A. Right.

1 Q. Was Terence Richardson also getting it from Booty  
2 to your knowledge, if you know?

3 A. To my knowledge, but I never seen him get it from  
4 him.

5 THE COURT: Well, you don't know.

6 BY MR. NOVAK:

7 Q. All right. Now, let's jump ahead a number of  
8 years. You would go off -- you eventually started  
9 selling a lot more drugs in other areas; is that  
10 right?

11 A. Yes.

12 Q. You moved up in terms of quantity; is that right?

13 A. Yes.

14 Q. That's why you got three convictions by now; is  
15 that right?

16 A. (Witness nodding head).

17 Q. Now, I want to direct your attention to -- First  
18 of all, do you recall when a police officer died down  
19 there in Waverly?

20 A. Yes.

21 Q. In the time period before the murder, did you then  
22 begin having -- become engaged in drug transactions  
23 with the Defendant Ferrone Claiborne before the  
24 murder?

25 A. With Ferrone?

1 Q. Yes.

2 A. Yes.

3 Q. When had you started doing drug transactions in  
4 relation to the murder with Mr. Claiborne? Was it two  
5 months before, six months before, a year before?

6 A. I would say between six months -- anywhere from  
7 six months to like maybe two months.

8 Q. I'm sorry, I didn't understand you. From six  
9 months to what?

10 A. I would say between a month to six months, not a  
11 very long time.

12 Q. So for a five month period that ended like a month  
13 before the murder?

14 A. Yes.

15 Q. Okay. And during that five month time period,  
16 what kind of relationship did the two of you all have  
17 in terms of drugs?

18 A. I wouldn't say a real steady relationship just --

19 Q. Well, first of all, was somebody selling and  
20 somebody buying?

21 A. Yes. I was selling; he was buying.

22 Q. What were you selling to him?

23 A. Maybe a 50 or a sixteenth, something like that,  
24 not a whole lot.

25 Q. Of what?

1 A. Yes.

2 Q. And then -- well, the very next month you got  
3 charged with two charges of -- actually, three charges  
4 but two convictions of possession of cocaine with  
5 intent to distribute again, correct?

6 A. Yes.

7 Q. So you got three felonies in the state system?

8 A. Yes.

9 Q. And your new arrest, that is, the second two  
10 convictions that you got that was a violation of the  
11 terms and conditions of your sentence that you had  
12 gotten just the month before; isn't that true?

13 A. Yes.

14 Q. Now, did somebody take you back to court and try  
15 to revoke any part of the suspended sentence that you  
16 had on the first conviction?

17 A. That went to court.

18 Q. I'm sorry?

19 A. That went to court.

20 Q. I understand you went to court. But did you go  
21 back for the specific purpose of having a show cause  
22 hearing? Well, let me ask you, do you know what a  
23 show cause hearing is?

24 A. Yes, sir.

25 Q. Tell the ladies and gentlemen what it is.



1 A. It's when you are convicted of a crime and you  
2 have maybe a suspended sentence or probation or  
3 something and you violate by another charge, and then  
4 they bring you back and the judge decides whether he  
5 wants to give you the back time or whatever.

6 Q. Did that happen to you?

7 A. No, it hasn't happened yet. The reason it didn't  
8 happen was because when I went to court, I had not  
9 been convicted yet. So we had to wait.

10 Q. The point is it hasn't happened yet, correct?

11 A. No, it hasn't.

12 Q. You don't know if any such hearing is scheduled in  
13 the future, do you?

14 A. It's not scheduled in the future, not right now.

15 Q. I only asking about right now. You don't know of  
16 anything now?

17 A. No, I don't.

18 Q. And, of course, let me take that back.

19 MR. BOATWRIGHT: Could I have just one  
20 moment, please, Your Honor?

21 BY MR. BOATWRIGHT:

22 Q. Now, the federal conviction is related to an  
23 actual distribution of crack cocaine that occurred in  
24 August of last year, that is, the year 2000, correct?

25 A. Yes.

1 Q. That's a violation of all three of the sentencings  
2 that you've got in state court, isn't it?

3 A. Yes.

4 Q. Because it occurred after you were sentenced to  
5 all those cases, correct?

6 A. Yes.

7 Q. You hope that show cause hearing never happens,  
8 don't you?

9 A. Of course, I hope so.

10 Q. Right. Now, you have agreed as part of your plea  
11 agreement that you will submit to a polygraph, lie  
12 detector examination, if requested to do so by the  
13 United States Government?

14 A. Yes.

15 Q. Have you as of yet been requested to do so?

16 A. No.

17 Q. Is anything scheduled as far as you know?

18 A. Not that I know.

19 Q. You were a crack dealer, correct?

20 A. Yes.

21 Q. Not a crack user?

22 A. No.

23 Q. So you strictly dealt, not used?

24 A. I have never used crack, no.

25 Q. You knew -- well, strike that. When you saw Mr.

1 Q. You went to North Carolina till 1997?

2 A. Yes, sir.

3 Q. When you came back did you return to Waverly in  
4 1997?

5 A. Yes. I came to Waverly in 1997 after doing seven  
6 months for a probation violation.

7 Q. Where were you living at when you moved back to  
8 Waverly in 1997?

9 A. 210 Burke Street.

10 Q. And where is that at?

11 A. The end of New Street at the end of town.

12 Q. Okay. Now, when you got back in town, did you  
13 again --

14 A. Excuse me.

15 Q. I'm sorry. When you got back in town, did you  
16 again begin to deal with Terence Richardson?

17 A. Yes.

18 Q. Were you -- was he selling or buying?

19 A. He was buying then and selling a little bit, you  
20 know, just basically just selling it to supply his  
21 habit.

22 Q. Okay. And that's basically throughout the time  
23 you've known him?

24 A. Yeah.

25 Q. He's got his own crack addiction; is that right?

1 A. Yeah. He wasn't never a big time guy.

2 Q. Okay. Where was he selling crack at?

3 A. He was doing it -- he was down at the Waverly  
4 Village Apartments, him and Calvin Eure.

5 Q. What's Calvin Eure's nickname?

6 A. Main.

7 Q. Did you see them selling?

8 A. Yeah. They selling on New Street and down at  
9 Waverly Village Apartments.

10 Q. All right. Would you go down there and hang out  
11 with them when they were selling sometimes?

12 A. Yes, go down there and drink, smoke weed, trip  
13 out.

14 Q. Now, where exactly in the Waverly Village  
15 Apartments would you go?

16 A. Right up -- we'd be by basically between the  
17 playground and the front side where the office is.

18 Q. And what kind of quantities of crack cocaine was  
19 Terence Richardson selling in 1997 when you were down  
20 there watching him?

21 A. About twenties.

22 Q. How many \$20 quantities would he sell per day that  
23 you saw?

24 A. I can't really say how much cocaine he was selling  
25 a day.

1 Q. Let's talk about dollar amounts. How much money  
2 did you see him collect from the sale of crack cocaine  
3 in say one day, one average day down there?

4 A. I wasn't really counting his money. From the type  
5 of people coming, I know on a Friday he probably go to  
6 --

7 MR. BOATWRIGHT: I object to that. It  
8 sounds like speculation to me.

9 BY MR. NOVAK:

10 Q. Well, let me ask you this, Mr. Jackson. Is  
11 business better for drug dealers on weekends?

12 A. Yeah.

13 Q. People want to go out and party; is that right?

14 A. Fridays -- it usually start like Wednesday, from  
15 Wednesday till Friday to Saturday, then like the 1st,  
16 2nd and 3rd.

17 Q. And why is that?

18 A. That's because that's when people get their  
19 checks.

20 Q. From the Government; is that right?

21 A. From the Government.

22 Q. Now, let's take a typical Friday during this time  
23 period. By the way, would Terence Richardson be out  
24 there on a regular basis in the Village in 1997?

25 A. Him and Calvin Eure be out there regular. Then

1 that you described for Mr. Richardson or more so or  
2 less so?

3 A. He didn't have -- every time he came down he  
4 didn't have crack. Sometimes he will come down and  
5 buy it.

6 Q. All right. So there is no way for you to  
7 approximate how much he was selling during that time  
8 period; is that right?

9 A. (Witness shaking head).

10 Q. Do you know a fellow by the name of -- do you know  
11 the Ramada Inn in Petersburg, I'm sorry?

12 A. Yes, sir.

13 Q. Tell us, do you know the manager there?

14 A. Yes. The night shift manager all of us was  
15 associating with was Khalid.

16 Q. Okay. Was his original name Lewis Langford?

17 A. Lewis Langford. When he came out of the  
18 penitentiary he changed his name. He became a Muslim  
19 and changed his name to Khalid.

20 Q. Did you ever go down to that hotel?

21 A. I used to go down there quite often.

22 Q. What would you do when you'd go down there?

23 A. Go to the bar and drink, smoke weed, get a room  
24 and smoke weed.

25 Q. Did you ever see Terence Richardson there?

1 A. Yes.

2 Q. How often?

3 A. He used to be there quite a bit.

4 Q. How about Ferrone Claiborne, did you ever see him  
5 there?

6 A. Yeah. He was staying at Khalid's room for a min  
7 at one time.

8 Q. Again, for those of us who don't get the word  
9 "min," what does that --

10 A. For a short period of time.

11 Q. All right. Did you ever see the two of them  
12 together, referring to Terence Richardson and Ferrone  
13 Claiborne?

14 A. All of us been together, been in -- been in that  
15 room.

16 Q. Hanging out, drinking, getting high?

17 A. Yeah.

18 Q. I want to direct your attention to the day the  
19 officer was killed, that Saturday, April the 25th, and  
20 ask you where were you at the time of the murder?

21 A. When the murder happened I was doing some car -- I  
22 was just trying to open up a detail shop. I was doing  
23 some cars, which was the mayor's car and his  
24 brother-in-law's car.

25 Q. Did you have occasion to go to Dobie's store?

1 A. Yes, sir.

2 Q. And why is it that you went to Dobie's store?

3 A. To vacuum out the Bronco.

4 Q. Did they have a vacuum?

5 A. They had a vacuum where you pull up in front of  
6 the store and you can vacuum your car out.

7 Q. While you were going over there -- Dobie's is on  
8 Railroad Avenue; is that right?

9 A. Yes.

10 Q. Did you have occasion to see Ferrone Claiborne?

11 A. Yes, sir.

12 Q. Where did you see him at?

13 A. I think -- I know I talked to him at the store. I  
14 don't know exactly where I first seen him at because I  
15 thought I saw him near the railroad track. He was  
16 with Rayton Wilson when he came up. We all met at the  
17 store.

18 Q. Okay. You talked to him though; is that right?

19 A. Yes.

20 Q. Do you know what Mr. Claiborne was wearing at the  
21 time?

22 A. I believe he had on some shorts and a red shirt.

23 Q. Okay. Do you know what time of day this was?

24 A. It was between 2:00 -- around 2:00 and 4:00 or  
25 5:00, somewhere in there. I'm not quite sure of the



1 time. It's been so long ago.

2 Q. No guessing here. Okay. Are you guessing about  
3 the time frame?

4 A. No. It was between 2:00, around between -- well,  
5 I can't even say what time it was.

6 Q. Sometime in the afternoon?

7 A. It was in the afternoon.

8 Q. Now, I just asked you about the clothing. Are you  
9 guessing about the clothes or do you recall that?

10 A. Maybe guessing.

11 THE COURT: If you are guessing--

12 MR. NOVAK: You can't guess.

13 THE COURT: Just a minute. If you don't  
14 know the answer, just say, I don't know. Don't guess.

15 THE WITNESS: Well, I thought he had on a  
16 red shirt and some shorts.

17 BY MR. NOVAK:

18 Q. Okay. But you're not sure?

19 A. Not sure.

20 Q. Okay. That's fine. I want to direct your  
21 attention to later in the day. Did you have an  
22 occasion to get a visit from Ferrone Claiborne?

23 A. When we was at the store, was talking about -- him  
24 and Rayton was together and --

25 Q. Does Rayton have a nickname?

1 Q. Did you ever say anything in the grand jury  
2 testimony about seeing him sell drugs?

3 A. I had to. I told him I bought from him.

4 Q. Did you ever say anything in your grand jury  
5 testimony about seeing him selling drugs to other  
6 people?

7 A. I don't think I was asked that in the grand jury.

8 Q. You don't think that would have been important to  
9 the investigation? He told you why -- Mr. Novak told  
10 you why you were at the grand jury.

11 A. I was told to answer questions that I was given  
12 that I was told to answer.

13 Q. The only reason you didn't mention that at the  
14 grand jury is because Mr. Novak didn't ask you that  
15 question?

16 A. Exactly.

17 Q. Do you remember being asked by Mr. Novak at the  
18 end of the grand jury about whether or not you saw Mr.  
19 Claiborne later that evening?

20 A. Yes.

21 Q. And you basically said some of that here just now,  
22 didn't you, sir?

23 A. Yes, sir.

24 Q. And you said that Ferrone was sitting back there  
25 smoking a laced blunt?

1 MR. NOVAK: Page number?

2 MR. GAVIN: I'm sorry, Mr. Novak, page 13,  
3 line 22.

4 BY GAVIN:

5 Q. Do you remember being asked this question and  
6 giving this answer? Actually, I will skip down to  
7 your answer.

8 I walked back there talk to them for a few  
9 minutes. Ferrone was like real paranoid. So I left.  
10 Question by Mr. Novak. What do you mean by  
11 that?

12 Your answer: He was thinking I was going to  
13 take something from him. Well, you know what I'm  
14 saying. It was like, why would I take it from you  
15 now. I just sold you the stuff.

16 Question: Did you have any conversation  
17 with him at that time about the --

18 Answer: That little one right there. We  
19 walked -- I walked away or something and they left.

20 Do you remember answering that way to Mr.  
21 Novak's questions?

22 A. Yes.

23 Q. Did you say anything at the grand jury about he  
24 told me he had something heavy on his mind?

25 A. I said he was paranoid.

1 Q. Did you say anything about him having something  
2 heavy on his mind?

3 A. Evidently, I didn't. That's not in the paper.

4 Q. Is that something that just came to you as you  
5 were thinking about this case?

6 A. I guess so because I think about it all the time  
7 now.

8 MR. GAVIN: I don't have anything else,  
9 Judge.

10 MR. NOVAK: Nothing else, Judge.

11 THE COURT: All right. You may step down.

12  
13 (The witness was excused from the witness  
14 stand).

15  
16 MR. NOVAK: Call Jermont Perry.

17  
18 JERMONT PERRY, having first been duly sworn,  
19 was examined and testified as follows:

20  
21 DIRECT EXAMINATION BY MR. NOVAK:

22  
23 Q. Do you want to state your full name?

24 MR. NOVAK: I'm sorry. May I proceed,  
25 Judge.

1 THE WITNESS: Jermont Perry.

2 MR. NOVAK: I'm sorry. I was talking to the  
3 Judge first. May I proceed, Judge? I'm sorry.

4 BY MR. NOVAK:

5 Q. You can tell the ladies and gentlemen your name.  
6 I was being rude to the Judge.

7 A. Jermont Perry.

8 Q. Mr. Perry, do you have a nickname?

9 A. Mont?

10 THE COURT: You need to speak up.

11 THE WITNESS: Mont.

12 THE COURT: How do you spell that?

13 THE WITNESS: M-O-N-T.

14 BY MR. NOVAK:

15 Q. Do they also call you Creep?

16 A. I don't know about that.

17 Q. Now, how old are you?

18 A. Twenty-two.

19 Q. You've been convicted of drug offenses on two  
20 separate occasions; is that right, in the state  
21 system?

22 A. Sir, yes, sir.

23 Q. As an adult; is that right?

24 A. Sir, yes, sir.

25 Q. You can just say yes. You don't have to say, sir,

1 yes, sir.

2 I've told you that as long as you tell the  
3 truth, you won't get any additional federal drug  
4 charges on top of the state drug charges; is that  
5 right?

6 A. Yes, sir.

7 Q. And you understand you are obligated to tell the  
8 truth?

9 A. Sir, yes, sir.

10 Q. Now, where do you live at?

11 A. Waverly, Virginia.

12 Q. How long have you been living down there?

13 A. Twenty-two years.

14 Q. Now, you currently live on Maple Street; is that  
15 right?

16 A. Sir, yes, sir.

17 Q. Where did you live before that?

18 A. Waverly Village, Waverly Village Apartments.

19 Q. And how long did you live in the Waverly Village  
20 Apartments?

21 A. About five, six years.

22 Q. Now, let's talk about at some point you also lived  
23 on Dogwood Street?

24 A. I never lived on Dogwood Street.

25 Q. All right. Let me ask you this. You said you've

1 been convicted of drug offenses. When did you start  
2 selling drugs?

3 A. About age of fourteen.

4 Q. Which was approximately when?

5 A. About --

6 Q. I guess seven, eight years ago?

7 A. Something like that.

8 Q. And you sold until when? When did you stop  
9 selling drugs?

10 A. Till I got the last indictment.

11 Q. Which was in December of last year?

12 A. October, October '98.

13 Q. October '98?

14 A. Yes, October '98.

15 Q. So you sold from at least '95 to '98?

16 A. Sir, yes, sir.

17 Q. What kind of drugs did you sell?

18 A. Crack.

19 Q. And where did you sell crack cocaine?

20 A. New Street.

21 Q. Now, do you know the Defendant Terence Richardson?

22 A. Sir, yes, sir.

23 Q. How do you know him?

24 A. Cousins.

25 Q. How long have you known him?

1 on Dogwood Street?

2 A. In the daytime.

3 Q. In the daytime?

4 A. Yes.

5 Q. How often per week would you see him selling back  
6 in 1993?

7 A. About two, about two or three.

8 Q. Two or three times a week?

9 A. Yes, sir.

10 Q. Do you know what quantities of crack cocaine he  
11 was selling back then?

12 A. Sir, no, sir.

13 Q. Now, you, yourself, weren't selling crack at that  
14 point; is that right?

15 A. (Witness shaking head).

16 Q. Is that a no?

17 A. Sir, yes, sir.

18 Q. Now, how long did that go on for that you were  
19 aware of that he was selling crack on Dogwood Street?

20 A. I see people coming up.

21 Q. And what would happen when you would see people  
22 coming up to him?

23 A. They would purchase.

24 Q. What did they purchase?

25 A. I never looked. I just seen them purchase.



1 Q. Do you know what kind of quantities it was that he  
2 was selling?

3 A. Sir, no, sir.

4 Q. My question was how long did this go on. And you  
5 said you started seeing this around thirteen or  
6 fourteen and we approximated that to be 1993 or 1994  
7 based on your age. Did that go on for a year? Did it  
8 go on for two years, three years?

9 A. He had got locked up, too.

10 MR. HUYOUNG: Objection, Your Honor.

11 THE COURT: Just a minute. The question is  
12 how long did it go on from --

13 MR. HUYOUNG: Judge --

14 THE COURT: That's the question. You're  
15 answering something else. Wait a minute. Is there an  
16 objection to that?

17 MR. HUYOUNG: Your Honor, can we approach  
18 the bench? It's the answer that I'm going to object  
19 to. I don't think it's proper for that information to  
20 come out.

21 THE COURT: Well, I think that what you are  
22 saying already has come out. I'm going to tell them  
23 to disregard it and tell him that we don't need to  
24 know about it.

25 Isn't that the way to solve the problem?

1 this. Do you know if Terence Richardson and Ferrone  
2 Claiborne were friends?

3 A. Sir, yes, sir.

4 Q. And how is it that you know that your cousin and  
5 Ferrone were friends?

6 A. Since I was -- I was living in the Village.

7 Q. You'd see them together?

8 A. Yeah.

9 Q. Hanging out together all the time?

10 A. Yeah.

11 Q. Let's talk about the day -- do you remember the  
12 day the police officer was murdered? Do you recall  
13 that day?

14 A. Sir, yes, sir.

15 Q. I'm just going to ask you about that night. Did  
16 you have occasion to go over to a party at a fellow by  
17 the name of John Brown, his house?

18 A. It wasn't no party.

19 Q. What was it?

20 A. It was we was just sitting in the yard just  
21 drinking.

22 Q. How many people were there?

23 A. About ten.

24 Q. And do you recall if you saw your cousin, Terence  
25 Richardson, there?

1 BY MR. HUYOUNG:

2 Q. And then there was an altercation?

3 A. Yes.

4 Q. So he never said the words, "I just killed  
5 somebody"?

6 A. Never said that.

7 Q. Are you sure?

8 A. Sir, yes, sir.

9 Q. The times that you saw Mr. Richardson sell crack  
10 cocaine, you don't know how much quantity?

11 A. Sir, no, sir.

12 Q. You weren't paying attention?

13 A. I just seen him when smoke just be coming up.

14 Q. And this was awhile ago?

15 A. Yes.

16 Q. Today you are not specific as to how long ago that  
17 was?

18 A. It was in '94, '95.

19 Q. So it was '94 or '95 --

20 A. Yes.

21 Q. -- around that time period? Okay. You know when  
22 the police officer was killed that was -- do you know  
23 the year of that?

24 A. '98.

25 Q. You had no knowledge of your cousin at that time

1 doing -- selling or doing drugs?

2 A. Sir, no, sir.

3 MR. HUYOUNG: I have no further questions,  
4 Your Honor.

5

6 CROSS EXAMINATION BY MR. EVERHART:

7

8 Q. Good afternoon, Mr. Perry. You testified awhile  
9 ago. Then you took a break and you were called back,  
10 correct?

11 A. Sir, yes, sir.

12 Q. Right before you took that break, Mr. Novak asked  
13 you if you knew my client, Ferrone Claiborne. You  
14 said yes. You've known him for about fifteen years.  
15 Do you recall making that answer?

16 A. Sir, yes, sir.

17 Q. Do you also recall when he asked you about had you  
18 ever seen Ferrone Claiborne selling drugs in Waverly  
19 Village, you said, I never saw him selling in Waverly  
20 Village. Do you recall saying that a little while  
21 ago?

22 A. I had said occasionally.

23 Q. Occasionally is what you're now saying. Your  
24 recollection is you did not say never then?

25 A. Yes.

1 MR. EVERHART: Thank you.

2 MR. NOVAK: Nothing else, Judge.

3 THE COURT: All right. You may be excused.

4 You are released from your subpoena. Everybody free?

5 MR. NOVAK: Yes, Your Honor.

6 MR. GAVIN: Yes, sir.

7 MR. HUYOUNG: Yes, Your Honor.

8 THE COURT: All right.

9

10 (The witness was excused from the witness  
11 stand)

12

13 MR. NOVAK: Frankie Richardson.

14

15 FRANKIE RICHARDSON, having first been duly  
16 sworn, was examined and testified as follows:

17

18 MR. NOVAK: Judge, may I proceed?

19 THE COURT: Please.

20

21 DIRECT EXAMINATION BY MR. NOVAK:

22

23 Q. Sir, do you want to tell the ladies and gentlemen  
24 what your full name is.

25 A. Yes, Frankie J. Richardson.

1 Q. Mr. Richardson, do you have a nickname?

2 A. Yes.

3 Q. What's that?

4 A. Tiger.

5 Q. Mr. Richardson, you are currently on bond after  
6 having pled guilty to a drug offense; is that right?

7 A. Yes, sir.

8 Q. And you were sentenced to how much?

9 A. Five years.

10 Q. And you're supposed to surrender -- actually, you  
11 are supposed to surrender this week, but it was  
12 delayed so you could testify here; is that right?

13 A. Yes, sir.

14 Q. Did you plead guilty pursuant to a plea agreement  
15 with the United States?

16 A. No, sir.

17 Q. You didn't have a plea agreement with the United  
18 States?

19 A. Yes, sir.

20 Q. You had a written plea agreement; is that right?

21 A. Yes.

22 Q. And what is it that it obligates you to do under  
23 the plea agreement? What do you have to do as part of  
24 your guilty plea?

25 A. To testify.

1 Q. And what do you hope to get out of testifying?  
2 You are not here just because you are a good citizen;  
3 is that right?

4 A. No.

5 Q. You are here because you want something; is that  
6 right?

7 A. Right.

8 Q. Why don't you tell them what it is you want. What  
9 do you hope to get?

10 A. I hope to get time reduction.

11 Q. Okay. And you pled guilty in front of Judge  
12 Spencer; is that right?

13 A. Yes, sir.

14 Q. And your hope is that if you testify truthfully,  
15 the Government will move to reduce your sentence; is  
16 that right?

17 A. Yes, sir.

18 Q. I told you if you tell the truth, I will do that;  
19 is that right?

20 A. Yes, sir.

21 Q. Now, has anybody told you -- Who makes the final  
22 decision as to whether you will get a sentence  
23 reduction or not?

24 A. The judge.

25 Q. Has anybody told you whether you are, in fact,

1 A. I had partners.

2 Q. Who are you partners with?

3 A. Calvin Eure.

4 Q. Does he have a nickname?

5 A. Man.

6 Q. And anybody else?

7 A. Terence.

8 Q. Terence who?

9 A. Richardson.

10 Q. Now, is that this defendant right here?

11 A. Yes, sir.

12 Q. Are you related to Terence Richardson?

13 A. Yes.

14 Q. How are you related to Terence Richardson?

15 A. Mothers.

16 Q. Both your mothers are sisters?

17 A. Yes, sir.

18 Q. So you've known him basically most of your life;  
19 is that right?

20 A. Yes.

21 Q. And in 1997 I'd like for you to describe for us  
22 how it is your drug dealing business with the  
23 defendant, as well as Calvin Eure, "Man", how that  
24 worked in the Village. What did you do? You'd get  
25 the crack, and what did you do with it?



1 A. Right, yes.

2 Q. And that goes on -- when did that start in 1997?

3 A. I can't recall the date.

4 Q. Well, how long then does that go on for?

5 A. It went on for maybe three months.

6 Q. And so during those three months -- now, you are  
7 getting a half an ounce a week during those three  
8 months; is that right?

9 A. Yes.

10 Q. Now, are you giving the whole half ounce to your  
11 cousin, Terence Richardson, or are you dividing it up  
12 amongst with Calvin Eure and your cousin as well?

13 A. Yes.

14 Q. How much were you giving to your cousin?

15 A. Probably give him like maybe like an 8-ball.

16 Q. At a time?

17 A. Yes.

18 Q. Do you want to tell the ladies and gentlemen what  
19 an 8-ball is?

20 A. Probably 3.8 grams.

21 Q. And 3.8 grams, how often per week would you give  
22 him the, quote, 8-ball?

23 A. I won't give it to him all the time, no.

24 Q. Well, how many times per week though on average?

25 A. Per week, one time.

1 Q. And that went on for approximately three months;  
2 is that right?

3 A. Yes.

4 Q. Now, an 8-ball is too much for personal use; is  
5 that right?

6 A. (No verbal response).

7 Q. Are you giving it to him to use it or are you  
8 giving it to him to sell it?

9 A. To sell it.

10 Q. Did he sell it?

11 A. Yeah.

12 Q. Okay. Where was it -- did you see him sell it?

13 A. We was out there under the tree in the Village.

14 Q. All three of you were out there; is that right?

15 A. Yes.

16 Q. So including yourself, your cousin, Terence, and  
17 the guy they call Man; is that right?

18 A. (Witness nodding head).

19 THE COURT: Is that right?

20 THE WITNESS: Yes.

21 BY MR. NOVAK:

22 Q. And by the tree, are you talking about near the  
23 playground area?

24 A. Yes.

25 Q. And would you just sell, I guess, to drug addicts

COPY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

-----  
UNITED STATES OF AMERICA, :  
 :  
 :  
-vs- : CRIMINAL ACTION  
 : NO. 3:00CR383  
TERENCE JEROME RICHARDSON :  
and FERRONE CLAIBORNE, :  
 : June 7, 2001  
 : Defendants :  
-----

VOLUME IV (Part 1)

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

DAVID J. NOVAK, Assistant United States Attorney  
Richmond, Virginia

Counsel on behalf of the United States

BOATWRIGHT & LINKA  
Richmond, Virginia  
BY: JOHN B. BOATWRIGHT, III, ESQ.

BARNES & BATZLI  
Richmond, Virginia  
BY: MICHAEL HUYOUNG, ESQ.

Counsel on behalf of Defendant Richardson

SANDRA M. BEVERLY, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT  
Comm. Exp. D, page 812 of 1254

1 RICE, EVERHART & BABER  
 2 Richmond, Virginia  
 3 BY: JEFFREY L. EVERHART, ESQ.

4 WHITE, BLACKBURN & CONTE  
 5 Richmond, Virginia  
 6 BY: CHARLES A. GAVIN, ESQ.

7  
 8 Counsel on behalf of Defendant Claiborne

9  
 10 I N D E X

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>On behalf of the United States:</u>				
Feshona Claiborne	11	--	--	--
Ronald Williams	26	47	71	--
Raoul Johnson	74	82	--	--
Antoine Coleman	86	99	--	--
Thomas "Tony" Tyler	102	124	145	--
Larry Stith	147	172	185	--
Melanie Duncan	194	204	--	--
Tonya Banks	207	--	--	--
Eon Shaw	211	224	--	--
Ernest Giles	229	241	244	--
Chenette Gray	246	258	--	--
Derrick Marshall	263	269	--	--
<u>On behalf of the Defendant Richardson:</u>				
Malcom Westbrook	288	294	300	301
Christy Richardson	303	310	--	--
Annie Westbrook	315	334	--	--
Lewis Goodwyn	351	355	361	--
John Bolen	363	--	--	--
Nathan Westbrook	370	377	--	--

1 (At 9:35 a.m. the proceedings continued.)

2

3 THE CLERK: Criminal Number 3:00CR00383, The  
4 United States of America v. Terence Jerome Richardson  
5 and Ferrone Claiborne.

6 Mr. David J. Novak represents the United  
7 States. Mr. John B. Boatwright, III and Mr. Michael  
8 HuYoung represent the Defendant Terence Jerome  
9 Richardson. Mr. Jeffrey L. Everhart and Mr. Charles  
10 A. Gavin represent the Defendant Ferrone Claiborne.  
11 Are counsel ready to proceed?

12 MR. NOVAK: The United States is ready.

13 MR. BOATWRIGHT: Ready on behalf of Mr.  
14 Richardson.

15 MR. EVERHART: Mr. Claiborne is ready, Your  
16 Honor. We have a brief motion we'd ask the Court to  
17 consider before the jury is brought back in.

18 THE COURT: All right.

19 MR. EVERHART: May it please the Court, Your  
20 Honor, the United States has advised us they intend to  
21 call as their first witness this morning Feshona  
22 Claiborne. Feshona is the sister or one of the  
23 sisters, I should say, of our client, Ferrone  
24 Claiborne.

25 The Government was kind enough to provide us

1 Well, are you still of the same estimate  
2 that you are going to finish some time today?

3 MR. NOVAK: Absolutely.

4 THE COURT: Before lunch, after lunch or  
5 what?

6 MR. NOVAK: I'm shooting for lunch. I don't  
7 know if I can make it. But if not, it will be soon  
8 thereafter.

9

10 (The jury returned to the courtroom)

11

12 THE COURT: Good morning.

13 JURY PANEL: Good morning.

14 THE COURT: All right. Next witness.

15 MR. NOVAK: Feshona Claiborne, please.

16

17 FESHONA CLAIBORNE, having first been duly  
18 sworn, was examined and testified as follows:

19

20 MR. NOVAK: May I proceed, Your Honor?

21 THE COURT: Please.

22

23 DIRECT EXAMINATION BY MR. NOVAK:

24

25 Q. Ma'am, do you want to tell the ladies and

1 gentlemen what your name is?

2 A. Feshona Claiborne.

3 Q. And how old are you, ma'am?

4 A. Twenty-two.

5 Q. Where is it that you reside now?

6 A. I live in Hopewell.

7 Q. How long have you lived in Hopewell?

8 A. Since about '94.

9 Q. You, obviously, know the Defendant Ferrone  
10 Claiborne; is that right?

11 A. Yes, he's my brother.

12 Q. And is he older than you or younger than you?

13 A. He's older.

14 Q. And do you have another sister?

15 A. Yes, I do.

16 Q. And what's her name?

17 A. Felisha Claiborne.

18 Q. Now, where does Felisha live?

19 A. She lives in Hopewell also.

20 Q. How long has Felisha lived in Hopewell?

21 A. Maybe about since '93.

22 Q. Do you all live in the same section down there in  
23 Hopewell?

24 A. Yes.

25 Q. What's that section called?

1 A. Canterbury town houses.

2 Q. Now, what's your mother's name?

3 A. Brenda Allen.

4 Q. And what's your father's name?

5 A. Curtis Claiborne.

6 Q. Do you and the defendant share the same mother and  
7 father?

8 A. Yes, we do.

9 Q. Now, at some point your mother and father got  
10 divorced; is that correct?

11 A. Yes.

12 Q. Approximately when was that?

13 A. I was young, probably about four, when I was about  
14 four or five.

15 Q. Which would have been about at least eighteen  
16 years ago?

17 A. I guess.

18 Q. Sometime in the Eighties?

19 A. Yes.

20 Q. I want to direct your attention, first of all, to  
21 the early 1990s and ask you if you knew a fellow by  
22 the name -- that they called Mikey Allen?

23 A. Yes. He's my stepfather.

24 Q. Do you want to tell us when -- your mother married  
25 him at some point; is that right?



1 A. Maybe I must have misunderstood the question  
2 because I can't sit here and say that my brother has  
3 told me he sold crack cocaine, never. I can't say  
4 that.

5 Q. Well, I think what you testified to before is not  
6 so much that he told, that you overheard him talking  
7 to others about selling crack cocaine.

8 A. I can't sit here and say I have overheard him.

9 Q. Well, let me ask you this. When you did testify  
10 though in the grand jury, you did provide truthful  
11 testimony; is that correct?

12 A. I tried my best, yes, sir.

13 Q. Do you know Terence Richardson?

14 A. Yes, sir.

15 Q. How do you know Terence Richardson?

16 A. We grew up in the same neighborhood.

17 Q. And where did he live at?

18 A. He stayed on Dogwood Avenue.

19 Q. Were you all friends growing up?

20 A. I mean he's older than I am, but I know -- I mean  
21 I know him.

22 Q. Was he friends with your brother?

23 A. Yes.

24 Q. How good a friend? Do they regularly associate  
25 together?

1 A. No, I mean not regularly. But he's one of my  
2 brother's friends.

3 Q. All right. Now, I want to direct your attention  
4 to the day that the police officer got killed, April  
5 25, 1998, that Saturday. Where were you when the  
6 officer was killed?

7 A. At home.

8 Q. Which was where at that time?

9 A. At Petersburg at that time.

10 Q. In Petersburg?

11 A. Uh-huh.

12 Q. How was it that you found out about the fact that  
13 the officer was killed?

14 A. I think it was on the news.

15 Q. Now, after you found out about it, did you know  
16 that there was a description of one of the assailants  
17 being of close cropped hair or bald?

18 A. No. I just heard something about dreadlocks or  
19 something.

20 Q. Now, let me ask you this. After you heard the  
21 officer got killed, did you have an occasion to go to  
22 Waverly?

23 A. Yes. My stepfather was having a cookout.

24 Q. When you went to Waverly, did you have an occasion  
25 to look for your brother?

1 A. No, I didn't look for him, no.

2 Q. You didn't look for him at all?

3 A. No.

4 Q. Now, did you see your brother that day?

5 A. No, I didn't.

6 Q. Now, did you have an occasion to see Terence  
7 Richardson that day?

8 A. Yes, I did, him and Shawn Wooden.

9 Q. And where did you see them at?

10 A. We was standing at the end of the driveway at my  
11 stepfather's house, and Terence and Shawn Wooden rode  
12 up on bikes.

13 Q. And approximately when was that?

14 A. Maybe about 1:00, 1:30.

15 Q. Do you recall what Terence Richardson was wearing?

16 A. I don't even remember what I was wearing. So I  
17 don't know what he was wearing.

18 Q. Do you know a fellow named Eric Johnson?

19 A. No.

20 Q. Do you know a fellow named Tony Tyler?

21 A. I don't know him, but I know of him.

22 Q. And has Tony Tyler ever been to your residence?

23 A. Yes, he was.

24 Q. On how many occasions?

25 A. Once or twice.

1 A. Yes, between my house and my sister's house and my  
2 mother's house.

3 MR. NOVAK: Thank you, Miss Claiborne. I  
4 have no further questions.

5 MR. HUYOUNG: Your Honor, I have no  
6 questions.

7 MR. EVERHART: No questions. Thank you.

8 THE COURT: All right. Can she be excused  
9 permanently?

10 MR. NOVAK: I think Mr. Everhart --

11 MR. EVERHART: No, Your Honor. We'd ask  
12 that she be --

13 THE COURT: Thank you for giving us your  
14 testimony this morning. You are not released from  
15 your subpoena yet. We will let you know when you are,  
16 if you will please say around.

17

18 (The witness was excused from the witness  
19 stand)

20 MR. NOVAK: Ronald Williams, please.

21

22 RONALD WILLIAMS, having first been duly  
23 sworn, was examined and testified as follows:

24

25 MR. NOVAK: May I proceed, Your Honor?

1 THE COURT: Please.

2

3 DIRECT EXAMINATION BY MR. NOVAK:

4

5 Q. Sir, do you want to tell the ladies and gentlemen  
6 what your name is?

7 A. Ronald Williams.

8 Q. Perhaps more importantly, why don't you tell us  
9 what your nickname is.

10 A. Booty.

11 Q. Now, Mr. Williams, how old are you?

12 A. Twenty-nine.

13 Q. Now, you have in the past been convicted of felony  
14 drug convictions on at least two occasions, right?

15 A. Yes.

16 Q. You have also been convicted of petty larceny; is  
17 that right?

18 A. Yes.

19 Q. Also convicted of a misdemeanor offense for bad  
20 checks; is that right?

21 A. Yes.

22 Q. And alluding the police in 2000; is that right?

23 A. Yes.

24 Q. You haven't been convicted of a felony since 1995;  
25 is that right?

1 A. Right.

2 Q. Now, you currently have a probation violation  
3 hearing pending in Prince George County for your  
4 alluding the police conviction; is that correct?

5 A. Yes.

6 Q. And have you been told that whatever cooperation  
7 you give in this case that it will be told to the  
8 judge that's holding your violation hearing?

9 A. Yes.

10 Q. Have any other promises been made to you?

11 A. No.

12 Q. Now, Mr. Williams, do you have any brothers?

13 A. Yes.

14 Q. What are your brothers' names?

15 A. Brevard Williams, Timothy Williams and John  
16 Williams.

17 Q. If you want to, you can pull the microphone a  
18 little closer so the jury can hear you.

19 Now, could you tell us, where did you grow  
20 up?

21 A. On Dogwood, Waverly.

22 Q. And did you live there most of your life?

23 A. Yes.

24 Q. Do you know the defendant, Terence Richardson?

25 A. Yes.

1 Q. How do you know the defendant?

2 A. He was my next door neighbor.

3 Q. For a good part of your life?

4 A. Yes.

5 Q. So you've known him basically forever; is that  
6 right?

7 A. Yes.

8 Q. Now, did you go to school with him?

9 A. Yeah.

10 Q. Do you know the defendant, Ferrone Claiborne?

11 A. Yes.

12 Q. How do you know him?

13 A. I grew up around him, too.

14 Q. I'm sorry; I didn't hear you.

15 A. I grew up around him, too.

16 Q. Where did he live at?

17 A. We stayed in Waverly, Prince George --

18 THE COURT: I'm sorry. I'm not hearing.

19 Are you hearing? They are having trouble hearing.

20 BY MR. NOVAK:

21 Q. Mr. Williams, don't be shy. I know you can talk  
22 loudly.

23 THE COURT: Speak up nice and loud. Lean  
24 into that mike.

25 THE WITNESS: Well, my family and his family

1 BY MR. NOVAK:

2 Q. What kind of quantities of cocaine were you  
3 purchasing from --

4 A. Twenties.

5 Q. Let me finish my questions first. What kind of  
6 quantities of crack were you purchasing from Ferrone  
7 Claiborne?

8 A. Twenties.

9 Q. Twenties, which is --

10 A. Which is -- I don't know how many it is in grams.

11 Q. That's for personal use; is that right?

12 A. Yes.

13 Q. Where would you purchase the crack cocaine from  
14 Ferrone Claiborne during that time frame?

15 A. Dogwood.

16 Q. I want to direct your attention to the day the  
17 police officer got killed. You remember that day; is  
18 that right?

19 A. Yes.

20 Q. Pretty big news down there; is that right?

21 A. Uh-huh.

22 Q. Where were you?

23 A. I was on my way to Waverly.

24 Q. Did you have drugs that day?

25 A. No.



1 Q. Now, at some point did you have an occasion to see  
2 Ferrone Claiborne?

3 A. Yes.

4 Q. And where did you see him at?

5 A. At Dobie's.

6 Q. And what is Dobie's?

7 A. It's a store.

8 Q. And who did you see him with, if anyone?

9 A. I seen him with a guy, but I don't know his name.  
10 He driving. I don't know his real name.

11 Q. And at that time, did you attempt to purchase some  
12 drugs from Mr. Claiborne?

13 A. Yes.

14 Q. Tell us what happened.

15 A. Well, I asked Ferrone for a twenty. He told me he  
16 didn't have none. He had to go down to Hopewell.  
17 He'd be back later on.

18 Q. Now, at that time did you have an occasion to  
19 observe his face?

20 A. Yes. He had some tissue in his nose. I think his  
21 nose was bleeding.

22 Q. Now --

23 MR. GAVIN: Judge, could I get a  
24 clarification on whether that was a guess or whether  
25 -- he said he thought his nose was bleeding.

1 THE COURT: Well, I think you can handle  
2 that in cross examination.

3 BY MR. NOVAK:

4 Q. Now, when you -- after you saw him at Dobie's, did  
5 you see him after that?

6 A. No.

7 Q. Did you drive by Raoul's house?

8 A. Yes.

9 Q. The same car, the fellow that you saw him with at  
10 Dobie's, did you see that car anywhere?

11 A. At Raoul's house.

12 Q. And approximately when was that on that day; do  
13 you know?

14 A. Approximately 12:00. It was in between 12:00 and  
15 1:00.

16 Q. Now, do you recall when you saw Ferrone Claiborne  
17 at the Dobie store what, if anything, he was wearing?

18 A. No.

19 Q. At that time -- by the way when you saw Ferrone  
20 Claiborne, did you know that the police officer had  
21 been killed?

22 A. No.

23 Q. Now, after that did you have occasion to see  
24 Terence Richardson?

25 A. Later on that day.

1 Q. Approximately when?

2 A. Probably about three, four hours later.

3 Q. And was he alone or with somebody else?

4 A. He was alone.

5 Q. Where did you see him?

6 A. On the bike on Railroad Avenue.

7 Q. Do you recall what he was wearing?

8 A. No.

9 MR. NOVAK: Judge, I have no further  
10 questions. Actually, I do have one more questions, if  
11 I might. I'm sorry.

12 BY MR. NOVAK:

13 Q. The next day after the murder, did you have an  
14 occasion to see Shawn Wooden?

15 A. Yes.

16 Q. Did you talk to Shawn Wooden about the murder?

17 A. Yes.

18 Q. What did Shawn Wooden tell you about the murder?

19 MR. HUYOUNG: Objection. That's hearsay.

20 MR. NOVAK: I'm offering it to show a prior  
21 statement to rebut a statement that -- the cross  
22 examination of Mr. Wooden saying that he's recently  
23 fabricated changing the story, that he started  
24 changing the story certainly after that day.

25 They seriously attacked Mr. Wooden's

1 credibility saying he made up this story about what  
2 happened at the murder thereafter, and I'm trying to  
3 show a prior statement to rebut charges of recent  
4 fabrication.

5 MR. HUYOUNG: Judge, again, he's going to  
6 testify to what Mr. Wooden said.

7 THE COURT: Yes. That's permissible under  
8 801(b) if it's a prior consistent statement offered to  
9 rebut the charge of recent fabrication of testimony at  
10 trial if the declarant has testified at trial.

11 MR. HUYOUNG: Judge, I think the whole thing  
12 should come in. It's my understanding that --

13 THE COURT: What do you mean the whole  
14 thing?

15 MR. HUYOUNG: Well, as far as what Mr.  
16 Wooden said, I mean, I know what Mr. Novak is going to  
17 try to bring out. Mr. Williams also has talked to Mr.  
18 Wooden. He's also made some other statements. I  
19 think that gets to come in, too.

20 THE COURT: Maybe so, but it has to come out  
21 in the question and answer. It will come out in this  
22 question and answer. So if you have other things you  
23 want to ask him about, you can ask him on redirect --  
24 I mean on cross. Objection overruled.

25 MR. NOVAK: Thank you.

1 BY MR. NOVAK:

2 Q. Where did you see Mr. Wooden at?

3 A. In front of my sister's house on Dogwood.

4 Q. If what, if anything, did he tell you the day  
5 after the murder about who perpetrated it?

6 A. He said that Terence had told him that they had  
7 done it. They had killed the cop.

8 MR. NOVAK: Judge, I have no further  
9 questions.

10 THE COURT: Ladies and gentlemen, that  
11 answer that he just gave that Wooden said that  
12 Richardson said that they had killed the cop, that's  
13 admissible to show that Mr. Wooden previously made  
14 that statement.

15 And you can consider that he made that  
16 statement in deciding whether he's making up what it  
17 is that he's testified to in court or not by assessing  
18 whether or not what he said back then was consistent  
19 with what he's saying now. But you can't use it to  
20 prove that Mr. Richardson actually did the killing.

21 Do you understand what I'm saying? You can  
22 use it to assess the testimony of Mr. Wooden but not  
23 to prove that Mr. Richardson actually did what he is  
24 said to have done. All right.

25 MR. HUYOUNG: May I proceed, Your Honor?

1 THE COURT: Please.

2

3 CROSS EXAMINATION BY MR. HUYOUNG:

4

5 Q. Mr. Williams, about that statement that Wooden  
6 allegedly made to you. You had met with Special Agent  
7 Michael Talbert on September 21, 2000. Do you recall  
8 that meeting with him?

9 A. Yeah.

10 Q. And in that statement to him, he asked you some  
11 questions about what happened, correct?

12 A. Uh-huh.

13 THE COURT: The answer is yes?

14 THE WITNESS: Yes.

15 BY MR. HUYOUNG:

16 Q. In that statement, you stated that Mr. Wooden told  
17 you that the defendant and him were at Mr. Wooden's  
18 home at the time of the murder; isn't that correct?

19 A. That was the same day of the murder. He said it  
20 the afternoon.

21 Q. Okay. He said after -- Wooden said the afternoon  
22 of the murder he was at Wooden's house?

23 A. I didn't understand what you're saying.

24 Q. Mr. Wooden said that the defendant and him were at  
25 Mr. Wooden's house on the afternoon of the murder?

1 A. No.

2 THE COURT: I think you are drawing a  
3 distinction about -- I think he was drawing a  
4 distinction about when the statement was made. Ask  
5 him again. But I think that's what he was saying.

6 The thing you read to him there was  
7 something that was said on the afternoon of the  
8 murder. And he was saying, I testified in response to  
9 Novak -- Mr. Novak's question about something that was  
10 said the day after the murder. I think that's what he  
11 was saying. You can clarify it. The jury will  
12 remember it.

13 BY MR. HUYOUNG:

14 Q. Did you make the statement to Special Investigator  
15 Michael Talbert that Wooden allegedly told you that  
16 he, Wooden, and Richardson were at his, Wooden's, home  
17 at the time of the murder?

18 A. Yes.

19 Q. You said that?

20 A. Yes.

21 Q. That was a lie?

22 A. Huh?

23 Q. Was that a lie that you told Investigator Talbert?

24 A. Was that a lie?

25 Q. Uh-huh.

1 A. No, it was not a lie.

2 Q. Let me make sure I understand this. You just  
3 stated --

4 THE COURT: Mr. HuYoung, you need to put a  
5 date to the date of that statement. In view of the  
6 answer that he just gave earlier, you have to get the  
7 time sequence right in order for the question and the  
8 answer not to mislead the jury.

9 MR. HUYOUNG: I understand.

10 THE COURT: So put a time frame.

11 BY MR. HUYOUNG:

12 Q. On September 21, 2000, you gave a statement to  
13 Investigator Talbert; did you not?

14 A. Okay, yes.

15 THE COURT: Mr. HuYoung, I'm not talking  
16 about that time frame. I'm talking about when it was  
17 that Wooden said this. His answer earlier was that  
18 Wooden -- if you put the two questions and answers  
19 together, he talked to Wooden twice, once on the  
20 afternoon of the murder and once on the day after, and  
21 Wooden said two different things. I think that's what  
22 he's testified to.

23 If that's what you want to get to, get to  
24 it. But you have to do it with reference to the date  
25 that Wooden made the statement to him.



1 BY MR. HUYOUNG:

2 Q. When did Mr. Wooden make the statement to you?

3 What date was this?

4 A. The statement that I gave right there?

5 Q. Yes.

6 A. That was the same day of the cop killing.

7 Q. Okay, the same day.

8 A. Yes.

9 Q. So the same day of the murder, Mr. Wooden told you  
10 that he and Mr. Richardson was at his trailer at the  
11 time of the murder?

12 A. Yes.

13 Q. Then subsequently in the afternoon, you had  
14 another conversation with Mr. Wooden?

15 A. I don't think --

16 Q. The next day?

17 A. Yeah, a couple days later.

18 Q. And it was at that time that he made that  
19 statement to you?

20 A. Yes.

21 THE COURT: It was at that time that he made  
22 what statement? You said that statement. Now, you  
23 are talking about two statements. You have to get it  
24 right, otherwise you leave the jury confused. And  
25 where he's testified to things, it's up to you all to

1 make sure if there are two statements that you  
2 identify which of the statements you are talking about  
3 when you ask about --

4 BY MR. HUYOUNG:

5 Q. The second statement that Mr. Wooden made to you,  
6 when was that statement made?

7 A. That was like two or three days after the cop got  
8 killed.

9 Q. And the statement that he made was --

10 A. That Terence had told him that they killed the  
11 cop.

12 Q. Mr. Williams, your grand jury testimony, you  
13 remember testifying before the grand on October 17,  
14 2000?

15 A. Yeah.

16 Q. You took an oath in front of the grand jury like  
17 you took an oath today?

18 A. Yeah.

19 Q. And in that grand jury testimony, you said that  
20 you knew Terence Richardson; is that correct?

21 A. Yes.

22 Q. And did you state to the grand jury that Mr.  
23 Richardson was selling nothing; he was smoking drugs?

24 A. It's a different time frame with that.

25 Q. Well, let's go through the time frame again. What

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

-----  
UNITED STATES OF AMERICA,

- vs -

TERENCE JEROME RICHARDSON  
and FERRONE CLAIBORNE,

Defendants  
-----

:  
:  
:  
: CRIMINAL ACTION  
: NO. 3:00CR383  
:  
: June 7, 2001  
:

VOLUME IV (Part 2)

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

DAVID J. NOVAK, Assistant United States Attorney  
Richmond, Virginia

Counsel on behalf of the United States

BOATWRIGHT & LINKA  
Richmond, Virginia

BY: JOHN B. BOATWRIGHT, III, ESQ.

BARNES & BATZLI  
Richmond, Virginia

BY: MICHAEL HUYOUNG, ESQ.

Counsel on behalf of Defendant Richardson

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RICE, EVERHART & BABER  
Richmond, Virginia  
BY: JEFFREY L. EVERHART, ESQ.

WHITE, BLACKBURN & CONTE  
Richmond, Virginia  
BY: CHARLES A. GAVIN, ESQ.

Counsel on behalf of Defendant Claiborne

I N D E X

WITNESS                      DIRECT      CROSS      REDIRECT      RECROSS

On behalf of the United States:

Feshona Claiborne	11	--	--	--
Ronald Williams	26	47	71	--
Raoul Johnson	74	82	--	--
Antoine Coleman	86	99	--	--
Thomas "Tony" Tyler	102	124	145	--
Larry Stith	147	172	185	--
Melanie Duncan	194	204	--	--
Tonya Banks	207	--	--	--
Eon Shaw	211	224	--	--
Ernest Giles	229	241	244	--
Chenette Gray	246	258	--	--
Derrick Marshall	263	269	--	--

On behalf of the Defendant Richardson:

Malcom Westbrook	288	294	300	301
Christy Richardson	303	310	--	--
Annie Westbrook	315	334	--	--
Lewis Goodwyn	351	355	361	--
John Bolen	363	--	--	--
Nathan Westbrook	370	377	--	--

1 MR. NOVAK: Ernest Giles, please.

2

3 ERNEST GILES, having first been duly sworn,  
4 was examined and testified as follows:

5

6 MR. NOVAK: May I proceed, Your Honor?

7 THE COURT: Please.

8

9 DIRECT EXAMINATION BY MR. NOVAK:

10

11 Q. Sir, do you want to introduce yourself to the  
12 ladies and gentlemen of the jury?

13 A. Deputy Giles, Deputy Ernest Giles, Sussex  
14 Sheriff's Department.

15 Q. And, Deputy Giles, how long have you been a deputy  
16 down there in Sussex?

17 A. It will be nine years come August.

18 Q. How old are you?

19 A. I'm twenty-nine.

20 Q. And where do you live at?

21 A. I live currently at 214 Butler Street, Waverly.

22 Q. How long have you lived in Waverly?

23 A. All my life.

24 Q. Now, I want to direct your attention back to April  
25 25th of 1998, that Saturday morning when Officer

1 Gibson died. Did you recall that day?

2 A. Yes, sir.

3 Q. Now, you were employed at that time as a Sussex  
4 County deputy; is that right?

5 A. Yes, sir.

6 Q. You weren't on duty that morning though, were you?

7 A. No, sir, I wasn't.

8 Q. Now, I want to direct your attention approximately  
9 to 11:15 a.m. and ask you where you were when you  
10 first learned that there was a problem involving the  
11 officer?

12 A. I was in my mother's yard. That was my current  
13 address at the time.

14 Q. Which is located where?

15 A. On Butler Street.

16 MR. NOVAK: Judge, if we could just have  
17 CH-4 shown to the witness, please.

18 BY MR. NOVAK:

19 Q. Deputy Giles, I'm asking you to take a look at  
20 this location or, I'm sorry, this map and ask you if  
21 you could show us the location -- first of all, do you  
22 see a picture of your mother's house back then where  
23 you were living? I will give you a hint. It says  
24 Earnest Giles' house?

25 A. That is my current house. That's not my mother's

1 house.

2 Q. Okay. Where is --

3 THE COURT: That wasn't much of a hint then,  
4 was it?

5 MR. NOVAK: I guess I should have gone to  
6 map school.

7 BY MR. NOVAK:

8 Q. Okay. Let's try this again. Where was your  
9 mother living at? Can you use the map and try to pin  
10 point for us?

11 A. Yes, sir.

12 Q. Where was that?

13 A. Right here this is where I live. Right here is  
14 where my mother is staying at, [REDACTED].

15 Q. What is that street?

16 A. Butler Street.

17 Q. Is there an area there called the pines?

18 A. The whole area we call the pines, but specifically  
19 it's Franklin Street.

20 Q. Okay. And why is it that you all call that area  
21 down there the pines? Are there some pine trees or  
22 something like that down there?

23 A. A whole lot of pines. I mean the whole street is  
24 full of pines. It just went from generation to  
25 generation calling it the pines.

1 Q. Okay. I'm sorry, at that time you were on which  
2 street?

3 A. Butler Street.

4 Q. Okay. Now, again, about 11:15 a.m., tell us what  
5 it is that got you going over to the Waverly Village  
6 Apartments.

7 A. Yes, sir. Myself and Deputy Johnson was in the  
8 yard of my mother's residence at [REDACTED] Butler Street. I  
9 was working on his pickup truck. My mom came to the  
10 rear door of her residence and advised that she heard  
11 on the scanner that a police officer was hurt.

12 Q. And then you got activated at that point; is that  
13 right?

14 A. Yes, sir, I did.

15 Q. Would it be fair to say you and the other off-duty  
16 deputy went over to the Waverly Village Apartments?

17 A. Yes, sir.

18 Q. And you assisted in crowd control, and you dealt  
19 with Chief Sturup and some problems that were caused  
20 over there; is that right?

21 A. Yes, sir.

22 Q. You also were at the Garrett residence for awhile,  
23 too; is that correct?

24 A. In front of it.

25 Q. That's not really relevant for us today. But how



1 long were you at the Waverly Village Apartments  
2 assisting in crowd control and various things?

3 A. Roughly 15, 30 minutes, probably a little bit  
4 beyond roughly. I can't give you the exact --

5 Q. Is that when you went to the Garrett residence?

6 A. I went from the Waverly Village to the Garrett  
7 residence back to Waverly Village.

8 Q. Okay. In total then of the amount of time that  
9 you worked at the Waverly Village that day before you  
10 left to go home, you went back to your mom's house at  
11 some point; is that right?

12 A. Yes, sir.

13 Q. How long were you over there?

14 A. At Waverly Village?

15 Q. Yeah. When did you leave Waverly Village to go  
16 back to your mom's place approximately?

17 A. I would say quarter to twelve to twelve o'clock,  
18 somewhere in that neighborhood.

19 Q. Okay. And during that time period, you obviously  
20 knew by that time that Officer Gibson had been shot  
21 and was fighting for his life; is that right?

22 A. Yes, sir.

23 Q. Now, at some point did you have occasion to run  
24 into Ferrone Claiborne?

25 A. Yes, sir.

1 Q. Now, before I get to that, let me just ask you  
2 this. Do you know Terence Richardson?

3 A. Yes, sir, I do.

4 Q. How do you know Terence Richardson?

5 A. That was one of my long time friends.

6 Q. You all went to high school together?

7 A. Yes, sir.

8 Q. But you all after high school chose and went  
9 different directions; is that right?

10 A. Yes, sir.

11 Q. You stopped hanging out with him; is that right?

12 A. Yes, sir.

13 Q. Did you know what kind of lifestyle he was leading  
14 then?

15 MR. BOATWRIGHT: I will object, Judge.

16 THE COURT: Sustained.

17 BY MR. NOVAK:

18 Q. Well, let me ask you this. Do you know Ferrone  
19 Claiborne?

20 A. Yes, sir, I did.

21 Q. And how did you know him?

22 A. He was one of the, I guess, kids in the  
23 neighborhood, as myself.

24 Q. Now, you are a little bit older than him then; is  
25 that right?

1 MR. NOVAK: Judge, may I just have a moment  
2 with Miss Bishop?

3

4 (Discussion off the record)

5

6 MR. NOVAK: Judge, I would like to move for  
7 the admission of Exhibit CH-1, which is one of the big  
8 charts we used routinely. I actually think I did move  
9 it in before, but just in case I didn't.

10 DC-8, P-17 and P-18, that's again additional  
11 photos on the big chart that I referenced before. I  
12 think I neglected to mention those, and I would move  
13 for admission of those items of evidence. With that  
14 the United States would rest.

15

16 (Government's Exhibits DC-8, P-17 and P-18  
17 were received in evidence.)

18

19 MR. EVERHART: Judge, before the United  
20 States rests, we have one thing.

21 MR. GAVIN: If I can confer with Mr. Novak.

22

23 (Discussion off the record)

24

25 MR. GAVIN: Thank you, Judge.

1 proceeding, it seems to me that there is sufficient  
2 evidence for a reasonable jury, if the evidence is --  
3 testimony offered by the Government is believed to  
4 convict on Counts One, Two and Three. So the motion  
5 for judgment as a matter of law is denied.

6 All right. Why don't we take a recess until  
7 4:05 and be back in position at 4:05 by that clock.

8 MR. BOATWRIGHT: Thank you, sir.

9  
10 (At 3:35 a.m. a recess was taken. At  
11 4:10 p.m. the proceedings continued)

12  
13 THE COURT: All right. First witness.

14 MR. BOATWRIGHT: Judge, we would like to  
15 call Malcolm Westbrook.

16  
17 MALCOLM WESTBROOK, having first been duly  
18 sworn, was examined and testified as follows:

19  
20 DIRECT EXAMINATION BY MR. BOATWRIGHT:

21  
22 Q. Good afternoon, sir.

23 MR. BOATWRIGHT: Excuse me, Judge. May I  
24 proceed?

25 THE COURT: Please.

1 BY MR. BOATWRIGHT:

2 Q. Sir, would you introduce yourself, please, to the  
3 fourteen ladies and gentlemen of the jury.

4 A. My name is Malcolm Westbrook.

5 Q. Speak up and speak up distinctly so everybody can  
6 hear you, even the farthest person over there.

7 All right. Mr. Westbrook, where do you  
8 live?

9 A. Chesterfield.

10 Q. Chesterfield County?

11 A. Yes, sir.

12 Q. And how long have you lived in Chesterfield?

13 A. Six years.

14 Q. Are you familiar with this young man right here,  
15 Terence Richardson?

16 A. Yes, sir.

17 Q. What, if any, is his relationship to you?

18 A. My nephew.

19 Q. Sir, did you have occasion to have Terence living  
20 in your home during a portion of 1999?

21 A. Yes, sir.

22 Q. And why was that?

23 A. He was on bond.

24 Q. Why was it necessary for him to live in your home?

25 A. The conditions was that he be with one of the

1 family members at all times.

2 Q. And so how long did he stay in your home? Can you  
3 tell us approximately from when to when, as best you  
4 can recall?

5 A. To tell you the truth, I can't recall the time  
6 because he stayed at my mom's house; he stayed with my  
7 sisters, and then he stayed with me some.

8 Q. Do you recall there being a family -- a death in  
9 the family in February of 1999?

10 A. Yes.

11 Q. Could you tell the ladies and gentlemen of the  
12 jury who it was and what it was all about?

13 A. His grandmother on his mother's side had passed  
14 and we went down to the funeral. He was already down  
15 there because he was staying with his aunt.

16 Q. You have to keep your voice up. You tend to trail  
17 off a little bit as you finish up. So keep it up  
18 there and do the best you can. I know you haven't  
19 seen these folks before.

20 Did you actually attend the services  
21 yourself?

22 A. Yes, I did.

23 Q. How did it come to be that you went down there?

24 A. Me and my fiancée, we rode down there and attended  
25 the funeral.

1 Q. Where was the funeral held?

2 A. The funeral was in Petersburg, but the burial was  
3 in Yale, Virginia.

4 Q. In Yale, Virginia?

5 A. Uh-huh.

6 Q. And then was there some kind of gathering  
7 thereafter?

8 A. Gathering after at his aunt's house.

9 Q. What's her name?

10 A. Christy.

11 Q. Is it Christy Richardson?

12 A. Christy Richardson.

13 Q. Now, did I understand you to say that Terence went  
14 down before you did?

15 A. Yeah. He went down I think a couple of days  
16 before I did.

17 Q. Did you hook up with him at some point?

18 A. Well, my fiancée rode back with my sister and my  
19 mother, and I stayed down there for a while at his --  
20 at our first cousin's house.

21 Q. Why did you stay down there?

22 A. To bring him back to Richmond with me.

23 Q. Bring Terence back to Richmond?

24 A. Terence back to Richmond with me.

25 Q. Now, did you bring Terence back to Richmond with

1 you?

2 A. Yes, I did.

3 Q. Do you recall approximately what time you would  
4 have left the Yale area?

5 A. It was probably after -- probably about nine  
6 o'clock. It was sort of dark.

7 Q. Nine o'clock p.m.

8 A. P.M.

9 Q. Now, did he accompany you back to Richmond?

10 A. Yes, he did.

11 Q. Tell us did you drive straight through back to  
12 Richmond?

13 A. Straight back to Richmond, took about forty-five  
14 minutes to an hour to get to my house in Chesterfield.

15 Q. Were there any stops along the way?

16 A. No stops whatsoever.

17 Q. Specifically, did you stop at any convenience  
18 stores?

19 A. No convenience stores.

20 Q. Do you know a gentleman named William Henry  
21 Ellsworth?

22 A. Not exactly.

23 Q. All right. Let's put it this way. Do you know  
24 who he is?

25 A. No, I don't.



1 Q. Have you seen him?

2 A. I have seen him, but I don't know of him.

3 Q. Do you know what he's called, what his nickname  
4 is?

5 A. No.

6 Q. So the name Junie doesn't mean anything to you?

7 A. No.

8 Q. Did you happen to see him anywhere along the way  
9 between Yale, Virginia, and your home in Chesterfield?

10 A. No, sir.

11 Q. Are you sure about that?

12 A. Positive. I saw his brother, but I didn't see  
13 him.

14 Q. You know his brother?

15 A. I went to school with his brother.

16 Q. What's his brother's name?

17 A. Jimmy.

18 Q. Did Terence have any opportunity to get out of the  
19 car whatsoever between the time you left Christy  
20 Richardson's home and the time you arrived at your  
21 home?

22 A. No, sir.

23 MR. BOATWRIGHT: All right, sir. Thank you  
24 very much. Please answer any questions Mr. Novak may  
25 have for you.

1 MR. NOVAK: I think -- isn't Mr. Everhart  
2 going to go first, Judge?

3 THE COURT: I thought so.

4 MR. BOATWRIGHT: I'm sorry.

5 MR. EVERHART: Judge, we don't have any  
6 questions.

7

8 CROSS EXAMINATION BY MR. NOVAK:

9

10 Q. Good afternoon, Mr. Westbrook. How are you?

11 A. I'm fine. Yourself?

12 Q. Good. Mr. Westbrook, what time period was it that  
13 Mr. Richardson was staying with you?

14 A. I can't pinpoint the times because he would stay  
15 from time to time. It wasn't no set time.

16 Q. Was it days on end, weeks on end?

17 A. Couple of days at a time. Then he'll stay with my  
18 sister or my mom.

19 Q. When he would stay with you -- you are a working  
20 man; is that right?

21 A. Yes.

22 Q. And where do you work at?

23 A. Nabisco.

24 Q. Do you live alone or with someone else?

25 A. My fiancée and my kids.

1 Q. When you would go to work, he would remain at your  
2 house alone?

3 A. No.

4 Q. Where would he go?

5 A. Back to my mother's.

6 Q. And you have no idea what he was doing then; is  
7 that right?

8 A. After he left me?

9 Q. Right.

10 A. No.

11 Q. You can only testify -- you can only testify to  
12 what he did in your presence; is that right?

13 A. Yes.

14 Q. And if he's not with you, you have no idea what he  
15 was doing; is that right?

16 A. No.

17 Q. All right. Now, it happens that on the day of the  
18 funeral that he wasn't with you at your house; is that  
19 right?

20 A. The day of the funeral?

21 Q. Right. You went to the funeral without him; is  
22 that right?

23 A. I went down there with my fiancée.

24 Q. Okay. So he was already down in -- where was it?

25 A. Stony Creek.

1 Q. Down in Stony Creek. And you have no idea what he  
2 was doing in Stony Creek until you saw him; is that  
3 right?

4 A. No.

5 Q. And when you got to -- you went over to the -- you  
6 went to the funeral; is that right?

7 A. Yes. Well, he was already down there. But the  
8 funeral was held in Petersburg. So I saw him in  
9 Petersburg that day.

10 Q. Okay. I'm sorry. So you went to Petersburg.  
11 Then from there he didn't ride with you down to Stony  
12 Creek, did he?

13 A. No. He rode with the funeral party.

14 Q. And you have no idea if he went somewhere else  
15 other than that after you saw him; is that right?

16 A. From Petersburg?

17 Q. Yeah.

18 A. He was at the funeral the whole time.

19 Q. Well --

20 A. I am saying that I saw him at the funeral. We  
21 went down to Yale, saw him down there at the burial.  
22 From there we went to his aunt's house.

23 Q. I understand, Mr. Westbrook. That's not my  
24 question. You're at the funeral. He's at the  
25 funeral; is that right?

1 A. Yes.

2 Q. And before the -- That was the first time you saw  
3 him; is that right?

4 A. Yes.

5 Q. You have no idea what he did that day before he  
6 got to the funeral; is that right?

7 A. No, I don't.

8 Q. Okay. At the funeral, you leave the funeral and  
9 you go down to Aunt Christy's place; is that right?

10 A. Went to the burial site.

11 Q. Went to the burial site, I'm sorry. From the  
12 burial site you go to Aunt Christy's place; is that  
13 right?

14 A. That's right.

15 Q. Now, from the funeral, from the church to the  
16 burial site, Mr. Richardson was not with you; is that  
17 right?

18 A. No, he wasn't.

19 Q. From the burial site to Aunt Christy's place, he  
20 was not with you; is that right?

21 A. That's right.

22 Q. Now, how long were you at Aunt Christy's place?

23 A. How long I was there?

24 Q. Yes.

25 A. I'd say anywhere from probably -- maybe, I'm

1 thinking maybe 3:00 or 4:00 that evening until we left  
2 that night at about 9:00 p.m.

3 Q. So you are talking about a six hour time period at  
4 least; is that right?

5 A. Uh-huh.

6 Q. Is that right?

7 A. Yes.

8 Q. It was a big family shindig down there?

9 A. Not really.

10 Q. How many people were down there?

11 A. About fifty, sixty.

12 Q. All right. In my family that's a pretty big  
13 shindig. Do you know was Mr. Ellsworth, William  
14 Ellsworth, that Mr. Boatwright asked you about, do you  
15 recall seeing him there?

16 A. I don't recall seeing him there.

17 Q. Is it possible that he was there and you didn't  
18 see him?

19 A. I didn't see him there.

20 Q. But my question is, is it possible that he was  
21 there and you just didn't see him?

22 A. Truthfully, I don't think it's possible because I  
23 didn't see him there.

24 Q. That's not what I'm asking you. My question is,  
25 is it possible that he was there and you didn't see

1 him?

2 A. Okay. It's possible.

3 Q. All right. Now, during the time period, that six  
4 or seven hours that you're down at Aunt Christy's  
5 place, you're down there with your family and Terrence  
6 is down there with his family; is that right?

7 A. Yes, sir.

8 Q. And during that time period you all were  
9 socializing; is that right?

10 A. Right.

11 Q. You are down there with your fiancée. And, in  
12 fact, your fiancée left with somebody else; is that  
13 right?

14 A. My sister.

15 Q. Your sister; is that right? Now, I gather during  
16 that seven hour time period you are not chained to  
17 Terrence Richardson; is that right?

18 A. No.

19 Q. I gather you are socializing with some of your  
20 other family members; is that right?

21 A. Well, where I was standing at, Terrence was with  
22 me.

23 Q. Well, let me ask you this. Is it possible that  
24 during that seven hour time period that Mr. Richardson  
25 could have left with somebody, another family member

1 that you didn't know? Is it possible? Is it  
2 possible, Mr. Westbrook?

3 A. I guess so.

4 MR. NOVAK: Thank you. I have no further  
5 questions.

6 MR. BOATWRIGHT: If I may, Judge.

7

8 REDIRECT EXAMINATION BY MR. BOATWRIGHT:

9

10 Q. How did you say Terence was getting from place to  
11 place, that is, from Stony Creek to Petersburg and  
12 Petersburg to the burial site and the burial site to  
13 Aunt Christy's house?

14 A. He was -- I guess he was --

15 THE COURT: Wait a minute.

16 BY MR. BOATWRIGHT:

17 Q. Don't guess.

18 A. He was with his mother. The wedding party was all  
19 together -- I mean the funeral party.

20 Q. All right. Say that one more time because you  
21 kind of ran through that quickly.

22 A. He was with the funeral party. And, of course,  
23 the family rides together in the same car.

24 Q. Are you talking about a limousine or something of  
25 that nature?



1 A. Uh-huh.

2 Q. Did you see him getting in and out of that car?

3 A. Yes, I did.

4 Q. Now, Mr. Novak refers to a six or seven hour time  
5 period. Were you actually at Christy's house that  
6 long?

7 A. We was there for a long time. We was there  
8 actually for about -- because we were waiting on  
9 another one of my cousins and he was doing some -- he  
10 was cooking barbecue, and we was waiting on him.

11 Q. Well, did you see Terence at Christy's from time  
12 to time while you were there?

13 A. I saw Terence the whole time.

14 MR. BOATWRIGHT: I don't have any other  
15 questions.

16 MR. NOVAK: May I?

17

18 RECROSS EXAMINATION BY MR. NOVAK:

19

20 Q. Let me ask you this, Mr. Westbrook. If you're  
21 like me you go to a barbecue because you eat.

22 A. It wasn't -- I'm saying we was waiting on my  
23 cousin later on that night. We was all in the house  
24 together.

25 Q. Right.

1 A. And he was cooking barbecue on the stove. So  
2 that's what we was waiting on.

3 Q. I know. My question is, did you eat?

4 A. The barbecue?

5 Q. Did you eat, period?

6 A. Yes, we ate earlier.

7 Q. Did you go to the bathroom?

8 A. No, I didn't.

9 Q. You didn't go to the bathroom for seven hours?  
10 You just sat in the living room or stared at Terence  
11 Richardson that whole time?

12 A. We was just sitting there talking.

13 Q. Looking at Terence Richardson?

14 A. No, I wasn't look him, but I knew he was in the  
15 room.

16 MR. NOVAK: Thank you. I have no further  
17 questions.

18 THE COURT: Can he be excused?

19 MR. NOVAK: Please.

20 MR. BOATWRIGHT: Yes, sir, Judge. I know  
21 he'd like to observe the proceedings from this point  
22 forward if it's all right with the Court.

23 THE COURT: Sure. You are released from  
24 your subpoena. You can stay if you'd like to.

25

1 (The witness was excused from the witness  
2 stand)

3  
4 MR. BOATWRIGHT: I'd like to call Annie  
5 Westbrook, please.

6 THE MARSHAL: She is using the facilities.

7 MR. BOATWRIGHT: I'll go to Christy  
8 Richardson then.

9 MR. NOVAK: We've been here for more than  
10 seven hours, maybe that's why --

11 THE COURT: Mr. Novak, you can do that in  
12 argument.

13

14 CHRISTY RICHARDSON, having first been duly  
15 sworn, was examined and testified as follows:

16

17 DIRECT EXAMINATION BY MR. BOATWRIGHT:

18

19 Q. Good afternoon, ma'am.

20 A. Good afternoon.

21 Q. Ma'am, would you please introduce yourself to the  
22 ladies and gentlemen of the jury by stating your name  
23 and doing so in a nice, clear, firm voice?

24 A. Christy Lorraine Richardson.

25 Q. Miss Richardson, where do you live?

1 A. In Stony Creek, Virginia.

2 Q. Specifically, where do you live in the Stony Creek  
3 area?

4 A. [REDACTED] Forest Lane.

5 Q. And how long have you lived there?

6 A. About six years.

7 Q. Were you living there back in February of 1999?

8 A. Yes.

9 Q. Now, let me stop and ask you, do you know this  
10 gentleman right here, Terence Richardson?

11 A. Yes.

12 Q. What is his relationship to you?

13 A. My nephew.

14 Q. And so his mother is what relation to you?

15 A. My sister.

16 Q. And her name is?

17 A. Annie Westbrook.

18 Q. All right. Did there come a time in February of  
19 this year when there was a death in your family?

20 A. Yes.

21 Q. Who passed away?

22 A. My mother.

23 Q. Can you speak up now so they can hear you. What  
24 was your mom's name?

25 A. Theresa Rose Westbrook.

1 Q. And were there funeral service associated sort of  
2 events for her?

3 A. Yes.

4 Q. Do you remember when this was?

5 A. February 6, 1999.

6 Q. Now, I want you to describe for the ladies and  
7 gentlemen of the jury what events took place on that  
8 day. In other words, was there -- first, let me ask  
9 you. Was there sort of a gathering place for the  
10 family?

11 A. At my home.

12 Q. The same home you talked about earlier?

13 A. Yes, sir.

14 Q. Now, who all gathered there?

15 A. My sister and myself.

16 Q. Now, when you say your sister, use her name.

17 Okay.

18 A. Annie.

19 Q. All right.

20 A. And Terence. Tanetia and Toran, those are my  
21 children. My aunts and uncles, most of the close  
22 family that was going in the procession.

23 Q. Now, was there a vehicle lined up, sort of a  
24 family car so to speak?

25 A. Yes.

1 Q. And who was -- who did use that vehicle?

2 A. My brother Floyd, my sister Annie, Terence,  
3 Tanetia, Toran and myself.

4 Q. So that's what, six people?

5 A. And on the way back Terence brought Iquisha.

6 THE COURT REPORTER: I'm sorry?

7 THE COURT: What was that?

8 Q. On the way back --

9 A. On the way back Terence brought Iquisha.

10 Q. Do you want to spell that?

11 A. I-Q-U-I-S-H-A.

12 Q. Thank you. Now, how did you go from your home to  
13 the funeral?

14 A. We went 95, Interstate 95.

15 Q. I asked the question the wrong way.

16 A. Okay.

17 Q. What I meant to ask you was, did you go directly  
18 from your home to the funeral service?

19 A. Yes.

20 Q. And that was where?

21 A. In Petersburg, Virginia.

22 Q. Now, did you -- were there stops along the way  
23 from your home to the funeral service in Petersburg?

24 A. No.

25 Q. Are you sure about that?

- 1 A. Yes.
- 2 Q. Okay. The funeral service was held in a church in  
3 Petersburg I take it?
- 4 A. Yes.
- 5 Q. Once the funeral service was over, did you all  
6 leave pretty quickly thereafter?
- 7 A. Yes.
- 8 Q. Where were you headed to?
- 9 A. To the cemetery.
- 10 Q. Where is the cemetery located?
- 11 A. It was on Pine Street Road in Yale, Virginia.
- 12 Q. And who rode in the car from the funeral service  
13 to the cemetery?
- 14 A. Okay, myself, Annie, Terence, Floyd, Tanetia,  
15 Toran and Iquisha.
- 16 Q. Were there any stops along the way from the church  
17 where the funeral was held to the cemetery?
- 18 A. No.
- 19 Q. Are you sure about that?
- 20 A. Yes.
- 21 Q. And then I take it there was a grave-side  
22 ceremony?
- 23 A. Yes.
- 24 Q. Where did you all go from there?
- 25 A. Back to my home.

1 Q. And how did you get from that place to your home?

2 A. Rode in the family car.

3 Q. The same car you were talking about all along?

4 A. Yes.

5 Q. Who rode in the car from the grave-side service to  
6 your home?

7 A. The same people that I mentioned before.

8 Q. The same people who went from Petersburg to the  
9 grave side?

10 A. Yes.

11 Q. Were there any stops along the way?

12 A. No.

13 Q. Are you sure about that?

14 A. Yes.

15 Q. Now, do you recall approximately what time you got  
16 back to your home?

17 A. About maybe 5:00, 6:00, something like that. It  
18 hadn't gotten dark yet.

19 Q. But it was late afternoon you are saying?

20 A. Yes.

21 Q. What did you all do then?

22 A. Well, we got in the family car. Then most of us  
23 went to my home. And then there is a lot of people  
24 outside.

25 Q. All right. Did you see Terence there at your



1 home?

2 A. Yes.

3 Q. Now, I know you obviously weren't standing over  
4 top of him for all the rest of the evening, but did  
5 you see him from time to time?

6 A. Yes. I was in and out.

7 Q. Did you ever -- was there ever a time when you  
8 looked around for him that you didn't see him?

9 A. No.

10 Q. How was he dressed?

11 A. Dressed in the suit he has on now.

12 Q. In the same clothes he has on now?

13 A. Yes.

14 Q. All right. As far as you could tell, did he leave  
15 your home?

16 A. No.

17 Q. And, honestly, you didn't keep your eye on him  
18 every single second, did you?

19 A. Not every second, no. But I was, you know, going  
20 in for about five minutes and come back out.

21 Q. Now, did you see him leave?

22 A. Yes.

23 Q. With whom did he leave?

24 A. He left with his uncle, Mal Westbrook.

25 Q. Is that the same gentlemen who just came in here

1 and testified right before you did?

2 A. Yes.

3 Q. Is that the gentleman seated in the back of the  
4 courtroom now?

5 A. Yes.

6 MR. BOATWRIGHT: I don't believe I have any  
7 other questions for you, ma'am.

8 MR. EVERHART: No questions, Your Honor.

9

10 CROSS EXAMINATION BY MR. NOVAK:

11

12 Q. Good afternoon, ma'am. How are you?

13 A. All right.

14 Q. Ma'am, I gather on that day -- first of all, you  
15 were being a hostess at your house I guess for a lot  
16 of people?

17 A. Yes.

18 Q. How many people were at your house?

19 A. Maybe about thirty, between thirty and forty.

20 Q. You don't know -- obviously, you don't know the  
21 exact number; is that right?

22 A. Not the exact number.

23 Q. A good bit of people at your house though; is that  
24 correct?

25 A. Well, whatever. I wasn't --

1 Q. You were helping serve them?

2 A. No. We had someone to serve.

3 Q. I gather, probably a pretty obvious question, you  
4 were dealing with the grief of having lost your mother  
5 then at that time; is that right?

6 A. Yes.

7 Q. I gather that that was a pretty sad day for you;  
8 is that right?

9 A. Uh-huh.

10 Q. At that time I assume that the thing that was  
11 going through your mind wasn't keeping your eye on  
12 Terence Richardson; is that right?

13 A. Well, I was -- no. I knew Terence wasn't going  
14 anywhere, you know, because he was staying with us.

15 Q. I think my point though, ma'am, is simply that  
16 that day you were focused on having to bury your  
17 mother; is that right? Am I right?

18 A. Yes.

19 Q. And grieving with the rest of your family; is that  
20 right?

21 A. Yes.

22 Q. Never in the world thinking you were going to be  
23 in a federal court talking about Terence; is that  
24 right?

25 A. No.

1 Q. And, of course, since you were the hostess for --  
2 how long did that get together last at your house?

3 A. After we got back to my house about maybe a couple  
4 of hours. People started leaving when it started  
5 getting dark.

6 Q. What time did you get back to your house, about  
7 three o'clock in the afternoon?

8 A. No. The funeral was at 1:00.

9 Q. What time did you get back?

10 A. Between maybe 5:00 and 6:00, something like that.

11 Q. And who was doing the cooking there?

12 A. Well, we had family members that had cooked.

13 Q. What were they cooking?

14 A. Whatever they had brought, people had brought to  
15 my house.

16 Q. Anybody barbecuing that day?

17 A. No.

18 Q. Okay. Now, let me ask you this. Do you know  
19 William Ellsworth?

20 A. William Ellsworth, yes.

21 Q. Are you related to him?

22 A. Yes.

23 Q. How are you related to him?

24 A. That's my second cousin.

25 Q. Do you recall seeing him there?

1 A. No, not that I know of.

2 Q. Is it possible that he was there?

3 A. Could.

4 Q. Was he related to your mother?

5 A. My father.

6 Q. Okay. Did you serve alcohol at this gathering?

7 A. No.

8 Q. I gather there is a religious connotation to this  
9 gathering, too, since your mother had passed away. If  
10 people wanted to drink, would they have had to leave  
11 your house?

12 A. Well, if they had wanted to drink, they'd have to  
13 drink outside.

14 Q. All right. And did people go to do that; do you  
15 know?

16 A. Not that I know of. I didn't see anyone drinking.

17 Q. Is it possible some people were doing it and you  
18 didn't see them?

19 A. Could have.

20 Q. Is there a convenience store located near your  
21 house?

22 A. Not right near my house.

23 Q. Okay. How far away?

24 A. Maybe about -- maybe between ten and fifteen  
25 minutes.

1 Q. Okay. By car or by walking?

2 A. Car.

3 Q. Do you know if anybody went to that convenience  
4 store near your house to get ice or sodas or anything  
5 like that?

6 A. No. We already had that.

7 Q. Already had everything. To your knowledge nobody  
8 left?

9 A. Not that I know of. They were leaving to go home.

10 Q. Is it possible, however, that somebody could have  
11 left?

12 A. Yes, could.

13 Q. Because you were busy doing what you had to do; is  
14 that right?

15 A. Yes.

16 Q. And you, obviously, weren't watching your nephew  
17 the entire time; is that right?

18 A. Not all the time.

19 MR. NOVAK: Thank you, ma'am. I have no  
20 further questions.

21 MR. BOATWRIGHT: I don't have any other  
22 questions for this lady.

23 THE COURT: Miss Richardson, thank you very  
24 much for being with us. You are excused. If you'd  
25 like to remain, you may, but you do not have to.

1 (The witness was excused from the witness  
2 stand)

3  
4 MR. BOATWRIGHT: Let's take a whack at Annie  
5 Westbrook again. She's out there. I see her now.

6  
7 ANNIE WESTBROOK, having first been duly  
8 sworn, was examined and testified as follows:

9  
10 DIRECT EXAMINATION BY MR. BOATWRIGHT:

11  
12 Q. Good afternoon, ma'am.

13 A. Hi.

14 Q. Now, I'd like for you to introduce yourself to the  
15 ladies and gentlemen of the jury. Speak up and speak  
16 up enough so that everybody can hear you. Okay.

17 A. Okay.

18 Q. Go right ahead.

19 A. My name is Annie Richardson Westbrook.

20 MR. BOATWRIGHT: Excuse me, Judge. I didn't  
21 ask for permission to proceed.

22 THE COURT: You don't have to.

23 MR. BOATWRIGHT: I'm just following his  
24 footsteps. He was doing so well at it.

25 MR. NOVAK: That's a dangerous path, a very

1 dangerous path.

2 BY MR. BOATWRIGHT:

3 Q. Let's this try one more time. What was your name?

4 A. Annie Richardson Westbrook.

5 Q. The lady who just was in here, Christy Richardson,  
6 is she your sister?

7 A. Yes.

8 Q. Who is older and who is younger?

9 A. I'm the oldest.

10 Q. You are Terence's mother, correct?

11 A. Yes, I am.

12 Q. How old is Terence now, ma'am?

13 A. Terence is thirty years old.

14 Q. Who is Terence's father?

15 A. Terence's father is Nathan Westbrook.

16 Q. Is Nathan Westbrook his stepfather?

17 A. Nathan Westbrook is his father.

18 Q. His biological father?

19 A. Biological father.

20 Q. All right. I want to first ask you about the  
21 events surrounding the day of the funeral of your  
22 mom. When did your mom pass away?

23 A. She passed away the last day of January.

24 Q. Of what year?

25 A. 31st of January.



1 Q. What year?

2 A. Of 1999.

3 Q. And were funeral services scheduled for her?

4 A. Yes.

5 Q. When did they take place?

6 A. On that Saturday, February the 6th.

7 Q. And do you recall what time the funeral services  
8 took place?

9 A. I'm not sure. I believe it was at 1:00.

10 Q. Let me tell you --

11 A. We left home at 1:00 I think.

12 Q. Take a look at this and see if this refreshes your  
13 memory about what exact time it was.

14 MR. NOVAK: May we just mark it for purposes  
15 of the record so the record is clear, Judge?

16 THE WITNESS: 1:30.

17 BY MR. BOATWRIGHT:

18 Q. Say that again.

19 A. 1:30.

20 Q. Thank you.

21 MR. BOATWRIGHT: I know they are going to  
22 want this back, Judge. Can we maybe mark a copy of  
23 it?

24 MR. NOVAK: That's fine, Judge. I'm sorry.  
25 I thought he was going to introduce it.

1 MR. BOATWRIGHT: I don't intend to introduce  
2 it. I just want to make sure and see if that helps  
3 her with remembering the time it was.

4 THE COURT: All right.

5 BY MR. BOATWRIGHT:

6 Q. Let's start off, how did -- was there a place  
7 where everybody in the family gathered before the  
8 funeral service began?

9 A. Yes.

10 Q. Where was that?

11 A. It was at my sister's trailer in Stony Creek.

12 Q. Christy's trailer?

13 A. Christy.

14 Q. And who gathered there?

15 A. The family members, you know, friends. We had  
16 like, you know, people come to visit that whole week  
17 at my sister's house. After the funeral everybody  
18 congregated at my sister's home.

19 Q. Among the people present, was your son there?

20 A. Yes.

21 Q. Terence, I mean.

22 A. Yes.

23 Q. Let me ask you this. Is Terence your only child?

24 A. Yes, he is.

25 Q. Boy or girl.

1 A. Only child.

2 Q. What arrangements had been made for you all to  
3 travel to the various places you needed to go that  
4 day?

5 A. We arranged with the limousine service with Jones  
6 Funeral Home in Stony Creek. And the family members  
7 that was supposed to ride in this limousine was my  
8 sister, her two children, my granddaughter, Terence,  
9 and all of us was in this one limousine to and from  
10 the church.

11 Q. Where did the limousine pick you up?

12 A. At my sister's trailer in Stony Creek.

13 Q. And the people that you just described were these  
14 -- was Terence's daughter, your granddaughter, there  
15 at that location?

16 A. No. She met us at the church in Petersburg  
17 because she rode back with us.

18 Q. So the people that you described, minus your  
19 granddaughter, did you all go to Petersburg together?

20 A. Yes.

21 Q. Were there any stops along the way?

22 A. None.

23 Q. You're sure about that?

24 A. None.

25 Q. All right. And then you went and had the service?

1 A. Right.

2 Q. And where did you go from there?

3 A. We left the church in Petersburg. Our family  
4 cemetery was in Yale, Virginia. From Petersburg we  
5 went directly to the cemetery in Yale. From there --

6 Q. All right. Hold on a minute. Any stops along the  
7 way on this leg of the trip?

8 THE COURT: Is it contested that there were  
9 stops along the way?

10 MR. NOVAK: No.

11 MR. BOATWRIGHT: All right.

12 THE COURT: I thought the issue was whether  
13 or not -- what happened after they got back --

14 MR. BOATWRIGHT: That's fine.

15 THE COURT: -- to the house.

16 MR. BOATWRIGHT: I'm making sure. But I  
17 will move on.

18 THE COURT: Now there is no issue. So you  
19 don't need to worry about it.

20 BY MR. BOATWRIGHT:

21 Q. You went to the grave-side service. Then you went  
22 back to Christy's, correct?

23 A. Yes.

24 Q. Now, do you recall approximately what time you  
25 went back to Christy's?

1 A. The funeral service was in Petersburg. I guess  
2 maybe -- I guess it might have taken an hour because  
3 we had to go slow from Petersburg to the funeral --  
4 from Petersburg to the burial. I would say we were  
5 probably back at Christy's about 3:00, 3:30 probably.

6 Q. Could it have been later than that?

7 A. Not really, I don't believe it was.

8 Q. What took place at Christy's house?

9 A. Just meeting, you know, family, friends gathering,  
10 you know.

11 Q. Was Terence there?

12 A. Yes.

13 Q. Now, did you stand over top of him all the time  
14 you were there until you left?

15 A. No, I didn't.

16 Q. Did you see him from time to time?

17 A. Yes.

18 Q. What was he doing when you saw him?

19 A. Well, mainly it was like he was around his uncles  
20 and his cousins, mostly my family. My mother's family  
21 was there. Most of them was my mother's family.

22 Q. He was under a condition of his bond, correct?

23 A. Yes, he was.

24 Q. What was that condition?

25 A. That condition was that he had to reside in

1 Richmond with grandmother or his aunt. He was not  
2 really allowed to go to Waverly or Sussex, and that  
3 was one of the occasions that he did go to my mother's  
4 when my mother passed.

5 Q. Other than that -- let's strike that. Who is  
6 Malcolm Westbrook?

7 A. Malcolm is my husband's brother.

8 Q. Your brother-in-law?

9 A. Brother-in-law.

10 Q. Let me just stop for a second. Are you and your  
11 husband still together?

12 A. We are separated.

13 Q. When did that occur?

14 A. We have been separated about five years.

15 Q. So in April 1998 you were separated then?

16 A. Yes.

17 Q. Where do you live?

18 A. I reside in Williamsburg.

19 Q. Now, was there ever a period -- are you familiar  
20 with the location of the nearest convenience store to  
21 your sister Christy's house?

22 A. Well, there is a little convenience store in Stony  
23 Creek.

24 Q. Was it ten or fifteen minutes away or something  
25 like that?

1 A. About ten maybe.

2 Q. Was there ever a period of time between your, for  
3 lack of a better term, sightings of your son that he  
4 could have gone down there as far as you are  
5 concerned?

6 A. I don't believe it, no.

7 Q. All right. Do you know William Henry Ellsworth?

8 A. Yes.

9 Q. Does he have a nickname?

10 A. Junie.

11 Q. What relation is he to you?

12 A. Junie's mother and I are first cousins.

13 Q. Do you recall seeing him that day?

14 A. I don't recall seeing him there at all.

15 Q. Now, are you saying he wasn't there or just simply  
16 that you didn't see him?

17 A. I don't recall seeing him there.

18 Q. Okay. Let me move on to another subject. Do you  
19 know Shawn Wooden?

20 A. Yes, I do.

21 Q. How do you know him?

22 A. Shawn's grandmother lives across the street from  
23 the house where I lived in Waverly. That's how I  
24 first met him when he visited his grandmother. He was  
25 probably in high school.

1 Q. Now, what street are you talking about in Waverly?

2 A. Dogwood Street.

3 Q. Is that the home that your husband still owns?

4 A. Yes.

5 Q. What's the address there?

6 A. The address where I lived in Waverly, [REDACTED] Dogwood  
7 Street.

8 Q. When you moved to Williamsburg, did Terence go  
9 with you?

10 A. No.

11 Q. Where did he stay?

12 A. He was still residing in the home in Waverly on  
13 Dogwood Street.

14 Q. Did you visit with him from time to time?

15 A. We always kept in touch. We visited or either  
16 we'd call on the phone or he came to see me.

17 Q. Would you go there to see him occasionally?

18 A. A couple of times, not too many times in Waverly.

19 Q. More often he's coming your way?

20 A. Came my way, right.

21 Q. Did Shawn Wooden ever work for you?

22 A. Yes, he did.

23 Q. How did that come to be?

24 A. I was the executive housekeeper at a hotel in  
25 Williamsburg, and Shawn's cousin was my assistant.



1 Shawn had just come out of prison and they wanted --  
2 he wanted him to have a job. And I kept saying I  
3 didn't want to give him a job. But he kept saying,  
4 well, he was on probation, parole and give him a  
5 chance, and that's what I did. I gave him a job.

6 Q. Who made the decision to hire him, your cousin or  
7 you?

8 A. I was the one in charge, so I hired Shawn Wooden.

9 Q. With reference to your son's hairstyle back in  
10 April of 1998, did you have an occasion to see him  
11 during that period of time?

12 A. I had seen Terence that Tuesday night.

13 Q. The Tuesday night before the officer's shooting?

14 A. Right.

15 Q. Where did you see him?

16 A. He was at my home in Williamsburg.

17 Q. How did he get over there; do you know?

18 A. As a matter of fact, he was with Shawn.

19 Q. One of them drove over; is that right?

20 A. Shawn was driving his cousin's car.

21 Q. What did his hairstyle look like to you at that  
22 time? Describe it for the ladies and gentlemen of the  
23 jury, not what it looked like to you, but what that  
24 was.

25 A. He had corn rows back, and it looked like it

1 needed to be redone because I was saying something to  
2 him about he needs to get his hair redone. It was in  
3 corn rows back.

4 Q. Were there little, for lack of a better term,  
5 locks hanging off in the back?

6 A. No, maybe here. It wasn't very long.

7 Q. Was it long enough to be pulled back into a pony  
8 tail?

9 A. Not in a pony tail. He could pull it back and  
10 maybe put a little rubber band, but it wasn't what I  
11 would call a pony tail like a lady would have, no.

12 Q. All right. What about his finger nails, how did  
13 his finger nails look?

14 A. Terence had very long finger nails, very long  
15 nails.

16 Q. Did he always do that?

17 A. He'd been wearing those I guess maybe about three  
18 years before 1999.

19 Q. Did he always keep them that way?

20 A. He kept them very long, yes, he did.

21 Q. Now, let's be honest, Terence wasn't working a  
22 whole lot during the period of time leading up to  
23 April 1998, correct?

24 A. Right.

25 Q. Did you give him money?

1 A. I sent Terence money mostly every week, 15, \$20.  
2 Usually, I'd send it by Demetrius Jones, that is Shawn  
3 Wooden's cousin that worked for me, because he stayed  
4 in Spring Grove and he could get to Waverly before I  
5 could.

6 Q. So you'd send him a little bit of money?

7 A. Little bit for cigarettes, whatever, small things  
8 because he was living at home so he had shelter, so,  
9 yes.

10 Q. You spoiled him, didn't you?

11 A. That's my baby.

12 Q. Okay.

13 MR. BOATWRIGHT: Just one minute, if I could  
14 please, Judge.

15

16 (Discussion off the record)

17

18 BY MR. BOATWRIGHT:

19 Q. Are you familiar with a T-shirt that your son  
20 owned that had a marijuana leaf on the front of it and  
21 the word "blunt" written on it?

22 A. Yes.

23 Q. How did you become to be familiar with it?

24 A. I would say it was maybe two years, probably '95,  
25 '96, I redid his room in black and white, and he had

1 a lot of clothes in his drawer that weren't, you know,  
2 that weren't the right size and were small that he  
3 wasn't wearing.

4 I was cleaning them out, and I came across  
5 that T-shirt, and I asked him, what is this, you  
6 know. And I told him, I said, Terence, you're not  
7 going to wearing anything like this out in public, you  
8 know.

9 Q. You got a little mad at him, didn't you?

10 A. Yeah.

11 Q. Why?

12 A. You know, I mean, what it signified, you know. I  
13 didn't really want him wearing something with a  
14 marijuana leaf on it. So I took it out of his room  
15 and I told him I was going to use it or he could use  
16 it for rags, whatever, because he wasn't going to wear  
17 that.

18 Q. By the way, do you know Frankie Richardson?

19 A. Yes.

20 Q. What is his nickname?

21 A. They call him Tiger.

22 Q. What relation is he to you?

23 A. His mother and I are first cousins.

24 Q. Was his mother your mother's sister?

25 A. No. His mother -- Tiger's grandmother and my

1 father are sister and brother.

2 Q. Could we show her RS-1, please. Thank you. Does  
3 that look familiar to you?

4 A. Yes.

5 Q. Is that the same T-shirt you and I were just  
6 discussing?

7 A. Well, I wouldn't say it was in that shape when I  
8 saw it years ago.

9 Q. Okay. But I mean is it the same design and so  
10 forth?

11 A. Right, right.

12 Q. The last time you saw it was when approximately?

13 A. Probably in 1995, was it? I was cleaning his  
14 room, probably '95.

15 Q. What did you do with it? Did you do anything with  
16 it or did you leave it with him to deal with it?

17 A. No. It was about four or five T-shirts that had  
18 gotten too small for him, and he said, mom, I want to  
19 use these to clean sneakers. So there was a case in  
20 his room. It's a black case that has a glass front,  
21 and I put those in there.

22 MR. BOATWRIGHT: Judge, we have copies of  
23 the funeral materials, for lack of a better term, if  
24 the United States wants to have it marked.

25 THE COURT: Anybody want it as an exhibit?

1 MR. NOVAK: No. I thought he was going to  
2 do more with it, Judge. That's okay.

3 THE COURT: Okay.

4 MR. BOATWRIGHT: Good enough.

5 MR. NOVAK: If he wants it, I don't have an  
6 objection.

7 MR. BOATWRIGHT: I don't think it's  
8 necessary.

9 BY MR. BOATWRIGHT:

10 Q. Did you look at this guest register?

11 A. Yes.

12 Q. Is Mr. Ellsworth's name on it?

13 A. No, it's not.

14 Q. Did you check it pretty carefully?

15 A. Yes.

16 Q. Where was this kept? Where was it kept for people  
17 to sign in?

18 A. The undertaker had this podium that he sat right  
19 at the -- like when you come to my sister's door, it  
20 was sitting right to one side. Anybody that come in  
21 the house they could sign down there.

22 Q. So right there when you came in?

23 A. Right when you came in the door.

24 MR. BOATWRIGHT: Again, may I consult with  
25 Mr. HuYoung for a minute?

1 THE COURT: Please.

2

3 (Discussion off the record)

4

5 BY MR. BOATWRIGHT:

6 Q. Did your son ever work with you from time to time?

7 A. Yes. Well, at least Terence started working in  
8 Williamsburg before I did. He started working in  
9 Williamsburg in high school.

10 Q. He worked in Williamsburg doing what?

11 A. When he first started he worked in the laundry.

12 Q. Is this at a motel or hotel?

13 A. Right. He started working in the laundry. From  
14 there he started doing housing work in the hotel.

15 Q. What kind of --

16 A. Housekeeping, like you clean public areas. You  
17 strip the beds and things like that, empty the trash.

18 Q. How long did that go on?

19 A. I would say he first started I guess eleventh  
20 grade, and every summer from then he worked with me.

21 I started working in Williamsburg I think it was in  
22 '86. Terence probably started in '85 doing summer  
23 work. That went on for like five years, he worked in  
24 Williamsburg during the summertime.

25 Q. Is there more demand for that work in the summer

1 than there is in the winter?

2 A. Well, Williamsburg is seasonal work, usually from  
3 April to September, and, you know, you might work up  
4 until Christmas, depending on how busy it is.

5 MR. BOATWRIGHT: Thank you, ma'am. I don't  
6 have any other questions for you.

7 MR. NOVAK: I have never been shown the  
8 funeral program. May I have a chance to look at it  
9 for a second?

10 THE COURT: The program or the register?

11 MR. NOVAK: The register, I'm sorry.

12 MR. BOATWRIGHT: While Mr. Novak is looking  
13 at that, may I ask an addition question or two?

14 THE COURT: Well, it's kind of hard for him  
15 to read and listen.

16 MR. NOVAK: I was just given this, and I'd  
17 ask for a chance to --

18 THE COURT: I said it's kind of hard to read  
19 and listen. So I was giving you a chance to continue  
20 your task.

21 MR. NOVAK: Thank you. I'm sorry, Judge.  
22 I'm ready.

23 THE COURT: Now, he has a question I think  
24 he neglected to ask.

25 BY MR. BOATWRIGHT:



1 Q. Ma'am, did you ever have a conversation with Shawn  
2 Wooden about the circumstances surrounding the death  
3 of Officer Gibson?

4 A. Yes, I did.

5 Q. Did he tell you anything about whether -- the  
6 subject of whether after Terence had been arrested  
7 they had the right person or wrong person?

8 A. They told me that Terence --

9 Q. They or he?

10 A. Well, Shawn told me that Terence didn't do it,  
11 that Terence was on his sofa in his living room.

12 MR. NOVAK: Judge, I'm sorry, I didn't hear.

13 THE COURT: What?

14 BY MR. BOATWRIGHT:

15 Q. Say that again.

16 A. Shawn Wooden talked to me, which was several  
17 times, that Terence did not kill Officer Gibson, that  
18 Terence was on the sofa in his living room.

19 Q. Did he ever tell you anything different than that?

20 A. He has never told me anything different.

21 MR. BOATWRIGHT: Thank you.

22 MR. NOVAK: Does Mr. Everhart have any  
23 questions?

24 MR. EVERHART: Oh, I'm sorry, Judge. We  
25 don't have any questions.

1 THE COURT: All right.

2 MR. NOVAK: May I proceed, Your Honor?

3 THE COURT: Please.

4

5 CROSS EXAMINATION BY MR. NOVAK:

6

7 Q. Good afternoon, ma'am. How are you?

8 A. Fine.

9 Q. Taking a look at the register, it looks like there  
10 was a good bit of people there.

11 A. Yes, there was.

12 Q. It seems to me that I see 22 names per page, if my  
13 math is okay, and I see, let's see, 1, 2, 3, 4, 5, 6,  
14 7 pages with the last one not quite full. So if my  
15 math -- of course, there is a reason I'm a lawyer, but  
16 if my math is right, that's at least 140 people were  
17 at that house that day; is that right?

18 A. Well, that's the whole week.

19 Q. Okay. People would come and go; is that right?

20 A. Yes.

21 Q. But no doubt there was a substantial number of  
22 people there at the time of your mother's funeral.

23 Now, who is Queen Ellsworth?

24 A. That's William Ellsworth's mother.

25 Q. And she was there according to this?

- 1 A. She was there, yes.
- 2 Q. Do you know if her son brought her?
- 3 A. No. I didn't see her -- well, one of her sons was
- 4 there, Jimmy. I saw Jimmy there.
- 5 Q. Is it possible that William Ellsworth was there?
- 6 A. I didn't see him there.
- 7 Q. My question though is, is it possible that he was
- 8 there with all these people there?
- 9 A. I didn't see him there, and he's a cousin. I'm
- 10 sure I would have seen him.
- 11 Q. Who is Mary Ellsworth?
- 12 A. That's his sister.
- 13 Q. His sister. So Mr. Ellsworth's mother and sister
- 14 were there; is that right?
- 15 A. Yes.
- 16 Q. And Mr. Ellsworth is -- your mother was Mr.
- 17 Ellsworth's aunt, as I recall, right?
- 18 A. No. My father is Queen's uncle.
- 19 Q. So --
- 20 A. My father --
- 21 Q. What would make your mother, I'm sorry, to --
- 22 A. He wasn't related to my mother. He was related to
- 23 my father.
- 24 Q. Yes. But he's then related by marriage.
- 25 A. By marriage right. But my father was his mother's

1       uncle.

2       Q.   Okay.   So now do you know of these people, of  
3       these 140 people that were there, do you know how many  
4       of the 140 were actually at your sister's place that  
5       day?

6       A.   Well, it was -- well, no, not really because, like  
7       I said, we have family in Petersburg.  A lot of people  
8       was at the funeral, but they didn't come back to the  
9       house.

10                 MR. NOVAK:  May I approach the witness for a  
11       second, please?

12       BY MR. NOVAK:

13       Q.   Let's just start.  Would you agree with me, this  
14       is the last page of seven pages in the book, ma'am?  
15       Would you agree with that?  Do you see that the last  
16       name is Barbara Bell?  Do you know her?

17       A.   Yes.

18       Q.   Do you know what time she arrived?

19       A.   Well, I don't know.  She was -- I know she was at  
20       the funeral.

21       Q.   Okay.  Do you know what time she -- do you know if  
22       she was at Christy's place?

23       A.   Yes, for a little while.

24       Q.   Do you know if at any time she left and came back  
25       at any point?

1 A. No.

2 Q. Is it possible she did?

3 A. I wouldn't see no reason that she would have to  
4 leave unless she got to go home.

5 Q. Okay. I'm just asking. Is it possible that she  
6 could have left? You were watching her the whole  
7 time, too?

8 A. Of course not.

9 Q. Okay. What about this? Who is that?

10 A. I don't know, probably friends of my sister.

11 Q. We can go through the whole -- there is no way you  
12 could watch 140 people or that many people at the  
13 funeral all at the same time, right?

14 A. No.

15 Q. I gather at the same time -- thank you. At the  
16 same time, ma'am, you're also dealing with the grief  
17 of having lost your mother, which I gather was  
18 significant; is that right?

19 A. Yes, it was.

20 Q. And you're dealing with the shared grief that you  
21 have with your brother, brothers and sisters. Do you  
22 have more -- is it you, Christy --

23 A. One brother and one sister.

24 Q. And their families are there, too, I guess. You  
25 have nephews and nieces; is that right?

1 A. I have a niece and nephew, my sister's kids.

2 Q. By the way, at the gathering at Christy's place,  
3 were there other young men of similar age to Terence,  
4 like nephews and nieces and such?

5 A. Well, my sister's kids are my only niece and  
6 nephew.

7 Q. Well, let me just go back to my original question,  
8 which was, were there other young men, which Terence  
9 would have been, what, about twenty-nine back then?

10 A. Yes -- no.

11 Q. Twenty-eight.

12 A. Twenty-six.

13 Q. This is in '99?

14 A. Two years ago.

15 Q. Two years ago. How old did you say he was?

16 A. He's thirty. So he would have been twenty-eight.

17 Q. Okay. And were there other, say, 25 to 30 year  
18 old males that were there?

19 A. Probably, yes.

20 Q. How many do you think?

21 A. I have no idea how many.

22 Q. There were too many people there to know then; is  
23 that right?

24 A. I mean it's too many for me to say I can count  
25 them.

1 Q. More than five, for example?

2 A. Sure.

3 Q. And do you know was anybody drinking at your  
4 sister's place?

5 A. Well, if they did, it was outside. They weren't  
6 drinking inside.

7 Q. Because that would be disrespectful to that type  
8 of service; is that right?

9 A. Uh-huh.

10 Q. Do you know if any anybody did do that?

11 A. No, I don't.

12 Q. Is it possible they did do that?

13 A. It's possible people were drinking.

14 Q. Okay. Now, you just weren't in a position to see;  
15 is that right?

16 A. (Witness shaking head).

17 Q. Now, just bear with me for just a second. You  
18 know Ferrone Claiborne; is that right?

19 A. Yes.

20 Q. How do you know Ferrone Claiborne?

21 A. I guess I met Ferrone --

22 MR. EVERHART: Judge, I'm going to object,  
23 outside the scope of any direct examination. If he  
24 wants to call her on rebuttal, but I'm not sure quite  
25 how that would work.

1 MR. NOVAK: That's fine.

2 THE COURT: All right.

3 MR. EVERHART: I don't know where he's  
4 going.

5 THE COURT: She will remain available under  
6 her -- under compulsory process, and you may call her  
7 in your rebuttal case if you'd like to.

8 MR. EVERHART: Judge, I apologize for  
9 interrupting the Court. Mr. Boatwright indicates that  
10 she would like the opportunity to see the close of the  
11 trial. And with an eye towards that I will --

12 MR. NOVAK: Well --

13 MR. EVERHART: -- waive objection.

14 THE COURT: Wait just a minute. Let people  
15 finish.

16 MR. EVERHART: I'm sorry. I will waive the  
17 objection and let Mr. -- we will waive the objection  
18 and let Mr. Novak, if he wants to proceed, then he can  
19 go ahead. If he prefers not to, that's fine, too.

20 MR. NOVAK: Judge, I will continue. But in  
21 fairness to Mr. Everhart, I will tell him that I would  
22 like her to remain under subpoena even when she is  
23 done for the possibility that we may call her in  
24 rebuttal.

25 I know she wants to be here for her son, but



1 there are evidentiary reasons. I don't know what else  
2 they are going to put on, and we would like her to  
3 remain.

4 So if that affects Mr. Everhart's decision

5 --

6 MR. EVERHART: I'd ask to him to recall her  
7 then, but it's not going to make any difference.

8 Thank you.

9 MR. NOVAK: Okay.

10 THE COURT: All right.

11 BY MR. NOVAK:

12 Q. Now, you said that Shawn Wooden was at your son's  
13 -- at your house in Williamsburg that Tuesday before;  
14 is that right?

15 A. Yes, he was.

16 Q. And at that time there was -- Shawn and your son  
17 were good friend; is that right?

18 A. I wouldn't really say that they were buddy/buddy.  
19 I mean he knew Shawn, but I wouldn't say that he was  
20 Shawn's -- somebody -- Shawn and him hung around  
21 together a lot.

22 Q. Well, did you know that he was staying in Shawn's  
23 trailer that week?

24 A. I believe that's when he started staying at  
25 Shawn's house.

1 Q. Okay. Well, would you -- since he was staying at  
2 his house, would you agree with me then they must be  
3 pretty good friends?

4 A. Not tight friends, no.

5 Q. Okay. Well, let me ask you this. When they came  
6 to see you at the -- where did they see you in  
7 Williamsburg, your house or the hotel?

8 A. At my home.

9 Q. And at the time you invited them into your home;  
10 is that right?

11 A. Yes.

12 Q. And he stayed there; is that right? He stayed  
13 there for awhile with your son?

14 A. Right.

15 Q. No harsh words going on between the two of them;  
16 is that right?

17 A. No.

18 Q. Did your son indicate to you that they were having  
19 any type of problems?

20 A. No.

21 Q. Say, mom, I'm mad at this guy Wooden for some  
22 reason. He's doing this or doing that to me.

23 A. No.

24 Q. As a matter of fact, at the time of the murder you  
25 had every reason to believe that they were very good

1 friends in fact; is that right?

2 A. Well, they hung sometimes.

3 Q. Well, let me ask you this. You said that you had  
4 spoke to Shawn Wooden at some point and he said your  
5 son hadn't done it; is that right?

6 A. Yes.

7 Q. When did that conversation occur?

8 A. On the telephone.

9 Q. Okay. When was that?

10 A. I believe it was that Monday after the officer was  
11 killed.

12 Q. Okay. Any other times after that?

13 A. Well, Shawn and Jovanna talked to me for about a  
14 couple of weeks afterwards. There wasn't hardly a day  
15 when they didn't call me.

16 Q. During any of those times did they say any bad  
17 words about your son?

18 A. No.

19 Q. During those times I gather your son was in jail.  
20 He had been arrested by that time; is that right?

21 A. Yes.

22 Q. At any point did your son say any bad things about  
23 Shawn?

24 A. No.

25 Q. Did he say anything, he set me up, doing terrible

1 things or anything like that?

2 A. No.

3 Q. You had every reason to believe that as of April  
4 26th when your son was arrested that they had a good  
5 friendship; is that right?

6 A. Yes.

7 Q. Nothing wrong with their friendship at all?

8 A. No.

9 Q. Now, by the way, as of that date your son was not  
10 working; is that right?

11 A. No. He was registered with Labor Ready.

12 Q. Okay. But he was not working; is that right?

13 A. Not working at that time.

14 Q. In fact, did he have a job that lasted more than a  
15 week in the --

16 A. Yes, he did.

17 Q. When was the last time before the murder on April  
18 25th that he had a job that lasted more than a week?

19 A. Well, the last time that I know he said he had  
20 worked was for like Labor Ready. It was some type of  
21 warehouse work that they were doing. Exactly what it  
22 was, I don't know, but it was in Petersburg.

23 Q. When was that?

24 A. I don't recall.

25 Q. How many months before the murder?

1 A. I don't recall that.

2 Q. Would it be fair --

3 A. It was that year I know.

4 Q. That year?

5 A. I don't know how many months before but --

6 Q. How long did he last at that job?

7 A. Well, that's Labor Ready. I mean they call you,  
8 you know, work available.

9 Q. It's like a temp agency; is that right?

10 A. Yes.

11 Q. From 1991 to 1998, what job did he have that  
12 lasted over a month?

13 A. Like I said, Terence worked in Williamsburg.  
14 Terence had that job for like five years.

15 Q. Let's try to get a time there. When was that?  
16 That's when he was in 1986; is that right?

17 A. The first job -- the first time he worked in  
18 Williamsburg he was in eleventh grade, still in  
19 school.

20 Q. When would that have been approximately?

21 A. I don't know, eleventh grade.

22 Q. I know. What year was that? Did he graduate from  
23 high school?

24 A. Yes, he did.

25 Q. What year was that?

1 A. In '71.

2 Q. '71. So he was in eleventh grade -- '71 or '81?

3 A. '81. I can't get it straight now.

4 Q. That's all right. Take your time and be  
5 accurate. So he graduated in '81. So then it would  
6 have been '80 he was in eleventh grade then about; is  
7 that right? Well, you graduate when you're in twelfth  
8 grade, right?

9 A. Yeah, he graduated.

10 Q. I understand that. What I'm saying is if he  
11 graduated from the twelfth grade in 1981, he must have  
12 been in the eleventh grade in 1980?

13 A. Well --

14 Q. Does that make sense?

15 A. Yes. He was in the eleventh grade when he first  
16 worked at Williamsburg.

17 Q. Okay. So he worked there for about five years  
18 then; is that what you're telling us?

19 A. During the summers, right.

20 Q. All right. That takes us to 1985. What did he do  
21 after 1985?

22 A. I don't remember dates. I went to Williamsburg to  
23 work in '85 myself.

24 Q. Okay. And he was already working there?

25 A. He worked there the summer before I went to

1 Williamsburg to work.

2 Q. All right.

3 THE COURT: All right. I think we're far  
4 enough down that road.

5 BY MR. NOVAK:

6 Q. Now, let me ask you this. So you were giving him  
7 -- you have to sustain your own household  
8 financially; is that right? You have your own bills;  
9 is that right?

10 A. Yes.

11 Q. And were you living with somebody down in  
12 Williamsburg or are you by yourself?

13 A. I'm living with someone in Williamsburg.

14 Q. And are you all sharing the bills or are you  
15 paying your own bills or how is that working?

16 A. We share bills.

17 Q. So what you could afford to give to your son was  
18 about 15, \$20 a week; is that right?

19 A. Yes.

20 Q. And if he was spending beyond that, you have no  
21 idea where he was getting his money; is that right?

22 A. No.

23 Q. Now, this T-shirt that was just shown to you, that  
24 T-shirt you said you found in 1995; is that right?

25 A. Well, when I redid -- no. It was like '95 because

1 it was maybe two years before I moved to Williamsburg.

2 Q. Okay. And when did you move out or separate from  
3 your husband?

4 A. Six years ago.

5 Q. Which is 1995?

6 A. Let me get this straight. Right. So when I  
7 remodeled his room, it had to be like '93 then.

8 Q. Okay. So you remodeled his room five years before  
9 it was found then; is that right? You understand the  
10 police found that on the early morning hours the next  
11 day after the murder?

12 A. Right.

13 Q. So the shirt remained there after you left the  
14 household is my point; is that right?

15 A. Yes.

16 Q. And you have no idea what he was doing with that  
17 shirt when you weren't there; is that right?

18 A. No, not when I wasn't there, no.

19 Q. Now, can we show P-2 on the screen, please. Let  
20 me ask you, after your son was arrested on the Sunday,  
21 did you go to see him?

22 A. I went to Waverly that Monday morning.

23 Q. You saw him in custody; is that right?

24 A. They arraigned him that morning.

25 Q. Okay. Can you take a look, there is going to be a



1 picture on the screen. Would it be fair to say that  
2 that's what your son looked like back then?

3 A. Yes.

4 Q. And if we could have the side view, please. Would  
5 that photograph fairly and accurately depict what his  
6 hairstyle was back then?

7 A. Yes.

8 Q. So his corn rows were hanging down to about his  
9 neck level; is that right?

10 A. Yes.

11 Q. So if he had -- would son ever where hats?

12 A. At times.

13 Q. Would he ever wear bandanas?

14 A. Yeah.

15 Q. So if he was wearing a hat or a bandana, would it  
16 be fair to say that the corn rows that are dangling  
17 down to his neck, they would hang out below the hat or  
18 the bandana?

19 A. Yes.

20 Q. And some people could mistake that to be a pony  
21 tail; is that right?

22 MR. BOATWRIGHT: Objection. He's asking her  
23 to speculate on what some other people might think.

24 THE COURT: Sustained.

25 MR. NOVAK: That's fine. If I could have

1 just one moment, Judge. Actually, I have no further  
2 questions of Mrs. Westbrook. I appreciate your time.

3 MR. BOATWRIGHT: I have no other questions  
4 for the lady. With the Government's permission, I  
5 will hand this back to her.

6 MR. NOVAK: Yes, that's fine. I have no  
7 objection.

8 THE COURT: If you would, Mr. Mack.

9 MR. BOATWRIGHT: Thank you.

10 THE COURT: All right. Miss Westbrook, you  
11 are temporarily excused but not permanently excused  
12 because you may have to be called back. So if you  
13 will remain available for the court sessions. As soon  
14 as they know that you can come back in or leave,  
15 whichever you want to do, they will let you know.

16 Thank you, Miss Westbrook, for being with us  
17 and giving us your evidence.

18 THE WITNESS: Thank you.

19

20 (The witness was excused from the witness  
21 stand)

22

23 THE COURT: Next witness.

24 MR. HUYOUNG: Good afternoon, Your Honor,  
25 Lewis Goodwyn.

1                   LEWIS GOODWYN, having first been duly sworn,  
2 was examined and testified as follows:

3  
4                   DIRECT EXAMINATION BY MR. HUYOUNG:

5  
6 Q. Mr. Goodwyn, good afternoon, sir. You need to  
7 speak up so the ladies and gentlemen of the jury can  
8 hear you and so that we all can. Is that okay?

9 A. Okay.

10 Q. What is your name?

11 A. Lewis Goodwyn.

12 Q. Mr. Goodwyn, where do you live?

13 A. Waverly Village, Waverly, Virginia.

14 Q. You still live there now?

15 A. Yes.

16 Q. What apartment number?

17 A. [REDACTED] Amherst Lane.

18 Q. I'm going to ask you to look at one of Mr. Novak's  
19 charts there, Exhibit CS-3. I believe I got that  
20 number right. It's the aerial photo.

21                   THE COURT: Do you need a pointer?

22                   MR. HUYOUNG: Yes, please.

23 BY MR. HUYOUNG:

24 Mr. Goodwyn, do you recognize that photograph?

25 A. Yes.

1 Q. What is that?

2 A. That's the apartment complex there.

3 Q. Where do you live?

4 A. Right here in this apartment right here.

5 Q. Now, Mr. Goodwyn, you were there present on the  
6 day that the police officer was killed, were you not?

7 A. Yes.

8 Q. Did you see the police officer come in?

9 A. Yes.

10 Q. How many times did he come in? Did he come in and  
11 leave and come back in?

12 A. Yes, he came and went back out, come in and went  
13 back out and he came back in again.

14 Q. You need to keep your voice up.

15 A. Yes.

16 Q. All right. Do you recognize or do you know of who  
17 Terence Richardson is?

18 A. Yes.

19 Q. Can you identify him today?

20 A. Yes, right there.

21 MR. HUYOUNG: For the record, Judge --

22 THE COURT: All right. He identified the  
23 defendant.

24 BY MR. HUYOUNG:

25 Q. Do you also know of Ferrone Claiborne; do you know

1 who he is?

2 A. Yes.

3 Q. Can you identify him also?

4 A. Right there.

5 MR. HUYOUNG: Judge, for the record --

6 THE COURT: All right.

7 BY MR. HUYOUNG:

8 Q. Now, did you hear the shot?

9 A. Yes.

10 Q. Back in the woods?

11 A. Yes.

12 Q. Prior to that shot did you see either Terence  
13 Richardson or Ferrone Claiborne in that apartment  
14 complex anywhere?

15 A. No.

16 Q. You were sitting where or where were you?

17 A. Right here.

18 Q. And what were you doing there?

19 A. We was raking up leaves, picking up paper. We do  
20 that every morning about 5:30 every morning.

21 Q. Okay. I'm sorry, I did not hear that.

22 A. Every morning we go out there, a friend of mine,  
23 John Bolen, we get up and go out there about 5:30 and  
24 clean up around there, pick up paper and raking up  
25 around the apartment where we live.

1 Q. Okay. Now, did you see anybody walking behind  
2 your apartment complex?

3 A. No.

4 Q. Towards the woods?

5 A. No.

6 Q. Did you see anybody walking in front of your  
7 apartment complex to the woods?

8 A. No.

9 Q. After the shot, when you heard the shot, did you  
10 see anybody run out of the woods?

11 A. No.

12 Q. Did you see either of these --

13 A. No.

14 Q. -- two gentlemen run out of the woods?

15 A. No.

16 Q. Obviously, a lot of people showed up; is that  
17 correct?

18 A. Oh, yes.

19 Q. Did you appear before the grand jury? Did you  
20 come to this building before and testify before the  
21 grand jury?

22 A. Not up here, but downstairs.

23 Q. Downstairs?

24 A. Yes.

25 MR. HUYOUNG: I have no further questions.

1 Please answer Mr. Novak's questions.

2 MR. NOVAK: Judge, I think Mr. Everhart --

3 MR. EVERHART: We don't have any questions.

4 MR. HUYOUNG: I apologize.

5

6 CROSS EXAMINATION BY MR. NOVAK:

7

8 Q. Mr. Goodwyn, how are you doing today?

9 A. Fine.

10 Q. Mr. Goodwyn, how old are you?

11 A. Sixty.

12 Q. Now, you are on disability; is that right?

13 A. Yes.

14 Q. What kind of disability do you have?

15 A. Lung disease.

16 Q. You've got what?

17 A. I had lung cancer.

18 Q. Okay. So you are not working; is that right?

19 A. No.

20 Q. And would it be fair to say you regularly hang out  
21 outside of your apartment there?

22 A. Do I hang out there?

23 Q. Yes.

24 A. Yes.

25 Q. You and some of the other gentlemen in the

1 community --

2 A. Yes.

3 Q. -- sit out there and play cards? Would you take a  
4 drink every now and then?

5 A. No, I don't drink.

6 Q. No drinking. Well, let me ask you this. One of  
7 the reasons that you -- you said you know Terence  
8 Richardson; is that right?

9 A. I know him when I see him, yes.

10 Q. Where would you --

11 MR. NOVAK: Mr. Mack, if you don't mind, I  
12 want to use that if that's okay.

13 BY MR. NOVAK:

14 Q. Would you see him out there in the Waverly Village  
15 Apartments on occasion?

16 A. What you say now?

17 Q. Would you see Mr. Richardson before the murder or  
18 on the days before the murder, not the day of the  
19 murder, in the days before the murder?

20 A. I seen him a couple of times.

21 Q. Would it be fair to say that you used to see him  
22 hanging out near the playground area?

23 A. Yes.

24 Q. All right. Would it be fair to say that he was  
25 there on a pretty regular basis?



1 A. No, I couldn't say that because I didn't see him  
2 on a regular basis.

3 Q. How often do you think you'd see him hanging there  
4 at the playground?

5 A. I seen him about once or twice out there.

6 Q. Once or twice total or once or twice a week?

7 A. Three or four times at least.

8 Q. Three or four times --

9 A. All together.

10 Q. I'm sorry?

11 A. The whole time I never seen him, oh, three or four  
12 times up there.

13 Q. How long have you lived there?

14 A. I been there going on six years now.

15 Q. Okay. So when did you move in there then? It was  
16 about 1995?

17 A. Yes, in October.

18 Q. So from 1995 to 1998, when the officer was killed,  
19 you had been there for about three years?

20 A. Yes.

21 Q. And basically from '95 when you moved in there  
22 were you disabled?

23 A. Yes. When I first moved here, got sick the first  
24 year I moved up there.

25 Q. Okay. So during that time period, you'd basically

1 sit out there on a daily basis; is that right?

2 A. That's right.

3 Q. So what you're telling us is during that three  
4 years, you only saw Mr. Richardson out in that  
5 playground area on three or four occasions?

6 A. Yeah.

7 Q. Did you ever see him selling drugs?

8 A. No.

9 Q. Any possibility he was selling drugs?

10 A. No.

11 Q. No way you saw that; is that right?

12 A. No.

13 Q. How about Mr. Claiborne, did you ever see him out  
14 there?

15 A. Yes, about once or twice, the same time.

16 Q. Same amount of time?

17 A. Yeah.

18 Q. You'd see them together, as a matter of fact;  
19 isn't that right?

20 A. Yes, once or twice.

21 Q. Because they were friends. You knew they were  
22 friends; is that right?

23 A. No, I didn't know exactly they was friends. I  
24 mean I seen them a couple of times together.

25 Q. Well, do you remember testifying in front of the

1 grand jury that they were close friends?

2 A. No, I never testified they was close friends.

3 Q. You didn't say that? Let me check and make sure I  
4 don't have this wrong.

5 Do you remember me asking, top of page 8,  
6 line 1: Those guys are pretty close friends? You  
7 said: Yeah.

8 Is that a possibility that I asked that and  
9 you said that?

10 A. No, I don't remember telling you that.

11 Q. You don't remember that?

12 A. No.

13 Q. Now, in any event, you've seen Ferrone Claiborne  
14 out there as well; is that right?

15 A. Yeah.

16 Q. Where in the Village Apartments would you see him?

17 A. I seen him out here, right about here.

18 Q. Do you know a woman named Niki Coleman?

19 A. Yeah.

20 Q. Where does she live at?

21 A. She was living in this apartment here on this  
22 corner here.

23 Q. Okay. Did you ever see Ferrone Claiborne visiting  
24 her?

25 A. No.

1 Q. Never?

2 A. No.

3 Q. Now, let me ask you this. On the day of the  
4 murder, what time did you get up that day?

5 A. I was out there about 5:30, 5:30 in the morning.

6 Q. What did you do starting at 5:30?

7 A. Just started picking up papers right in here,  
8 raking up in front of the apartment here where I live.

9 Q. How long did you stay there for?

10 A. I was out there all day.

11 Q. Ever go inside? Got to use the bathroom?

12 A. Oh, probably about after the officer got shot back  
13 there, all of us was standing out there. I probably  
14 went back in my apartment about twice that day.

15 Q. Do you know how many times you went inside your  
16 apartment before the officer got killed?

17 A. I never went back in there once I came out that  
18 morning.

19 Q. So from 5:30 until noon, you never went inside  
20 your apartment?

21 A. No.

22 Q. You are just standing out there?

23 A. Yeah, just sitting around in the shade.

24 Q. Now, do you recall before the officer got shot,  
25 before all the police cars came and all that kind of

1 stuff, were other people out there that day?

2 A. Not at that time of day.

3 Q. Okay. What kind of day was it that day?

4 A. It was Saturday morning. It was kind of clear,  
5 nice and warm.

6 Q. Do you remember anybody having a birthday party  
7 for their kids out there?

8 A. No.

9 Q. Didn't see any kids out there or anything like  
10 that?

11 A. No, not at that time of morning.

12 Q. So, basically, until the police cars all started  
13 arriving, when the officer -- till the gunshot, there  
14 basically were not a whole lot of people out there; is  
15 that what you're saying?

16 A. No.

17 Q. You didn't see anybody basically?

18 A. No.

19 MR. NOVAK: Thank you, Mr. Goodwyn. I  
20 appreciate your time. Have a nice day.

21 MR. HUYOUNG: I just have a few questions.

22

23 REDIRECT EXAMINATION BY MR. HUYOUNG:

24

25 Q. Mr. Goodwyn, you answered Mr. Novak's questions

1 and you said you sat out there.

2 A. Yes.

3 Q. I guess in some chairs out there?

4 A. Yeah.

5 Q. You sit out there with your friends. Do you sit  
6 out there when it's raining?

7 A. No, not when it's raining.

8 Q. Do you sit out there when it's cold?

9 A. If it's cold in the morning, you know, the middle  
10 of the day when it warms, we'll go sit out there.

11 Q. So you don't sit out there every day?

12 A. No.

13 MR. HUYOUNG: Thank you, Your Honor.

14 THE COURT: All right. Mr. Goodwyn, thank  
15 you for being with us. You are excused and released  
16 to go about your business.

17

18 (The witness was excused from the witness  
19 stand)

20

21 THE COURT: Next witness.

22 MR. HUYOUNG: Judge, call Mr. John Bolen.

23 THE COURT: Bolen.

24 MR. HUYOUNG: B-O-L-E-N.

25 THE CLERK: Where are your witnesses at?

1 Are they down the hall?

2 THE COURT: Let's do another one if he's not  
3 available. You all need to go out there and round up  
4 -- send somebody out there to gather up your  
5 witnesses.

6 MR. HUYOUNG: Judge, I did ask them to sit  
7 down there at the end of the hallway. These chairs  
8 were taken up here. So he's sitting at the end of the  
9 hallway.

10  
11 JOHN BOLEN: Having first been duly sworn,  
12 was examined and testified as follows:

13  
14 MR. HUYOUNG: May I proceed, Your Honor?

15 THE COURT: Please.

16  
17 DIRECT EXAMINATION BY MR. HUYOUNG:

18  
19 Q. Mr. Bolen, good afternoon.

20 A. Good afternoon.

21 Q. You need to speak up now so that everyone can hear  
22 you; is that all right? Please state your name to the  
23 ladies and gentlemen of the jury.

24 A. John Bolen.

25 Q. Mr. Bolen --

1 A. Waverly, Virginia.

2 Q. Okay. Thank you. Mr. Bolen, where do you live?

3 A. [REDACTED] Amherst Lane.

4 Q. Is that in Waverly Village?

5 A. Yes.

6 Q. Do you still live there?

7 A. Yes.

8 Q. Mr. Bolen, I'm going to ask you if you remember  
9 the day that the police officer got shot. Do you  
10 remember that day?

11 A. Not really.

12 Q. Not very clearly?

13 THE COURT: Not really he said.

14 BY MR. HUYOUNG:

15 Q. Do you remember the police officer coming in that  
16 day? Were you sitting outside --

17 A. Yes.

18 Q. -- the apartment complex?

19 A. Right.

20 Q. Do you recall seeing the police officer come in to  
21 the Waverly Village Apartments?

22 A. Yes, it was.

23 Q. Do you remember how many times -- did he come in  
24 and leave and then come back in?

25 MR. NOVAK: Judge, I object to the leading,



1 if we could not lead.

2 THE COURT: Sustained, particularly in view  
3 of his first answer.

4 MR. HUYOUNG: I understand.

5 BY MR. HUYOUNG:

6 Q. Mr. Bolen, tell the ladies and gentlemen of the  
7 jury what you remember of that morning, if you  
8 remember anything.

9 A. I was sitting outside --

10 THE COURT: How about moving that up a  
11 little closer to him. Speak into that, if you would,  
12 sir. Thank you.

13 BY MR. HUYOUNG:

14 Q. Go ahead.

15 A. We were sitting outside I guess around about 7:00,  
16 7:30 and the policeman came in, and he parked on the  
17 far end of the --

18 THE COURT: I'm having trouble. I can't  
19 understand. 7:00 or 7:30 the policeman came in. Now,  
20 that's all I heard. What else?

21 THE WITNESS: Okay. I'll repeat it. We  
22 were sitting outside and the policeman came in and  
23 parked around the far side, excuse me.

24 THE COURT: Would you like some water, sir?

25 THE WITNESS: No.

1 THE COURT: All right.

2 THE WITNESS: And he left out and stayed  
3 gone for about, I'll say, approximately about ten or  
4 fifteen minutes and then came back and parked in the  
5 same area and came behind the building that time. He  
6 stayed back there for a little while, and we heard a  
7 gunshot. We heard (unintelligible)

8 BY MR. HUYOUNG:

9 Q. You need to keep your voice up, please, Mr.  
10 Bolen. Okay.

11 A. And we went back over to the woods  
12 (unintelligible).

13 THE COURT: We can't follow that. I think  
14 maybe if you lean into the mike, it might help a  
15 little bit, Mr. Bolen.

16 MR. EVERHART: Your Honor, if I may. It may  
17 be just because I have a good angle and I can see him,  
18 it might be easier if he would direct his comments  
19 toward the jury and towards the court reporter.

20 THE COURT: He's looking at Mr. HuYoung.

21 MR. EVERHART: I know he is, but it's much  
22 easier to -- I can understand because I can see him.

23 THE COURT: All right. Well, let's move the  
24 mike over on this side. Mr. Bolen, would you look  
25 this way right here.

1 MR. HUYOUNG: Maybe if I stand here.

2 BY MR. HUYOUNG:

3 Q. Now, Mr. Bolen, why don't we look at the ladies  
4 and gentlemen of the jury so that you direct your  
5 answers to them. All right.

6 THE COURT: All right. Now, you heard a  
7 gunshot, right?

8 THE WITNESS: Right.

9 THE COURT: And then what happened after you  
10 heard the gunshot?

11 THE WITNESS: We got up and went over there  
12 to the end of the building. Somebody had gotten shot  
13 at the back of the building, and we heard somebody  
14 (unintelligible).

15 THE COURT: Slow down. Wait a minute. What  
16 did you do then? You went over to the back of the  
17 building, and then what did you do, sir?

18 THE WITNESS: We went over to the edge of  
19 the woods, but we didn't go down in there where the  
20 policeman was.

21 BY MR. HUYOUNG:

22 Q. Understand.

23 A. And there was a little girl, a young lady I might  
24 say. She went over there and she said, there is a man  
25 laying over there, officer laying over there.

1 THE COURT: Said what?

2 THE WITNESS: An officer was laying over  
3 there asking for help. He's been hurt. And she ran  
4 back and --

5 BY MR. HUYOUNG:

6 Q. And that's when the police were called?

7 A. Right.

8 Q. Now, you had said -- you were out there at what  
9 time? When did you and Mr. Goodwyn go out there?

10 A. It would probably be about 7:00, 7:30.

11 Q. Is that the time when the police officer came or  
12 did the police officer --

13 A. No, it was later in the morning.

14 Q. It was later in the morning. Okay. So when you  
15 said 7:30, that's when you and Mr. Goodwyn went out  
16 there?

17 A. Right, we was outside.

18 Q. Prior to hearing the shot, the gunshot, did you  
19 see anybody out there around the -- first off, let me  
20 ask if you could look at that photograph here, Mr.  
21 Bolen, if you recognize it.

22 A. If I'm not mistaken --

23 THE COURT: All right, Mr. HuYoung.

24 BY MR. HUYOUNG:

25 Q. Mr. Bolen, do you recognize that photograph? I

1 know you've never seen it before but --

2 A. I think -- let's see. I made a mistake.

3 Q. Mr. Bolen, that's fine if you don't recognize that  
4 photograph.

5 A. That house on the back I believe it is. It was  
6 (unintelligible).

7 THE COURT: We can't hear you, sir.

8 MR. HUYOUNG: I understand.

9 BY MR. HUYOUNG:

10 Q. Mr. Bolen, that's fine. Mr. Bolen, I'll just ask  
11 one more question. Prior to the shooting, did you see  
12 anybody out there that morning?

13 A. No.

14 MR. HUYOUNG: I have no further questions.

15 MR. EVERHART: I'm sorry, Judge, we don't  
16 have any questions.

17 MR. NOVAK: Judge, we have no questions.  
18 Thank you, Mr. Bolen.

19 THE COURT: Mr. Bolen, thank you very much  
20 for being with us. You can be excused and released  
21 from your subpoena. If you wish to stay, you can stay  
22 or you can go home. Thank you very much. Don't  
23 forget your cap over there that somebody took for you.

24 THE WITNESS: Thank you.

25 THE COURT: Yes, sir. Thank you.

1 (The witness was excused from the witness  
2 stand)

3

4 THE COURT: How many more witnesses do you  
5 have this afternoon?

6 MR. BOATWRIGHT: Well, one to two, depending  
7 on how -- one shouldn't take very long at all.

8 THE COURT: All right. Let's do it.

9 MR. BOATWRIGHT: Nathan Westbrook.

10

11 NATHAN WESTBROOK, having first been duly  
12 sworn, was examined and testified as follows:

13

14 DIRECT EXAMINATION BY MR. BOATWRIGHT:

15

16 Q. Good afternoon, sir.

17 A. Good afternoon.

18 Q. Pull that thing just a little closer to you.

19 Okay. I need you to speak up loudly enough so that  
20 everybody can hear you. We're having trouble with  
21 people getting their message across. Okay.

22 A. Okay.

23 Q. Introduce yourself, please, to the twelve --  
24 pardon me, fourteen, ladies and gentlemen of the  
25 jury.

1 A. My name is Nathan Jerome Westbrook.

2 Q. Mr. Westbrook, how old are you, sir?

3 A. Fifty.

4 Q. And what is your relationship to this young man  
5 right here, Terence Richardson?

6 A. That is my son.

7 Q. Is he your biological son?

8 A. Yes, sir.

9 Q. Are you his stepfather?

10 A. No.

11 Q. You are his father?

12 A. Father, sir.

13 Q. Would you ever describe yourself to anyone as  
14 being Terence's stepfather?

15 A. No, sir.

16 Q. Would you ever describe him as being your stepson?

17 A. No.

18 Q. Back on April 25th and 26th of this year, where  
19 were you living, not this year. It's late in the  
20 day. April 25th and April 26th of 1998, where were  
21 you living?

22 A. Waverly.

23 Q. And what was your address in Waverly?

24 A. P.O. Box 666, Dogwood Street, Waverly, Virginia.

25 Q. What's the address on Dogwood Street, the house

1 number?

2 A. [REDACTED]

3 MR. BOATWRIGHT: Can we put CS-4 up there,  
4 please, that one, whatever it is.

5 BY MR. BOATWRIGHT:

6 Q. You see down there toward the bottom where it says  
7 Westbrook house?

8 A. Yes, sir.

9 Q. Is that a picture of your home?

10 A. Yes, sir.

11 Q. Is that where you were living on April 25th and  
12 26th of 1998?

13 A. Yes, sir.

14 MR. BOATWRIGHT: Thank you. We can take it  
15 back.

16 BY MR. BOATWRIGHT:

17 Q. Who lived there with you?

18 A. Me and my son.

19 Q. Was it just the two of you?

20 A. (Witness nodding head).

21 Q. Was anybody else living there besides you and  
22 Terence?

23 A. No, sir.

24 Q. You and your wife had split up sometime before  
25 that?



1 A. Yes, sir.

2 Q. Where was she living?

3 A. Williamsburg.

4 Q. Were you working at that time, sir?

5 A. Yes, sir.

6 Q. Where were you working?

7 A. Smithfield Packing.

8 Q. Where is that located?

9 A. Smithfield, Virginia.

10 Q. What do you do down there?

11 A. Well, I break jaw bones, whatever.

12 Q. Break jaw bones, okay. That's what you do, right?

13 A. Right.

14 Q. Okay. Did you give your son money from time to  
15 time?

16 A. Yes, sir.

17 Q. What kind of money, how often, that type of thing?

18 A. Well, if he asked me, a lot of times I might leave  
19 some over on the dresser, or anything I tell him that  
20 if he needs anything get what you need, whatever.

21 Q. Okay. Did you have a separate bedroom, you and  
22 Terence?

23 A. Yes.

24 Q. And was there a stereo cabinet in his bedroom?

25 A. Yes, sir.

1 Q. Among other things, was there a T-shirt in there?

2 A. Yes, sir.

3 Q. Let me show you what's been marked as RS-1,  
4 please. Does that look familiar to you, sir?

5 A. Looks a little familiar.

6 Q. Did you ever see a T-shirt like this around your  
7 house?

8 A. It had a reefer sign or a reefer leaf on it.

9 Q. Well, this one has a reefer leaf on it, doesn't  
10 it?

11 A. Yes, sir.

12 Q. All right. Were you present in your home on April  
13 26th when the police came looking for Terence, April  
14 26, 1998?

15 A. Yes, sir.

16 Q. How did you come to be aware that they were there?

17 A. How did I what?

18 Q. How did you know that they were there? How did  
19 you know the police were there at your house?

20 A. They knocked on the door.

21 Q. All right. Who answered the door?

22 A. I did.

23 Q. What did they want?

24 A. They wouldn't tell me, didn't say.

25 Q. Were they looking for Terence?

1 A. They didn't say.

2 Q. Did you allow them to look through the house to  
3 see if Terence was there?

4 A. Yes. He asked me could they look in. I said, I  
5 don't have anything to hide, so you can come in.

6 Q. Did they look through the house?

7 A. Yes, sir. They walked in. They asked -- then  
8 when they got in, they asked me, well, where is  
9 Terence. I told him back there in the back bed there  
10 across from my bedroom.

11 Q. Was he back there?

12 A. No, sir.

13 Q. That was his bedroom?

14 A. Yes, sir.

15 Q. Did they go back in the bedroom area?

16 A. Yes, sir.

17 Q. While I'm at it, how many police officials are we  
18 talking about here?

19 A. I remember four or five.

20 Q. But did you let them all in your house?

21 A. Yes, sir. They came in, all of them.

22 Q. You said they went back to the bedroom area?

23 A. Yes, sir.

24 Q. What did they do back there?

25 A. Walked in, looked, looked around, didn't mess with

1 nothing. Go to the glass cabinet, open the glass  
2 cabinet. One of the officers said, I think I have  
3 something.

4 Q. All right. What did he have?

5 A. Picked up that T-shirt.

6 Q. The T-shirt that I just showed you?

7 A. Yes, sir.

8 Q. What did they do with it?

9 A. Open it up, laid it on the bed and took a picture  
10 of it.

11 Q. Did they take one picture or did they take more  
12 pictures than that?

13 A. All I saw them take is one picture, might have  
14 took two. I know they took a picture.

15 Q. All right. Now, when I showed you that shirt,  
16 there was a sleeve missing from that shirt. Did you  
17 notice that?

18 A. Yes, sir.

19 Q. Was it like that the day they came to your house?

20 A. No, sir, not the way I saw it.

21 Q. What did it look like that day that they came and  
22 got it as far as you can recall?

23 A. When I saw it, he opened it up, it had both  
24 sleeves on it. He laid it-- opened it up and laid it  
25 on the bed and took a picture of it.

1 Q. Are you sure about that?

2 A. Yes, sir.

3 MR. BOATWRIGHT: If I could have just one  
4 moment. Thank you, Mr. Westbrook. I don't have any  
5 other questions.

6 THE COURT: Do you have anything, Mr.  
7 Everhart?

8 MR. EVERHART: Judge, I'm sorry, no.

9 THE COURT: All right.

10 MR. NOVAK: May I proceed, Your Honor?

11 THE COURT: Yes.

12

13 CROSS EXAMINATION BY MR. NOVAK:

14

15 Q. Mr. Westbrook, how are you today?

16 A. Okay.

17 Q. Mr. Westbrook, did you see the officers tear the  
18 sleeve off that shirt?

19 A. No, sir.

20 Q. And you have no reason to believe that the  
21 officers did anything wrong with that shirt while they  
22 were in your house; is that right?

23 A. No, sir, not in my house.

24 Q. Okay. Now, when was the last time you had seen  
25 that shirt?

1 A. Last time I seen it?

2 Q. Yes.

3 A. The night -- the last time I saw it the night that  
4 they took it up in the bed and took a picture of it.

5 Q. Okay. I'm sorry. When was the last time before  
6 that time you seen it?

7 A. I remember I had used it one time myself.

8 Q. You used it one time?

9 A. I used it time to time, you know, to wipe off like  
10 sneakers.

11 Q. Okay. Well, that's what I'm asking. When was the  
12 last time you saw that shirt before that basically  
13 Sunday morning, one o'clock in the morning Saturday  
14 morning. I guess you went to sleep that Saturday  
15 night, right?

16 A. Yes, late that night.

17 Q. What?

18 A. Late that Saturday night.

19 Q. Right. You go to sleep. There is a knock at your  
20 door. It's the police, right?

21 A. Yes, sir.

22 Q. You are nice enough and you let them in.

23 A. Yes, sir.

24 Q. They say, can we search, and you let them search;  
25 is that right?

1 A. No. He asked, could we come in.

2 Q. Okay. Before that night though, that's what I'm  
3 asking, when was the last time you saw that shirt?

4 A. Probably a month.

5 Q. Okay. So when you saw that shirt was it -- I  
6 guess you had it in your hands then; is that right?

7 A. Yes, sir.

8 Q. At the time that you had it in your hands, the  
9 sleeve was not torn off; is that right?

10 A. No, sir.

11 Q. No doubt about it; is that right?

12 A. I know the sleeve wasn't off it.

13 Q. Okay. Had you seen your son wearing that shirt?

14 A. No, sir.

15 Q. And when you would use that shirt to wipe off  
16 sneakers --

17 A. Yeah.

18 Q. -- did you dip it in something or do you use water  
19 or polish? What do you use?

20 A. I use water.

21 Q. Okay. So you dip the whole thing like in a bucket  
22 or something like that?

23 A. No, sir, in a sink.

24 Q. In a sink?

25 A. Yes, sir.

1 Q. So you make it wet; is that right?

2 A. Yes, sir.

3 Q. So you're basically -- and you wash it when you're  
4 done; is that right?

5 A. No, sir, I didn't.

6 Q. That's what I'm asking. When you wash the  
7 sneakers, you are saying you use this to wash your  
8 sneakers or shoes?

9 A. No, sir, wipe them off.

10 Q. All right. So you take the shirt, you put it in  
11 the sink and you get it all wet; is that right?

12 A. Yes, sir.

13 Q. And you wipe off the shoes; is that right?

14 A. Yes, squeeze it first.

15 Q. You squeeze it, right, get all the water out; is  
16 that right?

17 A. You squeeze it, lay it there and wipe it off, wipe  
18 the sneakers off, yes sir.

19 Q. And that was the last time you saw that shirt.

20 You just put it through the water, wrung it out and  
21 wiped your shoes off. And then what did you do with  
22 it?

23 A. Put it back in the glass cabinet.

24 Q. In Terence's room; is that right?

25 A. Yes, sir.



1 Q. And that was the last time you saw it; is that  
2 right?

3 A. Yes, sir.

4 MR. NOVAK: Judge, if I could just have a  
5 moment.

6 BY MR. NOVAK:

7 Q. How much money a week do you think you were giving  
8 Terence?

9 A. Off and on if he asked me. He would get money  
10 from his mother or either me. If he come to me, I  
11 give him 20, \$30.

12 Q. How much a week do you think you were giving him?

13 A. A week's time?

14 Q. Yeah. How much per week were you giving Terence?

15 A. I wouldn't give him every week.

16 Q. Okay.

17 A. If he come and ask me or either I leave it up on  
18 the dresser.

19 Q. Okay.

20 A. I leave money up on the dresser for him. I said  
21 if you need something, get what you need.

22 Q. What I'm trying to find out though, Mr. Westbrook,  
23 I'm just trying to find out how much money you were  
24 allowing him to have. How much do you think you'd  
25 give him when you'd give to him once a week, once a

1 month a month, once a year?

2 A. I give it, like I said, I give it when he asked me  
3 if he need it.

4 Q. That's what I'm trying to find out, how much?

5 A. Be 20, 30, 40, \$50, whatever.

6 Q. In a month do you think it was under 50 bucks?

7 A. Might be that. Might be more. I don't know.

8 Q. You have no idea; is that right?

9 A. When I give it to him.

10 Q. Okay, because he wasn't working then, right?

11 A. Not at the time.

12 Q. So the only source of money that he had was you  
13 and your wife; is that right?

14 A. Yes, sir.

15 Q. That you knew of; is that right?

16 A. That I know of.

17 Q. Did you ever see Ferrone Claiborne at your house?

18 A. He came up from time to time.

19 Q. How often would he come to your house?

20 A. One or two times, something like that.

21 Q. When was the last time before the murder that he  
22 was at your house?

23 A. (Unintelligible) something like that.

24 THE COURT: I can't hear and they can't  
25 hear.

1 THE WITNESS: Sir?

2 THE COURT: How long before -- let's ask it  
3 again. Please talk slowly and loudly. That will help  
4 us, sir.

5 Ask it again, Mr. Novak.

6 BY MR. NOVAK:

7 Q. When was the last time that Ferrone Claiborne was  
8 at your house?

9 A. Maybe a month, two months ago (unintelligible).

10 Q. I didn't hear the end part.

11 A. I can't say for sure exactly.

12 Q. Okay. Who was he there with?

13 A. Huh?

14 Q. Who was he there with?

15 A. He was by himself.

16 Q. When was the last time that Shawn Wooden was at  
17 your house?

18 A. I never seen Shawn.

19 Q. Never saw him there?

20 A. I never.

21 Q. Do you know if your son was friends with Shawn  
22 Wooden?

23 A. I didn't, not really.

24 Q. You have other kids; is that right?

25 A. Yes, sir.

1 Q. So your son is not your only child; is that right?

2 A. No, sir.

3 Q. How many other kids do you have?

4 A. Two.

5 Q. Are they boys or girls?

6 A. One boy and one girl.

7 Q. And how old are they?

8 A. One is seventeen, one thirteen or fourteen.

9 Q. They are younger than Terence, obviously.

10 A. Yes, sir.

11 MR. NOVAK: Thank you. I actually have no  
12 further questions.

13

14 REDIRECT EXAMINATION BY MR. BOATWRIGHT:

15

16 Q. With reference to your two other children, where  
17 do they live?

18 A. One lives in California; one lives in Waverly.

19 Q. One lives in California and one in Waverly?

20 A. Right.

21 Q. Is it the older one that lives in California?

22 A. Terence is the oldest.

23 Q. I mean of the other two children, not Terence.

24 A. The girl lives in California.

25 Q. I'm sorry?

1 A. The girl lives in California.

2 Q. Do you have any contact with her at all?

3 A. Sometimes, you know, we'll write or something like  
4 that.

5 Q. Are you under any obligation to pay child support?

6 A. I pay child support now for both of them.

7 Q. Now, you said that you used that T-shirt we have  
8 been talking about to clean your tennis shoes.

9 A. Yes, sir.

10 Q. Did you ever see Terence using it to clean his  
11 tennis shoes?

12 A. I have seen Terence use it, yes, sir.

13 MR. BOATWRIGHT: Thank you. That's all we  
14 have, sir.

15 THE COURT: Can he be excused permanently?

16 MR. BOATWRIGHT: Yes, sir.

17 MR. NOVAK: Yes.

18 THE COURT: All right. Mr. Westbrook, you  
19 are excused and you are released from your obligation  
20 to be here. You can go home and do whatever you want  
21 to or you can stay. You can stay and you can sit in  
22 the audience.

23

24 (The witness was excused from the witness  
25 stand)

1 THE COURT: I think it's about time to let  
2 the jury go home.

3 MR. BOATWRIGHT: You asked me to remind you  
4 of something, Judge.

5 THE COURT: Yes. I will do that after they  
6 leave.

7 MR. BOATWRIGHT: No, I think --

8 MR. EVERHART: To inquire --

9 THE COURT: Okay, sorry. Thank you very  
10 much.

11 Ladies and gentlemen, I had asked you to  
12 reflect on what your interest was and whether you  
13 wanted to come back Monday or work over the weekend,  
14 and I wasn't suggesting an answer. Have you discussed  
15 it?

16 THE JURY: Yes.

17 THE COURT: And you all have elected to do  
18 --

19 THE JURY: Come back Monday.

20 THE COURT: Come back Monday. Okay. That  
21 helps the lawyers know what to tell their staffs for  
22 next week and so forth, too. Thank you.

23 Drive carefully, and we will see you  
24 tomorrow. We will start at 9:00.

25 (The jury was excused for the day)

1 THE COURT: It looks like a decisive  
2 decision.

3 MR. BOATWRIGHT: I wasn't going to ask them  
4 if they are sure.

5 THE COURT: And it was unanimous.

6 All right. The one thing I was going to ask  
7 -- take up with you all was this testimony that you  
8 were talking about having Mr. Boone proffer about what  
9 he had told or what Mr. Richardson had told him.

10 When you were talking about this at the  
11 beginning of the proceedings or it may have been the  
12 hearing on Friday afternoon, I don't recall, I'm not  
13 sure I quite understood exactly or I'm not sure I  
14 rightly understood what you're offering and for what  
15 purpose, and it may make a difference under the prior  
16 consistent statement law.

17 So can you help me a little bit and give me  
18 what you are talking about and get us back on the  
19 radar screen.

20 MR. BOATWRIGHT: It's simply that Mr. Boone  
21 would simply say that every time the topic of whether  
22 Mr. Richardson did what he was charged with doing came  
23 up, Mr. Richardson denied that he was responsible for  
24 it and insisted that he was innocent, and that other  
25 than the answer that he gave to the judge during the

1 judge's voir dire at the time of the guilty plea, that  
2 was always and only what he said on that very topic.

3 THE COURT: So Mr. Boone will say beginning  
4 when? When did these prior consistent statements  
5 occur?

6 MR. BOATWRIGHT: I can't tell you an exact  
7 date, but from the beginning of his representation,  
8 which is laid out in his --

9 THE COURT: In his affidavit.

10 MR. BOATWRIGHT: In his affidavit, yes, sir,  
11 which I have to hunt around for for a moment.

12 THE COURT: Miss Hamby, will you see if you  
13 can find it over there in the file? How many of them  
14 are there and when did they occur? That's what I'm  
15 trying to -- that is not in his affidavit. I know  
16 that.

17 MR. BOATWRIGHT: No, sir, it isn't. And  
18 from talking to Mr. Boone, although I didn't ask him  
19 that exact question, I got the distinct impression he  
20 couldn't give you a number. But what happened when  
21 they met --

22 THE COURT: When did the first one occur and  
23 the last one occur? The temporal aspect of a prior  
24 inconsistent statement, a prior consistent statement  
25 offered to rebut fabrication, which is, as I



1 understand it, what you are offering and why you are  
2 offering it, the temporal factor is very important.

3 MR. BOATWRIGHT: I understand, sir.

4 THE COURT: First, are we offering a prior  
5 consistent statement for the purpose of addressing a  
6 recent fabrication? Is that what you are offering it  
7 for?

8 MR. BOATWRIGHT: Addressing an allegation of  
9 recent fabrication?

10 THE COURT: Yes, I mean under Rule  
11 801(d)(1)(B).

12 MR. BOATWRIGHT: Give me just one moment,  
13 please.

14 THE COURT: I think that's what you are  
15 saying, but it has been a while, and it's Friday, and  
16 I want to get it right.

17 MR. BOATWRIGHT: It would have to be  
18 consistent with the declarant's testimony and being  
19 offered to rebut an express or implied charge against  
20 the declarant, in this case Mr. Richardson, of recent  
21 fabrication or improper influence or motive.

22 THE COURT: We don't have improper influence  
23 or motive here.

24 MR. BOATWRIGHT: No. So it would have to be  
25 recent fabrication.

1 THE COURT: So that's the rule you are  
2 relying under to proffer this testimony --

3 MR. BOATWRIGHT: Yes, sir.

4 THE COURT: -- as I understand it.

5 MR. BOATWRIGHT: Yes, sir.

6 THE COURT: Now, so the presupposition is  
7 Mr. Richardson will testify. If he doesn't testify --

8 MR. BOATWRIGHT: Obviously, that goes out  
9 the window.

10 THE COURT: Then this goes out the window  
11 and we don't even have an issue.

12 So then the next issue is under (B) is the  
13 substantive statement consistent with his in-court  
14 testimony, and is it offered to rebut an express or  
15 implied charge against the declarant of recent  
16 fabrication. So what's your showing on that?

17 MR. BOATWRIGHT: The Government is saying  
18 that his entire statement to Special Agent Ritchie,  
19 for example, is a fabrication, that the alibi that he  
20 proffered to Special Agent Ritchie back in -- I think  
21 it was October of last year, followed up with a  
22 readoption of that I think in early November of last  
23 year, the Government is implying that entire statement  
24 is a fabrication, and its readoption is a  
25 fabrication.

1 THE COURT: Well, that's the October and  
2 November statements that are fabricated -- is the  
3 charge of fabrication; is that what time we are  
4 dealing with?

5 MR. BOATWRIGHT: Well, the Government's  
6 position is that that is indeed -- those are indeed  
7 fabrications from beginning to end.

8 THE COURT: Well, I understand. I'm saying  
9 you are talking about the two interviews with Agent  
10 Ritchie which occurred, I think, in October and  
11 November of -- two or three weeks apart in 2000.

12 MR. BOATWRIGHT: Of 2000. One first at the  
13 Deep Meadow Correctional Center and the second at the  
14 Red Onion Correctional Facility.

15 THE COURT: Okay. So that's the alleged  
16 recent fabrication.

17 MR. BOATWRIGHT: Yes, sir.

18 THE COURT: Okay. All right. Mr. Novak, do  
19 you allege that that is a recent fabrication? Is that  
20 what you've charged?

21 MR. NOVAK: Well, I think I can cut to the  
22 chase real quick and say, no, but I think it's  
23 admissible because of a recent fabrication that we are  
24 arguing is the guilty plea. And having admitted the  
25 guilty plea, I think now they are in a position to

1     rebut that.

2                   I disagree with what he said about Mr.  
3     Ritchie's report, but I do think it's admissible for  
4     the other reason, and therefore, I think you should  
5     allow it.

6                   THE COURT:    Okay.

7                   MR. NOVAK:    How does that sound?

8                   THE COURT:    That sounds like I don't have to  
9     make a decision.

10                   MR. NOVAK:    Having said that, now, of  
11     course, then the issue becomes do we get a chance to  
12     examine Mr. Boone's file.    And I'll say this, Mr.  
13     Boone has told me he's always said he was not guilty.  
14     I'll take Mr. Boone at his word.   I know they turned  
15     --

16                   THE COURT:    If that's coming in, I don't  
17     have the file.

18                   MR. NOVAK:    I thought you had the file.

19                   THE COURT:    I don't have the file.

20                   MR. BOATWRIGHT:  No.

21                   MR. NOVAK:    Would it be possible --

22                   THE COURT:    I don't have the file.    But  
23     basically anything in there that's to the contrary is  
24     fair game.

25                   MR. BOATWRIGHT:  Certainly it is, no

1 question.

2 MR. NOVAK: I was going to say this. Is  
3 there any chance that we could have the file submitted  
4 to perhaps your clerks to review the file? And if  
5 there is anything that would be a possibility for  
6 examination -- and I'm gathering the answer is no. I  
7 take Mr. Boone at his word.

8 If the answer is that there is none, perhaps  
9 they could report tomorrow morning, and then we won't  
10 -- and I'm satisfied and won't ask to look further at  
11 the file.

12 THE COURT: Do I have the file? Do you have  
13 it?

14 MR. BOATWRIGHT: I have it. Maybe I can  
15 suggest something, Judge. I might be -- if I can  
16 reexamine what I have, and I don't believe I have  
17 every last single document. I want to say that. I  
18 think Mr. Boone has a file that contains mostly his  
19 correspondence in it that I don't have.

20 THE COURT: That's pertinent.

21 MR. BOATWRIGHT: Beg your pardon?

22 THE COURT: This is pertinent.

23 MR. BOATWRIGHT: Certainly it would be.

24 THE COURT: Particularly if it's  
25 correspondence from the defendant.

1 MR. BOATWRIGHT: Certainly.

2 THE COURT: Or to the defendant.

3 MR. BOATWRIGHT: I agree. If the Court will  
4 allow me, I will -- I'm almost one hundred percent  
5 certain if I look at this tonight, I'd probably be in  
6 a position to turn it over, turn the whole thing over  
7 to Mr. Novak and let him go right through it without  
8 having to put your clerks to the task.

9 THE COURT: It's not going to be the  
10 clerks. It's going to be me.

11 MR. BOATWRIGHT: Well --

12 MR. NOVAK: Just trying to save you some  
13 work, Judge.

14 THE COURT: I know. How big is the file?

15 MR. BOATWRIGHT: It's one small notebook and  
16 one large notebook.

17 THE COURT: I can read it tonight.

18 MR. NOVAK: Well, I'm glad to read it. They  
19 said they want to give it to me. Before they do it,  
20 I'd like to colloquy the defendant on the  
21 attorney-client privilege waiver. I want to make sure  
22 this record is perfect at this point.

23 THE COURT: There is no such thing. So you  
24 have already failed in that objective.

25 MR. NOVAK: I will try to do the best I can

1 at this point.

2 THE COURT: Well, it's a laudable --

3 MR. NOVAK: Well, that's why anything that's  
4 close to them, I wouldn't want to do.

5 THE COURT: Wait a minute. Now, are you  
6 willing to have them review it and then turn it over  
7 to you because I'm not going to be reviewing it in the  
8 morning in a rush. If I'm going to review it, I'm  
9 going to review it tonight.

10 MR. NOVAK: I don't see why they should  
11 review it. Why don't we just turn it over to you and  
12 you take a look at it.

13 THE COURT: I'll look at it.

14 MR. NOVAK: Now, I gather once --

15 THE COURT: The correspondence file is how  
16 voluminous?

17 MR. BOATWRIGHT: I think it's rather small.

18 THE COURT: I will look at that in the  
19 morning early.

20 MR. BOATWRIGHT: I haven't seen it, but I  
21 think it's rather small.

22 MR. NOVAK: Judge, I assume now since you  
23 are allowing that evidence though that I have proper  
24 -- I have a full range of cross examination for which  
25 I could inquire of Mr. Boone about that area. If he

1 gets to say, my client always insisted that he wasn't  
2 guilty from the beginning, I get to cross examine him  
3 about that; is that right?

4 THE COURT: That's certainly make sense.

5 MR. NOVAK: Thank you.

6 THE COURT: You don't object to that, do  
7 you?

8 MR. BOATWRIGHT: He can ask about it all he  
9 wants because I know exactly what the answer is going  
10 to be to that.

11 THE COURT: All right.

12 MR. NOVAK: Judge, let me ask you this. I  
13 would like to ask Mr. Boone if Mr. Boone believed that  
14 his client was guilty because I believe Mr. Boone is  
15 going to answer he believed that he was guilty. May I  
16 ask that question?

17 THE COURT: I'm concerned about that.

18 MR. BOATWRIGHT: What was that?

19 THE COURT: He wants to ask Mr. Boone  
20 whether he believed Mr. Richardson was guilty.

21 MR. NOVAK: Mr. Boone has told me that  
22 that's what he would testify to. I would like to ask  
23 that question.

24 MR. BOATWRIGHT: I can't believe he would  
25 say that, given his continuing duty to be loyal to his



1 client, but his opinion doesn't matter.

2 MR. NOVAK: Well, it does matter in terms of  
3 this alleged coerced guilty plea. If he's trying --

4 THE COURT: Wait a minute. I don't think  
5 there is an -- if this is coerced, then that's a  
6 different issue. We are not talking about a coerced  
7 guilty plea.

8 We talking about a guilty plea that they say  
9 was entered to avoid punishment of a significantly  
10 greater dimension than that which he got when he pled  
11 guilty. So that's not coercion. That is the  
12 antithesis of coercion.

13 MR. NOVAK: Maybe if the story changes when  
14 the defendant hits the witness stand, maybe I would  
15 like to revisit it with the Court. How is that?

16 THE COURT: If he alleges that he was  
17 coerced into pleading guilty, then the rules are  
18 completely changed. But that is not what I believe  
19 the theory has been as posited to me.

20 MR. NOVAK: Okay.

21 THE COURT: All right. Mr. Richardson,  
22 would you stand up, please. Now, Mr. Richardson,  
23 you've heard this exchange. You heard it on Friday  
24 afternoon, as well, about whether your lawyer was  
25 going to be permitted to testify about certain things

1 that you said.

2 When you do that, you waive the  
3 attorney-client privilege. That means that anything  
4 that you said to Mr. Boone or Mr. Boone said to you  
5 can be testified to by Mr. Boone when he takes the  
6 witness stand. Do you understand that?

7 THE DEFENDANT RICHARDSON: Yes, sir.

8 THE COURT: Have you talked to Mr.  
9 Boatwright and Mr. HuYoung about whether -- about your  
10 rights, and do you understand that you have the right  
11 to say, no, I'm not going to have Mr. Boone testify or  
12 I'm not going to have Mr. Boone testify about my  
13 protestations of innocence earlier?

14 You can do either one of those things. In  
15 which event, the attorney-client privilege would not  
16 be opened the way it's going to be opened. Do you  
17 understand? Have you talked with Mr. Boatwright and  
18 Mr. HuYoung about that?

19 THE DEFENDANT RICHARDSON: Yes, sir.

20 THE COURT: Do you understand their advice?

21 THE DEFENDANT RICHARDSON: Yes, sir.

22 THE COURT: Is there anything you need to  
23 talk to them about before I make the ruling of  
24 allowing the cross examination, or are you satisfied  
25 you got all the advice you need?

1 THE DEFENDANT RICHARDSON: Yes, sir.

2 THE COURT: All right. With that said, do  
3 agree that Mr. Boone can testify and that his files  
4 will be, if otherwise appropriately discoverable,  
5 provided to the Government?

6 THE DEFENDANT RICHARDSON: Yes, sir.

7 THE COURT: All right. You think that's in  
8 your best interest?

9 THE DEFENDANT RICHARDSON: Yes, sir.

10 THE COURT: You waive the attorney-client  
11 privilege then?

12 THE DEFENDANT RICHARDSON: Yes, sir.

13 THE COURT: All right. Thank you very  
14 much. You may be seated.

15 MR. BOATWRIGHT: I will tell the Court the  
16 table of contents about what is contained in there is  
17 exactly correct if that helps you. It's mostly  
18 discovery materials that were obtained during the  
19 state court prosecution.

20 THE COURT: All right.

21 MR. NOVAK: Judge, can I bring up just one  
22 totally unrelated thing?

23 THE COURT: Yes.

24 MR. NOVAK: Obviously, Mr. Richardson made  
25 clear he intends to testify. Mr. Claiborne has not

1 made it clear. If Mr. Claiborne elects not to  
2 testify, would the Court be inclined to colloquy the  
3 defendant to ensure that he understands he has the  
4 right to testify?

5 Again, I want to make sure the record is  
6 clear so that somewhere down the road he can't ever  
7 say that somebody told him not to testify.

8 THE COURT: Both of you stand up. Mr.  
9 Richardson and Mr. Claiborne, you both understand that  
10 you have an absolute right under the Constitution of  
11 the United States not to testify at trial if you  
12 choose not to. Mr. Richardson, do you understand  
13 that?

14 THE DEFENDANT RICHARDSON: Yes, sir.

15 THE COURT: Mr. Claiborne, do you understand  
16 that?

17 THE DEFENDANT CLAIBORNE: Yes, sir.

18 THE COURT: I'm not telling you whether or  
19 trying to suggest you should or shouldn't testify.  
20 And, in fact, you have a right under the Constitution  
21 to have the jury told that if you choose not to  
22 testify that the jury cannot consider the fact that  
23 you did not testify in any way in arriving at a  
24 determination of your guilt or innocence. That is,  
25 they can't even talk about it, can't consider it. And

1 I will tell them that very straightforwardly.

2 Do you understand that, Mr. Richardson?

3 THE DEFENDANT RICHARDSON: Yes, sir.

4 THE COURT: Do you understand that, Mr.  
5 Claiborne?

6 THE DEFENDANT CLAIBORNE: Yes, sir.

7 THE COURT: Have you two talked to your  
8 lawyers, respectively, about your rights to testify  
9 and not to testify and do you understand those rights,  
10 Mr. Claiborne?

11 THE DEFENDANT CLAIBORNE: Yes, sir.

12 THE COURT: Mr. Richardson?

13 THE DEFENDANT RICHARDSON: Yes, sir.

14 THE COURT: Do either one of you have any  
15 questions that you want to ask your lawyer about what  
16 your rights are with respect to testifying or not  
17 testifying?

18 THE DEFENDANT RICHARDSON: No, sir.

19 THE DEFENDANT CLAIBORNE: No, sir.

20 THE COURT: All right. I think that takes  
21 care of it.

22 MR. NOVAK: That's fine, Judge.

23 THE COURT: Of course, you have the right to  
24 testify. You understand that. By saying that you  
25 don't have to testify, I'm not suggesting one way or

1 the other that you should or you shouldn't. But you  
 2 have the right also to testify on your own behalf, a  
 3 constitutional right as well.

4 You both understand that. Mr. Claiborne?

5 THE DEFENDANT CLAIBORNE: Yes, sir.

6 THE COURT: Mr. Richardson?

7 THE DEFENDANT CLAIBORNE: Yes, sir.

8 THE COURT: Thank you. You may be seated.

9 Anything else, gentlemen, we need to do?

10 MR. BOATWRIGHT: Nothing that I know of.

11 MR. EVERHART: No, Your Honor.

12 THE COURT: All right. Thank you. We will  
 13 be in adjournment. See you in the morning.

14

15 (At 6:00 p.m. the proceedings were  
 16 adjourned)

17

18 I, Sandra M. Beverly, certify that the  
 19 foregoing transcript is a correct record of the  
 20 proceedings taken and transcribed by me to the best of  
 21 my ability.

ORIGINAL SIGNED

22

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\_\_\_\_\_  
 Sandra M. Beverly, RPR

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 Date

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

UNITED STATES OF AMERICA,	:
	:
-vs-	:
	:
TERENCE JEROME RICHARDSON	:
and FERRONE CLAIBORNE,	:
	:
Defendants	:

: CRIMINAL ACTION  
: NO. 3:00CR383  
: June 8, 2001

VOLUME V

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

DAVID J. NOVAK, Assistant United States Attorney  
Richmond, Virginia

Counsel on behalf of the United States

BOATWRIGHT & LINKA  
Richmond, Virginia  
BY: JOHN B. BOATWRIGHT, III, ESQ.

BARNES & BATZLI  
Richmond, Virginia  
BY: MICHAEL HUYOUNG, ESQ.

Counsel on behalf of Defendant Richardson

SANDRA M. BEVERLY, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT  
Comm. Exp. D, page 960 of 1254

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RICE, EVERHART & BABER  
Richmond, Virginia  
BY: JEFFREY L. EVERHART, ESQ.

WHITE, BLACKBURN & CONTE  
Richmond, Virginia  
BY: CHARLES A. GAVIN, ESQ.

Counsel on behalf of Defendant Claiborne

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
<u>On behalf of the Defendant Claiborne:</u>				
Warren Sturup	28	--	--	--
Alonzo Scott	44	47	--	--
Jontay Shaw	62	68	82	83
Feshona Claiborne	85	89	--	--
Marilyn Claiborne	92	97	118	--
Michelle Claiborne	121	124	--	--



1 (At 8:55 a.m. the proceedings continued.)

2  
3 THE CLERK: Criminal Number 3:00CR00383, The  
4 United States of America v. Terence Jerome Richardson  
5 and Ferrone Claiborne.

6 Mr. David Novak represents the United  
7 States. Mr. John B. Boatwright, III, and Mr. Michael  
8 HuYoung represent the Defendant Terence Richardson.  
9 Mr. Jeffrey L. Everhart and Mr. Charles A. Gavin  
10 represent the Defendant Ferrone Claiborne.

11 Are counsel ready to proceed?

12 MR. NOVAK: The United States is ready, Your  
13 Honor.

14 MR. BOATWRIGHT: Ready on behalf of  
15 Mr. Richardson.

16 MR. GAVIN: Mr. Claiborne is ready, Your  
17 Honor.

18 THE COURT: I reviewed these things from the  
19 files from Mr. Boone last night, and in my judgment,  
20 the only thing that is producible is the documents in  
21 the front ten pages. Do you agree?

22 MR. BOATWRIGHT: That was my thought, yes,  
23 sir.

24 THE COURT: All right. I think we need to  
25 get it to Mr. Novak right away. Are you sure he's

1 to that, Your Honor.

2 THE COURT: Any objection?

3 MR. BOATWRIGHT: No. That's fine.

4 MR. NOVAK: I'm sorry, Judge. I didn't mean  
5 to spout off.

6 THE COURT: Giving me a suggestion is not  
7 spouting off.

8 MR. NOVAK: In a very aggressive tone. I  
9 didn't mean it. I didn't mean to be snippy is what  
10 Miss Bishop is saying.

11 THE COURT: I didn't consider it as such.  
12 At the end period of a long trial, attorneys sometimes  
13 become excitable, or at least I did.

14 MR. NOVAK: I'm an excitable guy.

15

16 (The jury returned to the courtroom)

17

18 THE COURT: Good morning, ladies and  
19 gentlemen.

20 THE JURY: Good morning.

21 THE COURT: I'm sorry to keep you waiting.  
22 There was a circumstance that had to be dealt with  
23 that I think will, in the long run, end up inuring to  
24 your more efficient presentation of evidence.

25 All right.

1 MR. BOATWRIGHT: Thank you, Judge. Good  
2 morning. If we may begin with one written and one  
3 oral stipulation, if the Court please.

4 THE COURT: All right.

5 MR. BOATWRIGHT: The written stipulation is  
6 Stipulation Number 21, which reads as follows: The  
7 parties hereby stipulate that if called to testify  
8 Brandon Gilchrist would testify that during the late  
9 evening of Saturday, April 25, 1998, he was at John  
10 Brown's trailer in Waverly, Virginia, and got into an  
11 altercation with Defendant Terence Richardson.

12 Terence Richardson was drunk at the time.  
13 Defendant Richardson told Gilchrist that he would  
14 "fuck him up" and "whoop his ass."

15 Defendant Richardson and Gilchrist were  
16 never physically close at the time of the argument.  
17 Gilchrist does not recall hearing Defendant Richardson  
18 say that he, Richardson, would kill him, Gilchrist, or  
19 that he, Richardson, had already killed someone that  
20 day.

21 That is written Stipulation Number 21.

22 THE COURT: That, ladies and gentlemen, is a  
23 stipulation of what Mr. Gilchrist would say if he were  
24 called to the witness stand to testify.

25 MR. BOATWRIGHT: Which I'd like to file with

1 the Court, if I may, please.

2 THE COURT: All right.

3 THE CLERK: I filed it.

4 MR. BOATWRIGHT: I beg your pardon?

5 THE CLERK: I've already filed it.

6 MR. BOATWRIGHT: Oh, it's already filed.

7 Thank you.

8 THE CLERK: Thank you, sir. That was a  
9 copy, yes, sir.

10 MR. BOATWRIGHT: Second, the oral  
11 stipulation would be that during the time of -- at  
12 April 25, 1998, there was an officer on the Waverly  
13 Police Department who was nicknamed Hillbilly, but  
14 that person was not Officer Allen Gibson.

15 THE COURT: All right. That's a stipulation  
16 of a matter of fact?

17 MR. BOATWRIGHT: Yes, sir.

18 MR. NOVAK: So stipulated.

19 THE COURT: All right.

20 MR. BOATWRIGHT: With that, we would call  
21 Warren Sturup.

22

23 WARREN STURUP, having first been duly  
24 sworn, was examined and testified as follows:

25

1 MR. BOATWRIGHT: If Your Honor, please.

2 THE COURT: Please.

3

4 DIRECT EXAMINATION BY MR. BOATWRIGHT:

5

6 Q. Sir, good morning. Would you please introduce  
7 yourself to these ladies and gentlemen.

8 A. My name is Warren Sturup.

9 Q. Your age, sir?

10 A. I'm forty-five.

11 Q. Back in April of 1998, were you the chief of  
12 police of the town of Waverly, Virginia?

13 A. Yes, I was.

14 Q. Sir, do you know a lady named Evette Newby?

15 A. Yes, I do.

16 Q. Sometime after the death of Officer Allen Gibson,  
17 did you have occasion to see Evette Newby at a time  
18 when you were both driving cars down the street?

19 A. Yes, I did.

20 Q. Can you estimate to the ladies and gentlemen of  
21 the jury how long after Officer Gibson's death this  
22 encounter was?

23 A. I would say it was within ten days.

24 Q. Could you describe for the ladies and gentlemen  
25 what happened? How did you come to notice her in the

1 first place, I guess is my first question.

2 A. Okay. I was on my way to a call, and I was riding  
3 behind another vehicle when all of a sudden the  
4 vehicle put on its turn signal and a hand came out of  
5 the driver's side window doing this (indicating  
6 gesture).

7 Q. For the record, you're indicating a pointing  
8 motion from the left hand, with your left hand  
9 pointing to the right; is that correct?

10 A. Correct.

11 Q. Were you in uniform at that time?

12 A. Yes, I was.

13 Q. Did you have a marked vehicle? Were you operating  
14 around in a marked police vehicle?

15 A. No, I was not.

16 Q. What did you do in response to that?

17 A. Well, when the vehicle turned right into a gravel  
18 parking lot, then I turned right behind the vehicle.

19 Q. Tell us what took place from that point forward.

20 A. The vehicle came to a stop as I was pulling in  
21 behind it. The driver got out of the vehicle and  
22 began walking back toward me. I recognized the  
23 driver.

24 Q. Who was the driver?

25 A. That was Evette Newby.

1 Q. Where did this lady live at that time?

2 A. She lived in Waverly Village Apartments.

3 Q. All right. Did you have any conversation with her  
4 at that time?

5 A. Yes, I did.

6 Q. Could you tell the ladies and gentlemen of the  
7 jury what that conversation consisted of?

8 A. Well, Evette walked back toward my vehicle, and  
9 she -- the conversation went like this. Chief, I  
10 don't know if you know, but I was going to tell Mr.  
11 Ticket, who -- that's the nickname for a sheriff's  
12 deputy.

13 Q. What's that person's --

14 A. The real name is Rick Aldridge.

15 Q. Okay. What did she say about Mr. Ticket?

16 A. Just that she was going to tell Mr. Ticket, and I  
17 asked her, tell him what? And she told me that on the  
18 way to being polygraphed --

19 MR. NOVAK: Judge, I object. This is  
20 totally beyond the bounds of what's going on and  
21 what's supposed to happen.

22 MR. BOATWRIGHT: I'm not going to --

23 THE COURT: Get a hold of the examination.

24 MR. BOATWRIGHT: Beg your pardon?

25 THE COURT: Get a hold of the examination.

1 MR. BOATWRIGHT: Yes, sir.

2 BY MR. BOATWRIGHT:

3 Q. What did she say to --

4 MR. NOVAK: May I move to strike?

5 THE COURT: Just disregard the reference to  
6 the polygraph. It doesn't make any difference whether  
7 she had one or whatever happened in it, ladies and  
8 gentlemen. Just disregard that.

9 BY MR. BOATWRIGHT:

10 Q. Let me point you in a direction, if I could. Did  
11 she say anything to you about the subject of  
12 interaction between her and members of the Sussex  
13 County Sheriff's Department?

14 A. Yes, she did.

15 Q. Tell us specifically what she said about that, if  
16 you would, please.

17 A. That she was told what to say.

18 Q. By whom, did she say?

19 A. No, she never said anything specific other than,  
20 they told me.

21 Q. Did she say that she was being told to tell the  
22 truth or something different?

23 THE COURT: Wait a minute now.

24 MR. NOVAK: Judge, I object to that.

25 THE COURT: Who is "they"? Did she say who



1 "they" were?

2 THE WITNESS: No, Your Honor, she didn't.  
3 She did not give any names. She did not give any  
4 titles. She just mentioned in transporting to the  
5 location.

6 THE COURT: All right. So she didn't even  
7 say an organization? She just said the word "they"?  
8 They told her what to say, is that what you're saying  
9 she said?

10 THE WITNESS: That's what she said.

11 THE COURT: That's all; that's all she said?

12 THE WITNESS: That was in connection with  
13 what was, I thought, stricken and that was --

14 THE COURT: About being told what to say, is  
15 that all she said?

16 THE WITNESS: That's not all she said in the  
17 conversation with me, Your Honor.

18 THE COURT: All right.

19 BY MR. BOATWRIGHT:

20 Q. Well, was there a reference to any organization?

21 A. There was a reference to an organization.

22 Q. What was that?

23 A. That would have been the Sussex County Sheriff's  
24 Office.

25 MR. NOVAK: Judge, I object unless she said

1 that.

2 THE COURT: Now, did she -- I thought you  
3 just said she didn't say Sussex County?

4 THE WITNESS: Your Honor, she did not.

5 THE COURT: If she didn't say that, then  
6 strike that, please, ladies and gentlemen.

7 MR. BOATWRIGHT: Judge, having talked to  
8 him, I know how it is that he knows that. There's a  
9 reason that he knows that.

10 THE COURT: Maybe, maybe not. Ask the  
11 question. Let's see if the question -- ask it in a  
12 proper form, and if it's objectionable, then I will  
13 sustain an objection to it. If not, you can get an  
14 answer.

15 Don't answer the question until I rule on  
16 it, please, Mr. Sturrup.

17 BY MR. BOATWRIGHT:

18 Q. Were you told directly by her what organization  
19 she was talking about?

20 THE COURT: No, no, no.

21 MR. BOATWRIGHT: I'm sorry.

22 THE COURT: Come up here, please.

23

24

25

1 BENCH CONFERENCE:

2

3 THE COURT: What is it that you're trying to  
4 do here, Mr. Boatwright?

5 MR. BOATWRIGHT: He told me that she was  
6 being transported to the examination, if you will, by  
7 members of the Sussex County Sheriff's Department and  
8 that during that trip she was told what she was  
9 supposed to say.

10 THE COURT: If he's going to say that, then  
11 just don't mention the polygraph.

12 MR. BOATWRIGHT: I didn't want him to  
13 mention that.

14 MR. NOVAK: This makes this even more  
15 objectionable, and I'll tell you why. What he's now  
16 talking about is not her statement that she testified  
17 to. She took a polygraph --

18 THE COURT: What's that?

19 MR. NOVAK: She took a polygraph on the  
20 original story that she gave about who the  
21 perpetrators was, and she failed it because she  
22 actually saw these two guys.

23 That's what they're talking about. They're  
24 talking about the early statement where she was  
25 talking about this guy Coop. He hasn't laid the

1 groundwork to impeach her current testimony. This  
2 is --

3 THE COURT: This has to be after she gave  
4 the statement you are trying to impeach. If not, I'm  
5 going to strike the testimony.

6 MR. BOATWRIGHT: I think her first statement  
7 was well before ten days after the shooting, if I'm  
8 not mistaken.

9 THE COURT: Number One, you are trying to  
10 impeach the issue, which is the one -- if they told  
11 her to tell the truth about the one they thought she  
12 was lying about, she, in fact, told the truth. It  
13 doesn't impeach her. It actually supports her  
14 testimony.

15 MR. NOVAK: Right.

16 THE COURT: So you have to establish the  
17 date of this. When was her statement that was true?

18 MR. NOVAK: It's after the ten days.

19 THE COURT: When? What day? What year?  
20 What month?

21 MR. NOVAK: I don't have the exact dates,  
22 Judge. That's his burden at this point.

23 THE COURT: I know.

24 MR. BOATWRIGHT: Well, I have her statements  
25 in the file.

1 THE COURT: You can't ask this question  
2 unless you first establish that it occurred -- that  
3 this ten-day period occurred after the statement you  
4 are trying to impeach because, otherwise, the  
5 inference -- it gives a misleading impression to the  
6 jury, and under 403, it's excludable.

7 MR. NOVAK: The other thing is at this point  
8 all he's saying is they told me to lie. She doesn't  
9 even say she did lie. There is no connection at all.

10 THE COURT: That's a matter for you to argue  
11 to the jury.

12 MR. BOATWRIGHT: What we're talking about is  
13 her testimony in this trial that she said she spoke to  
14 Chief Sturup.

15 THE COURT: Oh, no. Oh, no. We are not  
16 talking about her testimony in this trial. We are  
17 talking about -- because she didn't say that they told  
18 her to lie about this testimony. We are talking about  
19 whatever she told Sturup.

20 MR. BOATWRIGHT: She testified that she told  
21 Sturup that she was being pressured to identify  
22 Richardson as being the shooter when all she could  
23 really say was that she saw him back in the woods.

24 THE COURT: Well, that's true.

25 MR. BOATWRIGHT: And he would say that she

1 never -- she just made a general statement that she  
2 was being pressured to tell something other than the  
3 truth and that she never specified what it was, that  
4 she was not specific. She said she was --

5 THE COURT: What statement were you offering  
6 it to impeach, her testimony in court?

7 MR. BOATWRIGHT: About her statement about  
8 this very same encounter.

9 MR. NOVAK: There is no probative value.  
10 She admitted that she said that.

11 MR. BOATWRIGHT: But she went on to say that  
12 she told him what it was she was being pressured to  
13 not tell the truth about was that Terence Richardson  
14 was the shooter, when all she could say was that he  
15 was present on the scene.

16 She said she affirmatively told Chief  
17 Sturup that, and he's prepared to tell you that she  
18 did not affirmatively tell him that.

19 MR. NOVAK: Well, he's already testified to  
20 what she told him. He said there is nothing else,  
21 that they pressured me to lie. That's what he said.  
22 That's the only evidence that he knows of.

23 I renew my 403 objection. Probative value  
24 here, there is none. And, number two, I renew any  
25 hearsay objection because it doesn't impeach anything.

1 THE COURT: Well, it's being offered to  
2 impeach testimony she gave in court, I think, is what  
3 he's saying.

4 MR. BOATWRIGHT: Yes, about that very same  
5 incident. If we agree that he has said that, then  
6 fine.

7 THE COURT: He said "they."

8 MR. BOATWRIGHT: The problem is --

9 THE COURT: But he's drawing an inference as  
10 to who she meant when she said "they" from the fact  
11 that she also chronologically in the same conversation  
12 mentioned that she was in the -- that the people that  
13 had taken her to be transported were Sussex officers.

14 Now, did she -- does he say that she said  
15 that they told me to lie statement, that that came in  
16 that car?

17 MR. BOATWRIGHT: Yes, yes.

18 THE COURT: Is that your point?

19 MR. BOATWRIGHT: Yes, it occurred during  
20 that trip and that she was being taken to that  
21 examination by members of the Sussex County Sheriff's  
22 Department.

23 THE COURT: And it occurred in the car?

24 MR. BOATWRIGHT: That's what he told me.

25 THE COURT: That isn't what she said, I

1 don't think, but we'll see.

2 All right. I think you can ask the  
3 question, but just, look, were you riding somewhere  
4 with somebody or did she tell you where she was when  
5 she made that statement, and did she say who was  
6 present when she made that statement?

7 MR. BOATWRIGHT: When the statement was made  
8 to her?

9 THE COURT: Yes.

10 MR. NOVAK: Did she say that to him? Did  
11 she tell him, not whether he's guessing.

12 THE COURT: Whether she told him. Okay.

13 MR. BOATWRIGHT: Let me make sure. Did she  
14 tell him who it was that spoke to her, did it occur --

15 THE COURT: Where did she tell you she was  
16 when this statement was made to her, and who did she  
17 tell you she was with when this statement was made to  
18 her?

19 MR. NOVAK: What if his answer is going to  
20 be about the polygraph again? How about this: Did  
21 she tell you whose company she was in as to where she  
22 was?

23 THE COURT: Okay.

24 MR. NOVAK: If he answered no to those  
25 questions without -- I don't want to have another



1 sidebar -- I'd move to strike the entire testimony.

2 THE COURT: No foundation if he answers no.

3

4 END BENCH CONFERENCE

5

6 THE COURT: Mr. Sturup, just listen to the  
7 question, and answer only the question you are asked.

8

9 BY MR. BOATWRIGHT:

10 Q. Mr. Sturup, did Evette Newby tell you where she  
11 was when the statement was made to her?

12 A. Yes, she did.

13 Q. And where was she?

14 THE COURT: In a boat, in a plane, in a  
15 pool, where? That's all we want, in a what?

16 THE WITNESS: She was in a vehicle.

17 BY MR. BOATWRIGHT:

18 Q. All right. And who was with her at the time?

19 THE COURT: No.

20 BY MR. BOATWRIGHT:

21 Q. Who said it?

22 THE COURT: No. Who did she say, if anyone,  
23 was with her at that time?

24 MR. BOATWRIGHT: Thank you.

25 THE WITNESS: She did not identify

1 particularly any person.

2 BY MR. BOATWRIGHT:

3 Q. Did she say she was with --

4 THE COURT: Who, if any, organization did  
5 she say was in the car with her?

6 THE WITNESS: No, Your Honor.

7 THE COURT: She didn't say anybody was in  
8 the car with her?

9 THE WITNESS: She did not say an  
10 organization. She did not say a name.

11 THE COURT: All right.

12 MR. NOVAK: Judge, I renew my motion then.

13 MR. BOATWRIGHT: Let me ask one last  
14 question, please.

15 THE COURT: All right.

16 BY MR. BOATWRIGHT:

17 Q. Was there any identifying information given about  
18 the person or persons who made certain statements to  
19 her?

20 THE COURT: Did she give any identifying  
21 information about the person or persons who made the  
22 statements?

23 MR. BOATWRIGHT: Yes, sir.

24 THE COURT: Did she say the name of the  
25 person or what organization, if any, the person or

1 persons were with?

2 THE WITNESS: The only identifying  
3 information --

4 THE COURT: Just say yes or no to that  
5 question. Did she give the names of the person or the  
6 identity of the organizations that they were with?

7 THE WITNESS: No, she did not.

8 BY MR. BOATWRIGHT:

9 Q. Did she say what type of vehicle she was in?

10 THE COURT: That's not the same thing.

11 THE WITNESS: She did not say what type of  
12 vehicle.

13 MR. BOATWRIGHT: All right. I give up.

14 THE COURT: Ladies and gentlemen, the  
15 testimony about what Miss Newby said to Mr. Sturrup,  
16 that she was told what to say or words to that effect,  
17 is stricken and will be disregarded. It's not part of  
18 the record, and you may not take it into account in  
19 your deliberations in any way.

20 Is there anything else that needs to be  
21 asked of Mr. Sturrup?

22 MR. NOVAK: You have stricken his entire  
23 testimony; is that right, Judge? So there's nothing  
24 for me to cross examine, I believe.

25 THE COURT: So far. I don't know whether he

1 has anything else to ask him.

2 MR. NOVAK: I'm sorry.

3 MR. BOATWRIGHT: Oh, no, I don't. No, I  
4 don't.

5 THE COURT: All right.

6 MR. EVERHART: No questions, Your Honor.

7 THE COURT: None. Can he be excused?

8 MR. BOATWRIGHT: Certainly.

9 MR. NOVAK: Please.

10 THE COURT: Thank you very much,  
11 Mr. Sturup, for being with us. You are released from  
12 your subpoena, and you may go about your business.

13  
14 (The witness was excused from the witness  
15 stand.)

16  
17 MR. HUYOUNG: Good morning, Your Honor. Our  
18 next witness will be Alonzo Scott.

19  
20 ALONZO SCOTT, having first been duly sworn,  
21 was examined and testified as follows:

22  
23 MR. HUYOUNG: May I proceed, Your Honor?

24 THE COURT: Please.  
25

## DIRECT EXAMINATION BY MR. HUYOUNG:

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Q. Mr. Scott, please state your name for the ladies and gentlemen of the jury.

A. Alonzo Tyrone Scott.

Q. Mr. Scott, do you know the Defendant Terence Richardson?

A. Yes, I do.

Q. How are you related to him?

A. He's my cousin.

Q. Mr. Scott, do you remember the day that the police officer was killed in Waverly Village?

A. Yes, sir.

Q. Where were you living at that time?

A. I was living in Waverly Village, [REDACTED] Amherst Lane.

Q. All right. I want to focus your attention to the afternoon. Did there come a time when you saw Mr. Richardson?

A. Yes.

Q. And Mr. Shawn Wooden?

A. Yes.

Q. Tell the ladies and gentlemen of the jury what were the circumstances that you saw them.

A. When I seen Terence and Shawn?

Q. Correct?

1 A. It was chaotic at that time.

2 Q. Speak up so they can hear you, so the Judge and  
3 Mr. Novak and everyone can hear you.

4 A. It was chaotic at that time. There was  
5 bloodhounds, police cars, people. I mean, it was just  
6 a lot of people everywhere.

7 Q. And where were you?

8 A. I was back at my car at that time.

9 Q. Okay. And about approximately what time did you  
10 see Mr. Richardson and Mr. Wooden?

11 A. It was about one o'clock, between 1:00 and 1:30,  
12 somewhere in that area.

13 Q. And did they come up and talk to you? What did  
14 they do? What were you all doing?

15 A. I had just come from around back, and when I came  
16 back around, I started walking to my car because I was  
17 waiting on my parents to --

18 Q. Where was your car?

19 A. It was right in front of my apartment. I  
20 stayed -- my apartment was the next one from the end.  
21 And when I came back around, I saw Terence and Shawn  
22 riding up on bicycles. They came up and just started  
23 talking.

24 Q. How long were they there with you?

25 A. Approximately between 30 or 45 minutes.

1 Q. Did Mr. Richardson appear nervous, drunk or  
2 anything to that effect?

3 A. No, he was his normal, calm self. I mean, I been  
4 knowing Terence all my life, and he seemed like he had  
5 just gotten up, wasn't anything wrong.

6 MR. NOVAK: Judge, I object to the opinion.

7 THE COURT: Sustained. Ladies and  
8 gentlemen, you can disregard the expression of the  
9 opinion that it seemed that he had just gotten up and  
10 there wasn't anything wrong.

11 BY MR. HUYOUNG:

12 Q. You said that there was a lot of police officers  
13 and other personnel there. How close were you all to  
14 the police officers, the bloodhounds?

15 A. When I came back around, like I said, I seen  
16 Terence and Shawn coming up. They came up to me on  
17 the bicycles then. Actually, it was a state police  
18 right there with a bloodhound going door to door, you  
19 know, questioning people at that time. So we were  
20 right there at the officer.

21 Q. I'm asking how close were you to, say, that police  
22 officer? How close was Mr. Richardson to that police  
23 officer?

24 A. From me to you, about 10 feet.

25 Q. Did the dog bark or jump or do anything?

1 A. No.

2 MR. HUYOUNG: I have no further questions,  
3 Your Honor.

4 THE COURT: Any questions, Mr. Gavin?

5 MR. GAVIN: No, sir.

6 MR. NOVAK: Very briefly.

7

8 CROSS EXAMINATION BY MR. NOVAK:

9

10 Q. Good morning, Mr. Scott. How are you?

11 A. Good morning.

12 Q. Mr. Scott, you have no idea what your cousin did  
13 before one o'clock when you saw him; is that right?

14 A. Yes.

15 Q. That was the earliest you had seen him that day;  
16 is that right?

17 A. Yes.

18 Q. Before the police came, you were in your apartment  
19 most of the morning getting ready to go to the beach  
20 with your family; is that right?

21 A. Yes.

22 Q. You were on the phone to your mom; is that right?

23 A. I wasn't on the phone. I was just waiting on  
24 her. I had talked to her earlier. I was waiting on  
25 her to come there.



1 Q. You actually then heard a lot of sirens, and still  
2 you didn't go outside yet because you're kind of used  
3 to hearing sirens?

4 A. Yes. I be living right there by U.S. -- I mean  
5 Highway 460. I've always -- I always hear sirens all  
6 the time anyway and hear the train coming. So I  
7 didn't pay any mind to it. I was getting ready to  
8 take my trash out.

9 Q. So by the time you walked outside, it was chaos  
10 out there with all the police and all the people; is  
11 that right?

12 A. Yes.

13 Q. That's the first time you saw Mr. Richardson; is  
14 that right?

15 A. When I came back from dumping my trash, I came  
16 back around.

17 Q. You have no idea what he did earlier that day; is  
18 that right?

19 A. No.

20 MR. NOVAK: I have no further questions.  
21 Thank you, Mr. Scott.

22 MR. HUYOUNG: No further questions, Your  
23 Honor.

24 THE COURT: All right. Thank you,  
25 Mr. Scott. You can be released from your subpoena to

1 go about your business. If you want to stay in court,  
2 you're welcome to do that.

3 THE WITNESS: Thank you, sir.

4

5 (The witness was excused from the witness  
6 stand.)

7

8 MR. HUYOUNG: Your Honor, may it please the  
9 Court. Just to save some time, we were planning on  
10 bringing in some of the forensic scientists, but the  
11 Government and Mr. Richardson and us have agreed to  
12 enter into some written stipulations to --

13 THE COURT: Are these stipulations of fact  
14 or testimony?

15 MR. HUYOUNG: Stipulations of fact and also  
16 to get the laboratory reports in.

17 THE COURT: All right. These are  
18 stipulations that they have agreed to as to fact, that  
19 they have agreed have been established because, as I  
20 told you, you can accept that, but you don't have to.

21 All right, Mr. HuYoung.

22 MR. HUYOUNG: Thank you, Your Honor.

23 Stipulation Number 16: Fibers recovered  
24 from the white T-shirt, Exhibit RS-1, recovered by  
25 Virginia State Police Special Agent Alan Martell on

1 April 26, 1998, from inside the residence of Terence  
2 Richardson's father at [REDACTED] Dogwood Street in Waverly,  
3 Virginia, could not be associated with the fibers  
4 composing Officer Allen Gibson's uniform shirt and  
5 pants due to differences in physical and optical  
6 properties.

7 Certificate of Analysis from the Division of  
8 Forensic Science of the Commonwealth of Virginia dated  
9 October 5, 1998, analyzed by Eileen A. Davis, Forensic  
10 Scientist, Exhibit LB-3 can be admitted without  
11 further authentication or testimony.

12 Judge, we would ask that that report be  
13 entered as evidence.

14 THE COURT: What is the number?

15 MR. HUYOUNG: LB-3.

16 THE COURT: All right. It's admitted  
17 without objection.

18  
19 (Defendants' Exhibit LB-3 was admitted into  
20 evidence.)

21  
22 MR. HUYOUNG: I believe the other exhibits  
23 have already been entered.

24 THE COURT: All right.

25 MR. HUYOUNG: Stipulation Number 17: Human

1 DNA, which is an acronym for deoxyribonucleic acid, is  
2 a genetic material that human beings inherit from  
3 their parents. Each human being has their own unique  
4 DNA.

5 Two stains were isolated from Officer Allen  
6 Gibson's T-shirt, Exhibit GC-2, for the presence of  
7 human DNA. One stain was isolated from the T-shirt  
8 that Terence Richardson was wearing at the time of his  
9 arrest, Exhibit RS-7.

10 The DNA profile obtained from Officer  
11 Gibson's T-shirt, Exhibit GC-2, is different from the  
12 DNA profile obtained from the stain on Terence  
13 Richardson's T-shirt, Exhibit RS-7.

14 Therefore, the stains from Officer Gibson's  
15 T-shirt and the stain on Terence Richardson's T-shirt  
16 did not originate from the same individual.

17 Certificate of Analysis from the Division of  
18 Forensic Science of the Commonwealth of Virginia,  
19 dated November 30, 1998, analyzed by Brian L.  
20 Covington, Forensic Scientist, Exhibit LB-5, can be  
21 admitted without further authentication or testimony.

22 Judge, at this time we'd ask that Exhibit  
23 LB-5 be introduced. It's also my understanding that  
24 Exhibit RS-7, the T-shirt that Terence Richardson was  
25 wearing at the time of the arrest, has not been

1 introduced yet. Is that correct?

2 MR. NOVAK: That's correct.

3 MR. HUYOUNG: We would ask that that be  
4 introduced, Your Honor.

5 THE COURT: All right. LB-5 and RS-7 are  
6 admitted.

7  
8 (Defendants' Exhibits LB-5 and RS-7 were  
9 admitted into evidence.)

10  
11 MR. NOVAK: I think he misspoke. I think he  
12 said at the time of the offense. The T-shirt -- we're  
13 talking about two different T-shirts. RS-1, the  
14 marijuana one, is the one from the time of the  
15 offense. RS-7 is a T-shirt that Mr. Richardson was  
16 wearing at the time he was arrested, and that's  
17 what --

18 MR. HUYOUNG: Correct.

19 THE COURT: That's what these stipulations  
20 are addressing, the clothing at the time of arrest.

21 MR. HUYOUNG: That's correct, Your Honor.

22 THE COURT: All right.

23 MR. HUYOUNG: Stipulation Number 18: Further  
24 examinations were conducted on the two stains obtained  
25 from Officer Allen Gibson's T-shirt, Exhibit GC-2, and

1 the stain from Terence Richardson's T-shirt, which he  
2 was wearing upon his arrest, Exhibit RS-7.

3 Terence Richardson and Ferrone Claiborne are  
4 eliminated as possible contributors of genetic  
5 material detected on the stains obtained from Officer  
6 Gibson's T-shirt, Exhibit GC-2.

7 The stain on Terence Richardson's T-shirt,  
8 Exhibit RS-7, is consistent with DNA profile of  
9 Terence Richardson and different from that of Ferrone  
10 Claiborne and the DNA profile obtained from the two  
11 stains obtained from Officer Gibson's T-shirt, Exhibit  
12 GC-2.

13 Certificate of Analysis from the Division of  
14 Forensic Science of the Commonwealth of Virginia,  
15 dated May 31, 2000, analyzed by Brian L. Covington,  
16 Forensic Scientist, Exhibit LB-6, can be admitted  
17 without further authentication or testimony.

18 Judge, at this time, we would ask that that  
19 exhibit be admitted.

20 THE COURT: It's admitted. Again, we are  
21 dealing with what was on or the analysis of the  
22 T-shirt that Mr. Richardson was wearing on the date of  
23 his arrest?

24 MR. HUYOUNG: Yes, Your Honor.

25 THE COURT: All right.

1 (Defendants' Exhibit LB-6 was admitted into  
2 evidence.)

3  
4 MR. HUYOUNG: Stipulation Number 19: Two  
5 hair fragments exhibiting Negroid racial  
6 characteristics were found on Allen Gibson's pants and  
7 socks, Exhibits GC-3 and GC-4. These hairs are not  
8 suitable for meaningful microscopic comparison  
9 purposes.

10 A brown Caucasian body area hair and a brown  
11 Caucasian hair fragment were found on the jeans and  
12 socks worn by Terence Richardson upon his arrest.  
13 These hairs are not suitable for meaningful  
14 microscopic comparison purposes.

15 However, human DNA analysis were performed  
16 on these hair fragments, and they concluded that  
17 Ferrone Claiborne, Terence Richardson and Allen Gibson  
18 can be eliminated as a source of the hair fragments  
19 found on the above clothing.

20 Federal Bureau of Investigation Laboratory  
21 Report, dated July 6, 2000, Exhibit LB-8, analyzed by  
22 Karen A. Lanning, Forensic Scientist, and Federal  
23 Bureau of Investigation Laboratory Report, dated  
24 October 2, 2000, Exhibit LB-9, analyzed by Alice R.  
25 Isenberg can be admitted without further

1 authentication or testimony.

2 We'd ask that those exhibits be entered.

3 THE COURT: Is that a stipulation in  
4 writing?

5 MR. HUYOUNG: Yes.

6 THE COURT: When it said that the  
7 analysis -- that Mr. Richardson, Officer Gibson and  
8 Mr. Claiborne were eliminated as the people who  
9 contributed those --

10 MR. HUYOUNG: Hair fragments.

11 THE COURT: -- hair fragments, were they  
12 talking about the hair on Officer Gibson's clothes as  
13 well as the hair on the jeans of Mr. Richardson?

14 MR. HUYOUNG: That is correct.

15 THE COURT: Do you agree with that,  
16 Mr. Novak, just so we're clear?

17 MR. NOVAK: Uh-huh.

18 THE COURT: All right.

19

20 (Defendants' Exhibits LB-8 and LB-9 were  
21 admitted into evidence).

22

23 MR. HUYOUNG: Stipulation Number 20: On  
24 April 26, 1998, Terence Richardson was arrested by law  
25 enforcement authorities. At the time of his arrest,



1 Terence Richardson was wearing a plaid shirt, Exhibit  
2 RS-4, a pair of jeans, Exhibit RS-5, a bandanna,  
3 Exhibit RS-6, and socks, T-shirt, sneakers and briefs,  
4 Exhibit RS-7.

5 The Sussex County Sheriff's Department  
6 obtained Terence Richardson's clothing and submitted  
7 them to the laboratory for analysis. The above  
8 mentioned clothing can be introduced into evidence  
9 without further authentication or testimony.

10 THE COURT: That's RS-4, 5, 6 and 7?

11 MR. HUYOUNG: Yes, Your Honor.

12 THE COURT: They're admitted without  
13 objection.

14  
15 (Defendants' Exhibits RS-4, RS-5, RS-6 and  
16 RS-7 are admitted into evidence.)

17  
18 MR. HUYOUNG: That's all the stipulations.  
19 Thank you, Your Honor.

20 THE COURT: All right. Next witness.

21 MR. BOATWRIGHT: I think it's reached the  
22 point where it's time to go to Mr. Claiborne's  
23 evidence.

24 THE COURT: Ladies and gentlemen, what we're  
25 going to do is take some of the evidence a little bit

1 out of order. There are a couple of extra witnesses  
2 to be called in the case to be presented by  
3 Mr. Richardson.

4 However, there are certain things that have  
5 to happen before that testimony can be presented. It  
6 is best if we minimize the intrusion on your time and  
7 to improve the efficiency of the trial if we let that  
8 event take place over the lunch hour and then you hear  
9 the testimony.

10 And so for that purpose, what we're going to  
11 do now is leave the case of the defense involving  
12 Mr. Richardson until we come back to his testimony and  
13 begin the defense involving Mr. Claiborne.

14 All right. And the counsel have agreed to  
15 do that. This is all being done with their  
16 suggestions and agreement.

17 Yes, Mr. Gavin.

18 MR. GAVIN: May it please the Court. First  
19 of all, we have an oral stipulation regarding  
20 testimony.

21 THE COURT: This is a stipulation of what  
22 someone would say?

23 MR. GAVIN: Yes, sir. This is an oral  
24 stipulation of what Assistant United States Attorney  
25 Bob Trono would say if called regarding Derrick

1 Marshall, who was the Government's last witness.

2 THE COURT: All right. This is testimony --

3 UNIDENTIFIED JUROR: I'm sorry. Would you  
4 please repeat. We couldn't hear what he said.

5 THE COURT: Yes. It's the testimony of  
6 Assistant United States Attorney Robert Trono,  
7 T-R-O-N-O.

8 MR. GAVIN: That's correct.

9 THE COURT: Mr. Trono is in the same office  
10 as Mr. Novak here in the Eastern District of Virginia,  
11 and he's going to testify to something about  
12 Mr. Derrick Marshall, who was the witness you heard  
13 yesterday afternoon.

14 Is that correct, Mr. Gavin?

15 MR. GAVIN: Yes, sir, it is.

16 Judge, the stipulation would be that Derrick  
17 Marshall has been told that Assistant United States  
18 Attorney Bob Trono would write a letter to the state  
19 board handling Marshall's probation violation  
20 detailing the full extent of Marshall's cooperation  
21 with the Government, and that's it, Judge.

22 THE COURT: All right.

23 MR. GAVIN: Judge, the next one would be a  
24 written stipulation of testimony.

25 THE COURT: This is another witness?

1 MR. GAVIN: Yes, sir, Mr. Michael Morchower,  
2 written stipulation Number 23.

3 THE COURT: All right. Now, ladies and  
4 gentlemen, this again is what Mr. Morchower would  
5 testify to if he were to be in court, and the written  
6 stipulations you'll have back with you. But it's  
7 helpful, I think, to have them read to you as well.

8 This is what Mr. Morchower would testify to  
9 if he were called to testify and were on the witness  
10 stand. He was the lawyer for Mr. Claiborne in the  
11 state proceedings that we have been talking about.

12 MR. GAVIN: Yes, sir.

13 THE COURT: All right.

14 MR. GAVIN: Mr. Morchower will state as  
15 follows: On April 28, 1998, Ferrone Claiborne was  
16 arrested and charged with the capital murder of Police  
17 Officer Allen Gibson. He was held without bond.

18 Two, that Ferrone Claiborne retained the  
19 services of Michael Morchower to represent him in the  
20 capital murder offense.

21 Three, that prior to trial on December 9,  
22 1998, for capital murder, the Commonwealth's Attorney  
23 for Sussex County advised Mr. Morchower that he would  
24 be willing to reduce the capital murder offense to a  
25 misdemeanor charge, accessory after the fact.

1 THE COURT: Go slow now. I think they are  
2 trying to follow you.

3 MR. GAVIN: I'm sorry.

4 THE COURT: And a lot of these things are so  
5 familiar to you all that it's easy to articulate them  
6 quickly. And even though you're not speaking too fast  
7 for the court reporter, remember, they're hearing  
8 these things for the first time. So you might want to  
9 go back a couple of paragraphs and begin repeating.

10 MR. GAVIN: I think I'll start with the  
11 third one.

12 THE COURT: Okay, whichever.

13 MR. GAVIN: I apologize, ladies and  
14 gentlemen.

15 MR. NOVAK: I've been telling him to slow  
16 down.

17 MR. GAVIN: I learned from the best.

18 Prior to trial on December 9, 1998, for the  
19 capital murder, the Commonwealth's Attorney for Sussex  
20 County advised Mr. Morchower that he would be willing  
21 to reduce the capital murder offense to a misdemeanor  
22 charge of accessory after the fact, which is a  
23 misdemeanor in Virginia with a maximum term of  
24 incarceration of twelve months.

25 Number Four, that in Sussex County, inmates

1 incarcerated on misdemeanors are entitled to a  
2 50 percent reduction of their sentence so long as they  
3 are of good behavior.

4 Accordingly, the maximum term of  
5 incarceration that Ferrone Claiborne would have served  
6 on the misdemeanor would have been six months.

7 Next one: Upon Mr. Morchower's advice, the  
8 Defendant Ferrone Claiborne pled guilty to the charge  
9 of accessory after the fact, was sentenced to time  
10 served and was released shortly after sentencing.

11 That's it, Judge.

12 THE COURT: What stipulation is that?

13 MR. GAVIN: That's Number 23, if I may  
14 submit that for the record.

15 THE COURT: Please tender that for the  
16 record.

17 MR. GAVIN: I would like to call as our  
18 first witness Jontay Shaw.

19 THE COURT: Jontay Shaw. Do you have  
20 another witness, Mr. Everhart, you're willing to  
21 pursue?

22 MR. EVERHART: Sitting right there on the  
23 bench. I'll be glad to go, Judge, if you want.

24 THE COURT: Mr. Trono is out here. Do you  
25 want him? Do you want to release Mr. Trono?

1 may go about your business. It's up to you.

2  
3 (The witness was excused from the witness  
4 stand.)

5  
6 MR. EVERHART: Judge, may I speak to  
7 Mr. Novak for a second?

8  
9 (Discussion off the record).

10  
11 MR. EVERHART: May it please the Court, Your  
12 Honor, we have two stipulations, please.

13 THE COURT: All right.

14 MR. EVERHART: First, a stipulation of fact  
15 that is reduced to writing. It will be Stipulation  
16 Number 22, that is that the parties stipulate the  
17 following:

18 A, a Burger King restaurant was located at  
19 the corner of Main Street and 460 in Waverly --  
20 Judge, it says "Waverly Street." I think it should be  
21 "Waverly, Virginia." With the Court's permission, I  
22 will delete "Street" and put in "Virginia."

23 MR. NOVAK: No objection, Your Honor.

24 MR. EVERHART: -- on April 25, 1998. I'm  
25 just going to abbreviate "Virginia," Your Honor, if

1 that's okay.

2 THE COURT: Okay.

3 MR. EVERHART: B, that on April 25, 1998, in  
4 accordance with the restaurant's usual practices, it  
5 stopped serving breakfast at eleven o'clock a.m.

6 C, that on April 25, 1998, the breakfast  
7 menu included sausage biscuits, which was a regular  
8 item on the menu at that time.

9 We would offer that as Stipulation  
10 Number 22, please.

11 MR. NOVAK: So stipulated.

12 THE COURT: All right.

13 MR. EVERHART: Judge, I'd like to tender  
14 that to the clerk for entry. Judge, we also have a  
15 stipulation as to testimony.

16 THE COURT: All right.

17 MR. EVERHART: If the Court would allow, if  
18 Investigator Tommy Cheeks, who has previously  
19 testified, was recalled, he would testify that on  
20 April the 26th of 1998, he participated in the  
21 interview of Evette Newby.

22 Miss Newby gave a description. She  
23 described the three as, one, Terence Richardson, T,  
24 lives on Dogwood Street, BM, black male, early  
25 twenties, blue jeans and a white T-shirt with green on



1 it, braided dreads with dark cap, medium sized, it  
2 appears, Your Honor, with a D on the end of it.

3 Two, Coop Falls, mother Brenda Turner, BM,  
4 black male, early twenties, blue jeans, blue shirt,  
5 small dreadlocks, tall and muscular.

6 Three, UNK, unknown BM, black male, early  
7 twenties, light skinned, "poppy," with parentheses  
8 around it -- or quotations, I'm sorry, around it --  
9 eyes and "knot," again with quotations, then  
10 parenthetically, small dreads starting, end  
11 parenthesis, skinny and taller than T but shorter than  
12 Coop.

13 That would be the stipulation as to the  
14 testimony. Thank you.

15 THE COURT: That's what Officer Cheeks would  
16 testify to if he were recalled?

17 MR. EVERHART: Yes, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. NOVAK: So stipulated.

20 THE COURT: So stipulated.

21 MR. EVERHART: If I could have just one  
22 moment, please.

23 THE COURT: All right.

24 MR. EVERHART: Your Honor, Ferrone Claiborne  
25 rests.

1 could go ahead and give closing arguments this  
2 afternoon and have the jury instructions on Monday,  
3 but nobody wants to do that.

4 MR. EVERHART: I'll say I'd prefer not to  
5 have to do that.

6 THE COURT: All right. Call the jury back  
7 in. You'll give a better closing argument right now  
8 than at any other time in the case, I submit to you.

9 MR. EVERHART: Probably so.

10 THE COURT: How long do you expect your  
11 closing to be?

12 MR. NOVAK: Well, anything I say, you have  
13 to double. So I'm going to say 45 minutes, Your  
14 Honor.

15  
16 (The jury returned to the courtroom.)

17  
18 THE COURT: All right. Mr. Boatwright.

19 MR. BOATWRIGHT: Thank you, Judge. With the  
20 Court's permission, I'd like to read to the jury what  
21 will eventually be filed as Stipulation Number 24.  
22 Stipulation Number 24 is this --

23 THE COURT: Give them a chance to --

24 MR. BOATWRIGHT: I'm sorry.

25 THE COURT: Okay. Go ahead.

1 MR. BOATWRIGHT: What's the last numbered  
2 stipulation.?

3 THE CLERK: I'm not following that. We'll  
4 get a number for you later.

5 MR. BOATWRIGHT: For now, it's marked 24,  
6 and if you find out later on it needs to be changed,  
7 we'll do that.

8 It reads as follows: One, on April 26,  
9 1998, Terence Richardson was arrested and charged with  
10 capital murder of Waverly Police Officer Allen Gibson,  
11 Jr.

12 Two, soon thereafter, Terence Richardson's  
13 family retained David Boone to represent him in the  
14 capital murder offense.

15 Three, prior to trial on December 8, 1999,  
16 the Commonwealth's Attorney for Sussex County advised  
17 Mr. Boone that he would be willing to enter into an  
18 agreement with the defendant that allowed the  
19 defendant to plead guilty to involuntary manslaughter,  
20 which is a felony in Virginia, with the maximum term  
21 of incarceration of ten years.

22 Four, after consulting with Mr. Boone,  
23 Defendant Terence Richardson pled guilty on  
24 December 8, 1999, to involuntary manslaughter and was  
25 eventually sentenced to five years imprisonment.

1           That is the entirety of the stipulation.  
2 With that, Mr. Richardson rests.

3           MR. NOVAK: Judge, I just actually noted on  
4 the Stipulation Number 23 while I was listening to  
5 that one I had the date wrong.

6           When Mr. Everhart read it, I think it said  
7 December 9, 1998. It should have been December 8,  
8 1999. Can we amend that?

9           MR. EVERHART: I don't have any objection to  
10 that being corrected.

11           MR. NOVAK: We have no rebuttal, and we  
12 would rest.

13           THE COURT: Can I see counsel up here a  
14 minute?

15           MR. EVERHART: All counsel?

16           THE COURT: All of you.

17  
18           BENCH CONFERENCE:

19  
20           THE COURT: As I understand our posture of  
21 this matter, neither defendant has testified and there  
22 is no alibi defense that was proffered; is that  
23 correct?

24           MR. EVERHART: I thought we put on alibi  
25 through two witnesses, Marilyn Claiborne and Michelle

1 opportunity to do that.

2 THE COURT: Well, I have learned a complete  
3 lesson on this occasion. There will never be another  
4 one of these cases where anybody gets to put in  
5 preemptive strikes. Put it in the order it's intended  
6 to be put in so we don't have these complicated  
7 problems.

8 If you say that you don't have any concern  
9 about it, that's fine. Go ahead and argue it that  
10 way. But I think it turns the whole system on its  
11 head to do what's been done here. All right.

12 MR. BOATWRIGHT: Thank you, sir.

13

14 END BENCH CONFERENCE

15

16 THE COURT: Ladies and gentlemen, the  
17 evidence in the case has been ended. I had thought it  
18 was going to end later. I'm going to need some time  
19 with the lawyers.

20 When I finish with the lawyers, it's going  
21 to be late, and I think that it's probably preferable  
22 that what we do is let me work with the lawyers this  
23 afternoon.

24 You all go on home. Then come back on  
25 Monday morning, and we'll start our proceedings at

1 nine o'clock on Monday morning. And then you will  
2 hear -- what will happen is you will hear closing  
3 arguments, and then you will hear instructions, and  
4 then you will retire to deliberate.

5 If we start at 9:00, it's my expectation  
6 that you will have the case by noon at the latest.  
7 Maybe we'll send for lunch so you can begin  
8 deliberating, and then you can deliberate as long as  
9 you want to.

10 So the first thing I would do is park  
11 someplace on Monday where you don't have to go back  
12 and get your car at 6:00. If you're going to be late,  
13 you can go get your car while it's light, and we'll  
14 have a place for you to park here.

15 And you can stay as long as you want to stay  
16 within reason, and you can come back the next day.  
17 I'm not suggesting how long you should deliberate.  
18 I'm just saying that will all be in your hands.

19 I think we will follow that schedule, and it  
20 will allow you to have more productive use of your  
21 time than sit around waiting while I talk with the  
22 lawyers.

23 So have a nice weekend, and please remember  
24 to keep yourselves free from exposure to the media.  
25 We'll see you on Monday morning at nine o'clock. If

1 you will please give your pads to Mr. Neal, he'll keep  
2 them until you return. Have a nice weekend.

3  
4 (The jury was for the day.)

5  
6 THE COURT: Mr. Novak, you're right. It was  
7 not a hearsay statement. It's just that the statement  
8 that Mr. Richardson made just isn't relevant until  
9 it's put into play, unless it's relevant for  
10 consciousness of guilt. So it's available for a  
11 limited purpose, not for substantive evidence, even  
12 though it's not hearsay.

13 MR. NOVAK: That's what I'm saying, Judge.

14 THE COURT: On the relevance principles. So  
15 I was wrong in stating it was hearsay. But with  
16 respect to the other matters, I still feel the way I  
17 feel about letting you all deal with it.

18 Since you all have decided that's the way  
19 you want to proceed, I'll let you proceed that way.

20 MR. NOVAK: Thank you, Judge. I will say  
21 this, Judge. I do feel very comfortable with the  
22 position I told you on that, for whatever that's  
23 worth.

24 I've been down this road once before on this  
25 and researched the area pretty thoroughly back then

a

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF VIRGINIA  
3 RICHMOND DIVISION

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UNITED STATES OF AMERICA,

v.

TERENCE JEROME RICHARDSON AND  
FERRONE CLAIBORNE,

Defendants.

Criminal No.  
3:00CR00383

June 11, 2001

VOLUME VI

COMPLETE TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

DIANE J. DAFFRON, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT



1 APPEARANCES:2 DAVID NOVAK, Assistant United States Attorney  
3 Richmond, Virginia

4 Counsel on behalf of the United States

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6 Richmond, Virginia  
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8 Counsel on behalf of Defendant Richardson

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20 Counsel on behalf of Defendant Claiborne

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1 (The proceedings in this matter recommenced  
2 at 9:05 a.m.)

3

4 THE CLERK: Criminal No. 3:00CR00383, the  
5 United States of America v. Terence Jerome Richardson  
6 and Ferrone Claiborne. Mr. David Novak represents the  
7 United States.

8 Mr. John B. Boatwright and Mr. Michael  
9 HuYoung represent the defendant, Terence Jerome  
10 Richardson. Mr. Jeffrey L. Everhart and Mr. Charles  
11 A. Gavin represent the defendant, Ferrone Claiborne.

12 Are counsel ready to proceed?

13 MR. NOVAK: The United States is ready, Your  
14 Honor.

15 MR. BOATWRIGHT: Ready on behalf of  
16 Mr. Richardson.

17 MR. EVERHART: Defendant Claiborne is  
18 prepared.

19 THE COURT: All right. For those of you  
20 sitting back there, they are going to bring some  
21 folding chairs in through the conference room, and  
22 that won't be too long, I don't think.

23 Good morning, ladies and gentlemen.

24 THE JURY: Good morning.

25 THE COURT: All right. We're now at the

1 part in the trial where you will hear the closing  
2 arguments of the lawyers.

3 As I told you, that is the time that the  
4 lawyers have to argue to you what they think has been  
5 proved by the evidence, and it's a time when they  
6 explain to you why they think you ought to rule in  
7 favor of their clients.

8 And that's important to you because it helps  
9 you understand how the different sides view the  
10 evidence, and it helps you understand how to  
11 synthesize the evidence. And it's an important part  
12 of the trial.

13 But remember what I said. What they say in  
14 the closing arguments is not the evidence. It's what  
15 you heard from the witness stand, what was in the  
16 stipulations and what's in the things that have been  
17 admitted in to evidence.

18 I notice that those curtains are -- I mean  
19 those blinds are wide open. Is that bothering  
20 anybody? Is it reflecting? Have you checked to see  
21 whether you're looking into the sun there, Mr. Novak  
22 and Mr. Everhart and Mr. Boatwright and whether you  
23 need it closed?

24 MR. NOVAK: Judge, I think we're fine.

25 MR. EVERHART: We're fine.

1 THE COURT: Thank you. With that,  
2 Mr. Novak.

3

4 MR. NOVAK: Thank you, Your Honor. May it  
5 please the Court, counsel. Good morning, ladies and  
6 gentlemen.

7 The end is almost near, and I want to take  
8 this opportunity to thank you for your patience and  
9 for your attentiveness throughout this trial. While  
10 you have been watching us, every now and then I snuck  
11 a peek over there at you guys and I noticed that each  
12 and every one of have you been watching throughout  
13 this trial. And that's all the United States asks  
14 for. We ask for a verdict based upon the evidence  
15 that we presented to you over the past week. Nothing  
16 more and nothing less.

17 We're about to ask you to render a verdict,  
18 and you may or may not know that the word "verdict" is  
19 derived from the Latin word "veredictum," which means  
20 speak the truth or true saying. And that's what your  
21 responsibility is here today, to speak the truth as to  
22 what these defendants did, as to their drug  
23 trafficking activities, and as to their role in the  
24 murder of Police Officer Alan Gibson back on April the  
25 25th of 1998.

1           So how do you go about that? How do you  
2 determine exactly what the truth is in this case? I  
3 suggest to you there's one very easy mechanism that  
4 can get you on that road to the truth, and it simply  
5 is to use your common sense, a God-given ability that  
6 you use each and every day to separate fact from  
7 fiction. And there's no more appropriate place to  
8 begin by using that common sense than with Count One  
9 of the indictment.

10           As you know by now, both defendants are  
11 charged in Count One with participating in a  
12 conspiracy to distribute more than 50 grams of crack  
13 cocaine. Essentially, you have to determine whether  
14 these defendants sold crack cocaine and whether they  
15 did it in concert where they did it with a common  
16 agreement.

17           As I told you in my opening statement, and  
18 as Judge Payne is going to instruct you later on this  
19 morning, there need not be a formal agreement because  
20 criminals just don't do that. They don't just wake up  
21 in the morning and sign an agreement and say, "Hey,  
22 let's go out and commit a crime today." They work in  
23 concert.

24           And what did you hear in this case that  
25 leads you to believe that they sold drugs and that

1 they worked in concert together? You heard a number  
2 of pieces of evidence. Let's start with No. 1.  
3 Number 1, and I don't think this has been contested,  
4 in fact you heard stipulations about this. Both of  
5 these defendants are essentially bums. They don't  
6 work. They are running the streets all the time. The  
7 only money that they ever get is the few handouts that  
8 they get from their parents. You heard, I think,  
9 Mr. Westbrook talk about 15, 20 bucks here and there.  
10 You heard a stipulation from Mr. Claiborne, Ferrone  
11 Claiborne's father, that again, his son has had no  
12 steady employment.

13 In fact, when we were talking to  
14 Mrs. Westbrook on the witness stand, when I started  
15 tracing back the last time he had a steady job, we  
16 were talking about 1985. What do these defendants do  
17 for money? Where are they getting their money to pay  
18 for their drugs, which you have heard over and over  
19 again that they have been using, all the booze they  
20 are drinking? Certainly more than 15 or 20 bucks.  
21 That money is coming from somewhere. It's coming from  
22 the sale of drugs, and you know that right now.

23 You know that when people don't have money  
24 and are living that lifestyle, that money is coming  
25 from somewhere. Your common sense tells you that.

1 And that's without hearing anything else, you know  
2 that they are getting that money from some illegal  
3 source.

4           What is the second thing you heard? You  
5 heard from neighbors in the Waverly Village  
6 Apartments. You heard from -- I feel like I take this  
7 picture with me everywhere I go. CS-3. You heard  
8 from Sherry Jones, I'm sorry, Sheila Jones, who said  
9 she was living in one of these apartments for two  
10 years leading up to the murder, and she looked out  
11 into this playground area and watched these two  
12 defendants sell drugs. She had absolutely nothing to  
13 gain for being here today. She's just a concerned  
14 citizen. You didn't hear anything about any deals or  
15 anything like that. She's just a woman who's living  
16 in the apartments that had to suffer through the drug  
17 dealing of these defendants, just like the rest of the  
18 members of that community.

19           You also heard from Carlissa Ellis who used  
20 to live back in this area. And while she was a little  
21 bit reluctant as you saw her testifying today, or  
22 testifying last week, she gradually admitted to you  
23 that she saw people coming up to these defendants,  
24 again in the playground area, making hand gestures  
25 such as there was an exchange going back and forth.

1 And while she may not have actually seen the drugs,  
2 she pretty much knew what was going on? Your common  
3 sense again tells you what was going on there.

4 You heard Terence Richardson being there  
5 almost every day. You think he's there to swing on  
6 the swings? You think he's there to baby-sit the  
7 kids? He's there for a purpose. Ferrone Claiborne is  
8 coming up on the weekends. Why would he come up on  
9 the weekends from Hopewell to be hanging out at that  
10 playground area? Because he misses everybody in the  
11 Waverly Village Apartments? Come on now. That's  
12 where your common sense kicks in.

13 What's the next piece of evidence do you  
14 have about the drug dealing? Well, you heard  
15 Mr. Claiborne's sister testify in front of the grand  
16 jury even that he was involved in selling drugs in  
17 Hopewell, but of course when his sister came to  
18 testify in front of you, she didn't want to get her  
19 brother in trouble, but I suggest to you in front of  
20 the grand jury when she was under oath, she testified  
21 that she had overheard her brother talking about drug  
22 trafficking that he had done in Hopewell.

23 You also heard Mr. Richardson's very own  
24 words through Agent Richie when he went to interview  
25 him. Remember when he said, "I sold drugs back in the



1 day. Back in the day." Of course, more of your  
2 common sense indicates that they were involved in  
3 selling drugs.

4 And then we get to their buddies. We get to  
5 what we have described as cooperating witnesses, a  
6 number of drug dealers down in Waverly that came  
7 before you last week and testified. Many of them  
8 quite reluctant. Many of them, I'm sure you very much  
9 disliked and well you should, because they are  
10 involved in the selling of drugs just like their  
11 buddies over here.

12 Let's just talk about that for one second  
13 because you're going to hear various attacks upon  
14 those people. Remember one thing about those  
15 witnesses. These defendants, Mr. Claiborne and Mr.  
16 Richardson, they chose our witnesses when they chose  
17 their friends. Would I like to be able to call the  
18 Pope up there and Mother Teresa to testify? You  
19 better believe it. Unfortunately, the Pope is not  
20 hanging out with these guys. The other drug dealers  
21 in Waverly are hanging out there. That's who knows  
22 about their activities. And you heard drug dealer  
23 after drug dealer talk about what your common sense  
24 already told you and what you already knew to be going  
25 on down there in Waverly. And that is that they were

1 involved in selling drugs.

2           Now, how did that conspiracy begin? How is  
3 it they began working together? They started working  
4 together back as early as 1991 as part of that Dogwood  
5 crew that you heard about that was really run by Booty  
6 and his girlfriend Roxy, who was the stepsister of  
7 Mr. Claiborne. And they had all the young men down in  
8 that area on Dogwood and Lotus Street -- I shouldn't  
9 say all the young men, many of the young men in that  
10 area -- involved in selling crack cocaine.

11           And you heard witness, after witness, after  
12 witness talk about how Terence Richardson and Ferrone  
13 Claiborne were selling in the Dogwood area. They were  
14 selling on Lotus Street. And they were selling down  
15 at the Waverly Village Apartments beginning in 1991,  
16 and that went on to at least 1993 or into 1994. Well  
17 over two years of selling crack cocaine.

18           Now, what did you hear in terms of amounts?  
19 And I wanted to talk to you about amounts for one very  
20 good reason. When you get the verdict form here,  
21 ladies and gentlemen, when you go back into the jury  
22 room, when you get to Count One, the first thing that  
23 you're asked to decide is whether the defendants are  
24 guilty of conspiring, whether they worked together to  
25 sell drugs. If you answer yes, that they are guilty,

1 the next thing that you are going to be obligated to  
2 do is to decide how much weight of crack cocaine they  
3 were involved in.

4 And first thing the Court is going to ask  
5 you on the verdict form is, did they sell more than  
6 50 grams of crack cocaine? If the answer is yes, you  
7 don't have to go any farther. If it's no, you go down  
8 to smaller amounts. And I suggest to you the evidence  
9 is overwhelming, that's it's well beyond 50 grams  
10 here, and I urge you to check that off on the special  
11 verdict form.

12 Now, how do we get to more than 50 grams?  
13 You've got more than 50 grams just in the time period  
14 of 1991 to 1993. Why is that? Because you heard  
15 multiple witnesses talk about when these defendants  
16 were part of the Dogwood crew, that Terence Richardson  
17 would get at a minimum one-sixteenth of an ounce of  
18 crack cocaine per week. And this goes on for a  
19 minimum of two years, probably closer to three years.  
20 One-sixteenth of an ounce.

21 I don't know if y'all were awake in math  
22 class, I know I wasn't, but let me tell you. An ounce  
23 is 28 grams. All right? So if you have 2 ounces of  
24 crack, you're well over the 50 grams because that  
25 would be 56 grams. So once you get to 2 ounces, there

1 are no more questions on that special verdict form for  
2 you to fill out.

3           So one-sixteenth for Mr. Richardson.  
4 Sometimes he got one-eighth. Mr. Claiborne was  
5 getting even bigger amounts because, as you heard, he  
6 was a better drug dealer, because he wasn't using as  
7 much of the drugs in the beginning as Mr. Richardson.

8           Let me tell you, by the way, let me digress  
9 and say, the issue is solely whether they were selling  
10 it. It doesn't matter whether they became rich and  
11 famous or not. The issue is whether they were selling  
12 it. It doesn't matter whether they were selling it to  
13 finance their own habits. The issue solely is did  
14 they sell it?

15           And, of course, you know they sold and they  
16 sold because they were drinking all the time. Excuse  
17 me. Drinking all the time and using drugs. So let's  
18 start with Mr. Richardson. One-sixteenth a week.  
19 Well, if you multiply 16 times one-sixteenth, you get  
20 1 ounce. So 16 weeks is 1 ounce. Thirty-two weeks is  
21 2 ounces, which is more than 50 grams. Thirty-two  
22 weeks is eight months.

23           You heard more than two years of drug  
24 dealing at one-sixteenth a week. For Mr. Richardson  
25 and Mr. Claiborne you're well beyond 50 grams on just

1 the first two years.

2           The next thing you hear is that they were  
3 involved in selling drugs, while it continued to go on  
4 until 1997, the next big amounts of crack cocaine  
5 occur in 1997. What did you hear? You heard that  
6 really the cornerstone of the group then was this guy  
7 named Tony Tyler, who was supplying Terence  
8 Richardson -- well, actually he was supplying his  
9 cousin, Tiger Richardson, Frankie Richardson, with  
10 over a half an ounce a week, sometimes larger amounts.  
11 And then Frankie Richardson was partner with Terence  
12 Richardson and Calvin Mann, also known as Uroff  
13 (phonetic). Hold on a second. Calvin Uroff known as  
14 Mann. I got that backwards.

15           And that the amounts for about three months  
16 that were going to Mr. Richardson was one-eighth of an  
17 ounce per week for a three-month time period. If you  
18 do the math, that works out to about 14 grams a month  
19 for three months that Mr. Richardson alone sold.  
20 That's 52 grams there alone. So when you add that,  
21 again, you're over 50 grams just on that time period.

22           At the same period, Mr. Tyler is supplying  
23 Mr. Claiborne with larger amounts. Amounts from a  
24 quarter of an ounce up to a full ounce on nine or ten  
25 times that Mr. Tyler told you he sold him

1 approximately 4 ounces of crack cocaine during that  
2 time period. That again is over 50 grams there.

3 The other thing you heard next is that when  
4 Mr. Claiborne started messing up the money because of  
5 his drug addiction, that he then referred Mr. Tyler  
6 over to Mr. Richardson to deal directly after Frankie  
7 Richardson had left the scene, and they did even more  
8 drug dealing, which I haven't even added in.

9 The point is, there is no question that both  
10 of these defendants are guilty of Count 1, that they  
11 were involved in the selling of crack cocaine, that  
12 they worked together from 1991 to 1998. And it need  
13 not be continuous. The Court is going to tell you  
14 that. They can stop for awhile. They can come back  
15 and sell. The whole question is whether they worked  
16 together at any point during that time frame, and  
17 there's ample evidence for you to find that they did,  
18 and certainly more than 50 grams.

19 But there's another very key fact that I  
20 hope you noticed during this trial. Particularly  
21 about that time period of 1997 to 1998. Particularly  
22 about Mr. Claiborne. And you'll see if you're  
23 Sherlock Holmes or not when you figure this out.

24 You heard over and over again that during  
25 that time period leading up to the murder that

1 Mr. Claiborne would come up on the weekends to sell  
2 the crack. You heard he was living in the Hopewell  
3 area with his mother and his sisters. And he would  
4 come up on Friday nights and sell drugs until Sunday.  
5 Kind of a part-time job on the weekends. You heard  
6 that over and over again. When did this murder  
7 happen? This murder happens on a Saturday. Do you  
8 think that's just a big coincidence or do you think  
9 that's another fact that helps to identify Ferrone  
10 Claiborne as the second person in addition with Mr.  
11 Richardson that participated in the murder of Alan  
12 Gibson?

13 Think about this. Over and over again,  
14 maybe you became immune to the fact that we kept  
15 saying "Saturday, April the 25th." It was a Saturday.  
16 It wasn't a Wednesday or Tuesday when he's in another  
17 town. It's on a Saturday when he would come up there  
18 and sell drugs. I suggest to you that's another  
19 finger that's pointing at him as being somebody that  
20 participated in this murder.

21 That brings us to Count 2 and Count 3 of the  
22 indictment. Count 2, as you know, charges both  
23 defendants with using a firearm to commit murder  
24 during a drug offense. That drug offense is the sale  
25 of crack cocaine. The firearm that was used

1 unfortunately was Officer Gibson's very own service  
2 firearm. And the person they murdered was Officer  
3 Gibson on April 25 of 1998.

4 And in committing murder, what you have to  
5 determine is whether it was done deliberately and  
6 intentionally or, if not, whether it was done with a  
7 callous disregard for the value of human life.

8 Really it's the same thing when you get to  
9 Count 3. Count 3 involves the murder of a law  
10 enforcement officer during a drug trafficking offense  
11 in order to avoid apprehension or prosecution for that  
12 drug offense.

13 So you have to find an officer was murdered.  
14 There's no question that Officer Gibson was murdered  
15 here; that it was done intentionally, and it was  
16 during a drug offense, that being the sale of crack  
17 cocaine in those woods. And it was done by the  
18 assailants in order to avoid being arrested or being  
19 prosecuted for that drug offense. And that's what you  
20 heard.

21 Let me stress again as I stressed to you in  
22 my opening. Judge Payne is going to instruct you  
23 about the concept of aiding and abetting. And I  
24 implore you to listen to those instructions when  
25 Judge Payne instructs you this morning about that.



1           And he's also going to give you the written  
2 instructions so you can read the instructions, and  
3 they are at the end, when you go back into the jury  
4 room. That basically says that somebody that aids and  
5 abets, somebody that assists another to commit a crime  
6 is just as guilty as the principal that carries it  
7 out.

8           So in this instance, Ferrone Claiborne,  
9 although he did not pull the trigger, he is just as  
10 accountable as Mr. Richardson is for those murders,  
11 for the murder of Officer Gibson and those two  
12 particular counts because he aided, he assisted by  
13 wrestling with the officer while Mr. Richardson took  
14 the gun off the officer and shot him.

15           So the next question becomes: Was this  
16 intentional? You actually heard some vague references  
17 by the defense attorneys throughout the trial as to  
18 whether this could have been an accident. You  
19 actually heard Mr. Richardson spin that to his  
20 relatives when he talked to -- when Mr. Ellsworth had  
21 his conversation after that funeral that we talked  
22 about.

23           Ladies and gentlemen, there was absolutely  
24 no accident in this case. This was an intentional  
25 murder, and you know that, and you know that for a

1 number of reasons. Why do you know that? Let me give  
2 you three very good reasons:

3           Number 1, a defendant has no right to resist  
4 arrest. Judge Payne is going to instruct you of that.  
5 You don't jump a police officer and take his gun  
6 unless you intend to use it. Why else would they have  
7 jumped Officer Gibson? Why else would they have  
8 wrestled that gun off of him unless they intended to  
9 shoot him, No. 1.

10           Number 2, the location of a bullet hole on  
11 the bulletproof vest. You saw that it was on the  
12 bottom. It was right at the bottom of the Kevlar.  
13 Let me suggest to you that shows again their intention  
14 to kill Officer Gibson. And the reason I say that is  
15 this: Remember, these two defendants were struggling  
16 with Officer Gibson. They had an opportunity to feel  
17 his body. They felt that he had a bulletproof vest  
18 on. That vest is in evidence. This is your evidence  
19 now. You can feel the vest. You lift it up and you  
20 can tell that if men are struggling with that officer,  
21 they can feel that he's got the vest on.

22           Do you think it's just a coincidence that  
23 they shot at the bottom to try to shoot under the vest  
24 or do you think that that again is another piece of  
25 evidence that shows a specific intent to try to kill

1 that officer because they can feel that vest?

2 You look at the vest. This is your  
3 evidence. This is no longer my evidence. We  
4 introduced this evidence for your benefit and I  
5 implore you to look at it back in the jury room.

6 What's the third reason that you know this  
7 was to an intentional killing? You know it because of  
8 the safety mechanisms. You heard Ann Davis, the  
9 firearms expert from the Virginia lab, tell you that  
10 there are three different safeties that are built into  
11 that firearm. Two of which address whether the gun is  
12 in battery, whether it's ready to be fired.

13 But the third and the most important one for  
14 you is that trigger safety. That safety that she told  
15 you requires 7 1/2 pounds of pressure directly on the  
16 trigger. And she happened to use that sugar analogy  
17 that I used in my opening, and I'm going to leave it  
18 to you to try to figure out who came up with that  
19 sugar analogy first, whether it was me or whether it  
20 was her. But it was 7 1/2 pounds of pressure that  
21 have to be applied directly on that trigger. That is  
22 intent from somebody to shoot that firearm,  
23 specifically with somebody -- Mr. Richardson,  
24 specifically, with intent to shoot that officer.

25 This was an intentional killing. Which

1 brings us to the question, I think, which is mostly at  
2 issue in this case which is: Whodunit? Who did this  
3 killing? And the evidence, ladies and gentlemen, I  
4 suggest to you overwhelmingly shows it was Terence  
5 Richardson that pulled the trigger and Ferrone  
6 Claiborne who was back in the woods that was helping  
7 him out.

8           And how do you know that? First of all,  
9 let's start with what we already know, that I've  
10 already talked about, that your common sense tells you  
11 is the foundation to begin with. And that's this:  
12 You know both of them were selling drugs. You know  
13 both of them -- that this was their turf. You know  
14 they sold in this playground area particularly. You  
15 know that Mr. Claiborne himself once lived in these  
16 Waverly Village Apartments. You know that he  
17 regularly came down here in addition to selling drugs  
18 because he had a friend, Nicky Coleman, who was down  
19 here.

20           And by the way, let me suggest to you this:  
21 Mr. Boatwright kept asking, "Why is it that  
22 Mr. Claiborne would go over here first while Mr.  
23 Richardson and Mr. Wooden would go into the woods?" I  
24 suggest to you the reasonable inference is that  
25 because he didn't have the drugs yet, he had them at

1 Ms. Coleman's house. That's where he went to. He  
2 went to Nicky Coleman's apartment. He had to pick up  
3 the drugs. That's where he went to. That's the place  
4 where he would visit all the time. That's the place  
5 he would stay occasionally. You heard a number of  
6 witnesses talk about that.

7 So you start with knowing that these  
8 defendants are drug dealers. This is their turf.  
9 They are there on a regular basis, and it's on a  
10 Saturday. It's on the weekend when Mr. Claiborne  
11 comes up there to sell drugs. That's what you're  
12 starting with.

13 What is the next step that you take? You  
14 start off with the best witness in this case for the  
15 United States, and that's Officer Gibson himself, who  
16 did everything he could to try to get you the  
17 information about what happened to him in the woods  
18 because he knew that some day you would be here.  
19 Maybe he didn't know individually who you were, but he  
20 knew some day there would be a jury here that would be  
21 there to carry out justice for him because he knew  
22 that he was going to die. And you are that jury.

23 And what did he tell? First, he told  
24 Officer Aldridge about the fact that he had intervened  
25 into a drug transaction between the two. Then the

1 question becomes a description.

2 Now, you heard Officer Aldridge start in the  
3 beginning. He said that he thought he heard him say  
4 on the day he had dreadlocks. I would suggest to you  
5 that he misheard. I think you saw that Officer  
6 Aldridge has some serious hearing problems. I think  
7 he said he had lost 100 percent hearing in one ear and  
8 either 80 or 90 percent in the other ear, and I think  
9 you saw how emotional he was in the courtroom talking  
10 about the events of that day. You can imagine how  
11 emotional he was when he came into the woods.

12 I submit to you that the better description  
13 that was given was to Trooper Williams, who was a  
14 friend of Officer Gibson, who took the detailed  
15 description over and over again when he interviewed  
16 Gibson as he was dying. And what is it that Trooper  
17 Williams told you?

18 He told you, first of all, you have got two  
19 black males; one a medium build with short maybe bald  
20 hair on the top, and the other was tall and skinny  
21 with dreadlocks pulled back into a ponytail. That  
22 both were wearing dark jeans. The skinny one had a  
23 white T-shirt on and a blue baseball cap. He got into  
24 a scuffle with the two of them, and he got his gun.  
25 And the one that got the gun was the skinny one.

1           And you also heard him say over and over  
2 again before he passed out, Officer Gibson said two  
3 black men. One with dreadlocks pulled into a ponytail  
4 with an old blue baseball cap on. One short, bald  
5 hair. Both white shirts. Both wearing blue jeans.  
6 That's what he said repeatedly as he was passing out.

7           You also heard Trooper Williams tell you  
8 that the next day that he was present when Mr.  
9 Richardson was arrested and that he had an opportunity  
10 to view Mr. Richardson and Mr. Richardson fit the  
11 description of the one with the dreadlocks pulled  
12 back.

13           And let's go look at the pictures about how  
14 he looked back then. If I can show you P2(a) and (b),  
15 what you saw repeatedly. This is the way that Mr.  
16 Richardson looked on the day after when he was  
17 arrested. You see his hair. You see how it was  
18 hanging down. You can see how if he had something on  
19 his hair, be it a bandana or be it a hat, and someone  
20 who is in the midst of fighting for their life trying  
21 to, first of all, fend off his attackers, could  
22 believe that that was a ponytail hanging out. The  
23 long cornrows down to his shoulder area.

24           In the other picture you see is  
25 Mr. Claiborne, who fits the description of having a

1 medium build with the close cropped hair, nearly bald.  
2 That's the way he looked back at the time of his  
3 arrest on April 28, three days after the arrest.

4 The only question at all that has been  
5 raised at all about the fact that these defendants fit  
6 these descriptions is the fact that Mr. Richardson is  
7 obviously not as tall as Mr. Claiborne. And Mr.  
8 Richardson was not as tall as the officer at the time.  
9 You heard evidence that Officer Gibson was five foot  
10 eleven. You heard evidence that Mr. Richardson was  
11 five foot eight.

12 Ladies and gentlemen, I suggest to you that  
13 at the time that Officer Gibson was in the woods  
14 fighting for life, he wasn't out there with a tape  
15 measure trying to decide exactly how tall these  
16 defendants were.

17 Isn't the issue one of perspective? Don't  
18 you think that as he's laying on the ground after  
19 being shot and he's looking up and he's looking at  
20 Mr. Richardson - you recall Mr. Richardson runs first  
21 to the front, to the berm area, then he runs backwards  
22 when he drops the gun, he goes back - don't you think  
23 that perhaps he looked a little taller than he was  
24 when Officer Gibson is laying on the ground? And in  
25 every other fashion he completely fits that



1 description, every other fashion.

2           And don't forget the foundation that we  
3 started with, the foundation is that these two  
4 defendants are drug dealers. They are both associated  
5 together on a regular basis. I mean, let's say you  
6 believe it fits Mr. Richardson, but you're a little  
7 concerned about Mr. Claiborne. Well, who else is Mr.  
8 Richardson's friend that's running around that fits  
9 the description of Mr. Claiborne? Does Mr. Claiborne  
10 have a body double out there that's associated with  
11 Mr. Richardson. Of course you know the answer is no.

12           Does Mr. Claiborne have a body double out  
13 there that fits Mr. Richardson's description? The  
14 answer is no.

15           You saw their friends. They testified  
16 against them here. Both descriptions fit the two  
17 people that were on a regular basis selling drugs down  
18 here in the Waverly Village Apartments. That's where  
19 you begin.

20           What's the next thing you know? Let's talk  
21 about some of the things that the defendants have  
22 said. Let's start with Mr. Claiborne. I'll put CH-4  
23 up here for you.

24           By now you have got the Town of Waverly  
25 memorized, I think, in your minds, and you certainly

1 know everything there is about this chart. If nothing  
2 else, you know how to read a map. And what's the  
3 first thing you know about Mr. Claiborne? That he  
4 hasn't told the truth. First of all, you know that  
5 he's told multiple alibis. I told you in the  
6 beginning when I opened to you that he changed his  
7 alibi as often as he changed his underwear.

8 He told his ex-girlfriend, Tonya Banks, and  
9 Michael Winfield that he was in Hopewell at his  
10 mother's place at the time. He told his buddy Larry  
11 Fit, also known as Pumpkin, that he was out on Route  
12 35 way outside of Waverly at this time.

13 Then he told Melanie Duncan about it, the  
14 state trooper. And let's start with that. He told  
15 the state trooper, Melanie Duncan, whom you heard at  
16 the end of the case on Thursday, that he was asleep at  
17 his uncle's place that day. That did he not leave his  
18 uncle's place until 1:30. And then he left his  
19 uncle's place, and on the way down as he went walking  
20 to The Pines, he saw Earnest Giles.

21 You know that that is not true for any of a  
22 number of reasons and we're going to go through those.  
23 But ask yourself why would an innocent man lie? An  
24 innocent man does not lie. That is evidence of a  
25 consciousness of guilt. You don't lie if you have got

1 nothing to hide. How do you know he was lying? You  
2 know this from their own evidence that they put in  
3 during their case.

4 Jontay Shaw and Eon Shaw. We called him Eon  
5 Shaw. They called him Jontay Shaw. What did they  
6 tell you? They told you that Mr. Richardson had  
7 spent -- I'm sorry, Mr. Claiborne had spent the night  
8 before at their Uncle Roosevelt's place. They woke up  
9 the next morning about nine o'clock. Eon told you he  
10 remembered Mr. Claiborne not being there. Jontay,  
11 depending on who was asking the questions, he either  
12 said he wasn't there or he was there, he wasn't sure.  
13 But it doesn't really matter.

14 Let's give the defendant the benefit of the  
15 doubt and say that at nine o'clock when they woke up,  
16 he was still at Uncle Roosevelt's place. But what did  
17 the Shaw boy say next? That's his cousins. His  
18 cousins. And they called Jontay Shaw.

19 The next thing they told you. They told you  
20 that at 9:30 they said they got up. They went to  
21 Burger King, and from there they went down in this  
22 area called The Pines. Right down here past Dobie's  
23 Store, and they both told you at 9:30 a.m.  
24 approximately they saw the defendant down here.  
25 That's four hours before 1:30. Four hours.

1           Why is that important? Why did they see him  
2 down here where it starts in The Pines? Because it's  
3 right past Dobie's and it's right next to Peace  
4 Funeral Home where Mr. Wooden and Mr. Richardson  
5 hooked up with Mr. Claiborne that morning at 10:30.  
6 That puts him on the way down to the murder site. Our  
7 best evidence is their witness, Jontay Shaw, puts him  
8 on the way down to the murder scene.

9           Now, what's the next thing you know? We're  
10 not even talking about anything that happens in the  
11 Village Apartments. You know right now that the  
12 murder happened approximately 11:10. You know that  
13 from the radio logs.

14           Officer Gibson exited his car at 10:57. And  
15 you know that there's the 911 call at 11:14. And I  
16 think, as Mr. Gavin properly argued to you in the  
17 opening statement, that puts the murder around 11:10  
18 because you have to give the young lady a couple  
19 minutes who ran to call 911.

20           So let's say it's 11:10 that the murder  
21 happened. Where does Mr. Claiborne go? You know  
22 where he went. Remember, this is their turf. They  
23 know their way around this little town. They know all  
24 the shortcuts. They know the woods. They know the  
25 cuts through the various side streets.

1           His friend, Mr. Claiborne's very good friend  
2 Chenette Gray, one of our last witnesses, what did she  
3 tell you? When she heard the rescue squad sirens, she  
4 saw him at The Pines. So a couple minutes -- let's  
5 say the murder is at 11:10, which I think is a  
6 reasonable argument.

7           The call to 911 is at 11:14. So the rescue  
8 squad and the police are responding. Let's say it's  
9 11:15, 11:16. And they are going down Railroad Avenue  
10 until they get down to the Waverly Village area. She  
11 sees Mr. Claiborne right here.

12           What did Mr. Richie tell you? He charted  
13 out the distances. From this area down here, you cut  
14 through the ball park, and you come out on Pine  
15 Street. Six-tenths of a mile. It took him five  
16 minutes at a brisk walk, not running, five minutes on  
17 a brisk walk. That's exactly from 11:10 to 11:15,  
18 that's when she saw him there. She saw the defendant  
19 as he was leaving this murder scene.

20           What's the next thing you know? All these  
21 times are significant. Those young ladies, Marilyn  
22 and Michelle Claiborne. Again, more evidence of the  
23 defendants' guilt because where do they see him at?  
24 They see him over here at this Beale Boy's Store. And  
25 they see him, they tell you, between 11:15 to 11:30.

1 They're not sure. They were close around 11:20 to  
2 11:25. I think both of them said that. Again, it's  
3 your recollection that controls, but that's what they  
4 said.

5           What did Agent Richie tell you? That  
6 there's a shortcut that goes through this field.  
7 There's a shortcut that goes over here that's  
8 seven-tenths of a mile, one-tenth of a mile more than  
9 here. So let's say that's another five minutes for  
10 somebody at a brisk walk. You can imagine if somebody  
11 is running who just committed a murder. Five more  
12 minutes from 11:15. That puts them at 11:20. That  
13 puts them right there.

14           Remember, those young ladies are saying well  
15 before 1:30 when the defendant said he had just woken  
16 up and went for his walk. So 11:20 at this time  
17 period. But there's something else. There's two  
18 other factors that are critical, absolutely critical  
19 about the testimony of those two young ladies.

20           No. 1, they tell you that they are not  
21 really sure what he was wearing that day. But they  
22 know that he wasn't wearing that Los Angeles Lakers  
23 sweatsuit that I'm sure every one of you watched the  
24 basketball finals over the weekend to see exactly what  
25 that sweatsuit looks like. Bright yellow. You can't

1 miss the Lakers.

2           They said they remember some red or some  
3 beige or something like that, but they knew it wasn't  
4 the Lakers sweatsuit.

5           Well, what do you know? You know that an  
6 hour later, at 12:30, Officer Giles is down here, and  
7 he sees the defendant, and he's wearing the Lakers  
8 sweatsuit. What does that tell you? He changed his  
9 clothes. He changed his clothes in that hour. Don't  
10 you think he was on the way to his uncle's place.  
11 That's where he was staying. That's where his clothes  
12 would be. Don't you think they saw him on the way to  
13 his uncle's place to change clothes? Doesn't that fit  
14 all the times in this case?

15           But there's something else critical that  
16 they tell you about what happens in front of Beale  
17 Boy's. We have pictures of everything. Let's show  
18 you P-20.

19           Mr. Mack, will you help me out a little bit?  
20 P-20.

21           P-20 is pictures from every conceivable  
22 angle of where they saw the defendant at approximately  
23 11:20, 11:25. And they saw him, as they told you,  
24 this is their evidence in their evidence, they saw him  
25 standing on this side of the road over here. Why is

1 that important? It's important because -- or they saw  
2 him right here. That's the other picture. Because  
3 this side of the street is where Uncle Roosevelt  
4 lives. Uncle Roosevelt lives up on here on this side.  
5 It's the same side of the street as Burger King.

6 People are inherently lazy. I would suggest  
7 to you that drug dealers are even more lazy than a  
8 normal person. That's why they sell drugs instead of  
9 getting up and going to work in the morning. Why  
10 would he cross the street to go to Burger King? You  
11 can see. Maybe this is not a formal sidewalk, but you  
12 can walk down through here. Here's the road coming  
13 from Uncle Roosevelt's. He can cut right down in  
14 front of this old store that was across the street  
15 from Beale Boy's and walk right down this side of the  
16 street to Burger King.

17 Why would he do that? It doesn't make any  
18 sense. You cross Main Street twice to go to Burger  
19 King? You just kept walking down the road right here  
20 it runs right into Burger King. That was their  
21 testimony.

22 Of course not. He was on the way back. He  
23 was on the way back. He just went to his uncle's  
24 place to change his clothes. That's exactly what he  
25 was doing. And you know that.



1           Why did he change his clothes unless he had  
2 something to do with the murder? And why did he lie  
3 to Special Agent Duncan and say that he was in bed  
4 until 11:30 unless he had something to do with the  
5 murder?

6           It's because he was there and he knew it and  
7 he didn't want to get caught and that's why he went  
8 back and changed his clothes. Just like Mr.  
9 Richardson changed his T-shirt. That's exactly what  
10 happened. Their evidence proves that.

11           What else do you know? Let's talk about  
12 some of the statements to some of the other people.  
13 By the way, you also saw -- if we can go back to CH-4,  
14 Mr. Mack. Thank you.

15           What else did you hear? You heard from  
16 three different witnesses, including Raoul Johnson  
17 himself, that that afternoon that he went to the drug  
18 house and that he had crack cocaine. Raoul Johnson's  
19 house is right their own Lotus Street. Remember, he  
20 told him he heard a knock at the door. Raoul Johnson  
21 has had this crack house forever. And he told you  
22 Mr. Claiborne came in. Remember, this is a guy that  
23 lived across the street from him. He's been in that  
24 drug house. He knows what's going on over there. And  
25 he walks in the door, and he sees he has at least four

1 rocks of crack cocaine.

2 That's what he saw. Do you remember that?  
3 Then you heard Antoine Coleman testify that he saw him  
4 right outside afterwards, and he -- actually he saw  
5 him right beforehand. He told him, he said, "If  
6 you're going to the Village and if you're holding,"  
7 referring to drugs, "you better turn around and go  
8 back." And that's what he did.

9 Don't you think he went into Raoul Johnson's  
10 place. And Bootie Williams told you the exact same  
11 thing. That he had seen him earlier at Dobie's and  
12 then he saw the car he was travelling in down by Raoul  
13 Johnson's place.

14 He's got drugs that day. He's down in that  
15 neighborhood. Is that just another coincidence or is  
16 he the guy with crack in the woods that was doing the  
17 drug deal? How many coincidences can exist until  
18 finally we realize that that defendant was in the  
19 woods, and he was the one with the drugs selling to  
20 Mr. Richardson?

21 Then you hear his other statements. What  
22 are the other statements that you heard him make? You  
23 heard him make a statement to Tony Tyler, one of his  
24 suppliers for a long period of time. That when Mr.  
25 Tyler got out of jail -- very much over the

1 government's objection. You heard how we tried  
2 everything we could to keep him in jail in the year  
3 2000, but it was ultimately up to the courts, and the  
4 courts, Judge Payne and the higher courts, decided  
5 that he should be released on bond.

6 So he is released on bond in August, and you  
7 heard that he's regularly at Feshona Claiborne's and  
8 Felisha Claiborne's house. You heard Feshona  
9 Claiborne admit that.

10 Don't you think that when he alerts  
11 Mr. Claiborne, "Hey, the feds are showing me pictures  
12 of you two guys," don't you think they are going to  
13 have a conversation about it? Feshona Claiborne, no  
14 way in the world that happened. She was there. They  
15 talked about it. But no way her brother said anything  
16 about him being in the woods that day.

17 Of course, she is the same young lady that  
18 testified in front of the grand jury that her brother  
19 had told her he sold crack, but when it came time to  
20 testify in front of you-all, she had amnesia about  
21 that. She didn't know anything about that.

22 Do you think Defendant Claiborne's sister  
23 wants to come in here and tell you that her brother is  
24 a murderer? Do you think so? That's the part of the  
25 bias that you have to assess when weighing the

1 credibility of witnesses.

2           What did he tell Mr. Tyler? He told him he  
3 just wrestled in the woods with the officer. Then he  
4 ran off. If Mr. Tyler is trying to come up with all  
5 these things to get a reduced sentence -- obviously,  
6 Mr. Tyler is not here because he's a concerned  
7 citizen. He doesn't care about us. Mr. Tyler is here  
8 for himself. I make no bones about that.

9           How else do you think we're going to get  
10 drug dealers to come in here and tell you what they  
11 know? They have to have a reason. Drug dealers care  
12 about themselves. But if he was making up all this  
13 stuff, don't you think he would make up this grandiose  
14 story about all the terrible things that Mr. Claiborne  
15 did? He said he wrestled with him. That's all he  
16 said.

17           Who is the other person you heard from as to  
18 a statement by Mr. Claiborne? Derrick Marshall, the  
19 drug dealer from Farmville. That's how we ended our  
20 case. Derrick Marshal knows nothing about this case.  
21 He lives out there in Farmville. He's obviously  
22 absorbed in selling drugs because he had God knows how  
23 many drug convictions. And the only thing he knows  
24 about this murder is what Mr. Claiborne told him.

25           Well, Mr. Gavin said, Well, the witness

1 testified, he said, well, he just told me he cleaned  
2 up, that he was there, and he just cleaned up. And  
3 Mr. Gavin says, there's no evidence of anybody  
4 cleaning up the scene. And he's right. There is no  
5 evidence.

6 But the fact that Mr. Marshal said that is  
7 what shows that that statement is true. All he knows  
8 is what the defendant told him. If he is making stuff  
9 up, don't you think he's going to make it up right?  
10 Don't you think he's going to say, oh, yeah, he was in  
11 the woods and he beat up the officer and he shot him  
12 to death and did all these horrible things?

13 He doesn't know. He's from Farmville. He  
14 doesn't know anything about the case. He can only  
15 tell you what it is the defendant told him. Again, I  
16 suggest to you that's the defendant spinning to his  
17 buddies about how he's not really that bad and didn't  
18 really do such terrible things in this case.

19 It's the nature of the statement itself that  
20 suggests to you that it is truthful. Because it's  
21 when they get these grandiose statements, that's when  
22 you know that it's not true.

23 That brings us now to Mr. Richardson. What  
24 do you know about Mr. Richardson? You know he likes  
25 Eerie Indiana, and you know he likes Ultimate

1 Goosebumps, and you know that he told Agent Richie,  
2 when he was interviewed, that he watched Eerie Indiana  
3 from 9:30 -- from ten o'clock to 10:30, and that he  
4 watched Ultimate Goosebumps from 10:30 to 11. And you  
5 know that that is absolutely false. You know that  
6 they stipulated that that is not true. That the  
7 records show, the records from the television station  
8 show that Eerie Indiana started at 9:30 that morning  
9 and that Ultimate Goosebumps started at 10.

10 Why would he move that down a half an hour?  
11 Why would he do that? The reason is because he saw  
12 those two shows. He saw them before he left. And if  
13 anybody asked him, we'll what was on? What was on  
14 Eerie Indiana that day? He can talk about it. He can  
15 talk about what's on Ultimate Goosebumps. But what he  
16 couldn't talk about was what was really on from 10:30  
17 to 11. And I think the stipulation says it was  
18 Toonsylvania.

19 Whatever it was, he didn't know anything  
20 about it. And he told you he remembered that Silver  
21 Surfer was on at 11, but he can't remember -- he  
22 didn't get a chance to see any of that. And I suggest  
23 to you the reason he knew that was because he came  
24 back in at 11:30 and saw the end of it and knew that  
25 he couldn't talk about what happened during that show.

1           So you know that he didn't tell the truth to  
2 the officers, just like Mr. Claiborne didn't because  
3 he moved the television shows around. But what's the  
4 other thing that he moved around?

5           The other thing that he moved was this phone  
6 call from this fellow -- to this fellow Joe Mack from  
7 his girlfriend Nuke. Now, you know about Nuke. You  
8 heard about Nuke during this trial. Mr. Richardson  
9 told Agent Richie that Nuke called over at 11:30. You  
10 know that's not true. She called at 12:27. He moved  
11 it up an hour. He said they called back at  
12 twelve o'clock. It actually happened at one o'clock.

13           Why did he do that? Why did he move the  
14 times up an hour? He's trying to cover the time  
15 period when he was out and about with Shawn Wooden  
16 because at the end of the day he knows that there is  
17 no evidence of an alibi. He knows that he can only  
18 bank on Shawn Wooden lying. That's all he's got. And  
19 he knew that one of these days that Shawn Wooden would  
20 not hold the line for him. That sooner or later he  
21 would give it up, and that's what he did. And that's  
22 the reason why Mr. Richardson moved the times on  
23 television stations and moved the times of the calls  
24 of Joe Mack.

25           And you know right now as you're sitting

1 there that what he said to Agent Richie wasn't true.  
2 And you have to ask yourself why. Why would he lie to  
3 the agent? And he lied because he knew -- again, this  
4 is consciousness of guilt. He knew he was in the  
5 woods that day, and he is the person that pulled the  
6 trigger and shot Officer Gibson to death.

7 But what else do you know from his  
8 statements? You know that he admitted this that  
9 night, the night of the murder, when he was at that  
10 fellow John Brown's trailer.

11 If I can have CH-4 back, Mr. Mack, for just  
12 a minute.

13 Mr. Richardson has made three different  
14 admissions to this crime. The first of which occurred  
15 at John Brown's trailer, which is over here on New  
16 Street, which is, as you can see, up the road a little  
17 bit from where Shawn Wooden's trailer was on I guess  
18 it would be the western side of Waverly over there.

19 And you heard him admit to Agent Richie that  
20 that Saturday night when he was over here on New  
21 Street that he saw John Brown, was drinking with him  
22 and another fellow by the name of Ernest Barrow, that  
23 he was so drunk he couldn't even remember what he did  
24 that night. Couldn't even remember how he got home.

25 Of course, the guy, you know, that took him



1 home was Steve Vaughan. He testified in front of you.  
2 Again, that Mr. Richardson was so drunk he did not  
3 know where he was. He couldn't remember anything.

4 What happens over there at that party at  
5 John Brown's trailer? What happens? Well, you heard  
6 his cousin, his cousin, Jermont Perry. Remember, the  
7 guy. He started off telling one story, and I asked  
8 the judge to stop and bring him back so I could get  
9 his grand jury testimony out. I think that happened  
10 on Thursday. We took a recess, and I looked at his  
11 grand jury testimony over the morning break.

12 Remember, he came back in and told you  
13 something quite different after we started talking to  
14 him about what he said in front of the grand jury?  
15 What did he tell you? He told you his cousin, again,  
16 was very drunk. He told you he had said to some of  
17 the other people at the party that he had done  
18 something wrong that day, that he had messed up.

19 And that Brandon Gilchrist had pressed him.  
20 He kept pressing him. And that led to an argument.  
21 And you heard a stipulation that Brandon Gilchrist  
22 would testify that he got into an argument and that  
23 Mr. Richardson said words something like "I'm going to  
24 whoop your ass." You can read the stipulation. But  
25 he wasn't in earshot to hear anything more.

1           But the person that was in the earshot was  
2 Keith Jackson, and Keith Jackson heard him and he  
3 said, "Look, I killed a guy today. I can kill  
4 somebody else."

5           Don't you think that that comment is  
6 completely consistent with what's going on? You've  
7 got a guy who's drunk. I suggest to you drunks don't  
8 lie. There's an old cliché about that drunks just  
9 don't lie because they just say what's on their mind.

10           And he got into an argument with Mr.  
11 Gilchrist, and he already said to his cousin he had  
12 done something wrong, and don't you think that he  
13 could have said that? And Mr. Jackson even said he  
14 didn't believe him at the time.

15           What does Mr. Jackson have to gain out of  
16 this? You heard him get nothing out of this. That  
17 he's in state custody serving a drug sentence that the  
18 government couldn't help him even if we wanted to. So  
19 he gets nothing out of this. He just wanted to appear  
20 in front of you.

21           Is he the nicest guy in the world? No. Is  
22 he a long-time drug dealer? Absolutely. That's his  
23 buddy. That's who he's hanging with. So that's  
24 admission No. 1.

25           What's admission No. 2? Joe Jones. You

1 remember Joe Jones. You probably still have no idea  
2 what he said because nobody could hear what he was  
3 saying. Remember, he was on the witness stand. He  
4 was basically going into convulsions shaking back and  
5 forth the whole time because you know he didn't want  
6 to be here. You know that he was scared to death to  
7 be here.

8 But who was he looking at? I'm up there  
9 asking him questions. He's not looking at me. He was  
10 looking at Terence Richardson. That's who he was  
11 looking at. That's why he was afraid. He was  
12 absolutely terrified.

13 What had he said in front of the grand jury  
14 when there were no defendants there, when that's done  
15 in secret, when he felt comfortable, when he wasn't  
16 afraid Mr. Richardson would know what he had to say?  
17 He said that he was at Dobie's Store that afternoon.  
18 He had gone down there to get some beers. He drinks.  
19 He makes no bones about it. And he heard Mr.  
20 Richardson and Mr. Wooden talking, and that  
21 Mr. Richardson said he had killed an officer that day.

22 What did Mr. Richardson tell you? You heard  
23 him admit that he was at Dobie's that afternoon. You  
24 heard a million witnesses talk about the fact that  
25 they were at Dobie's that afternoon. There's no

1 question about that. That he was in exactly that  
2 position from which Mr. Jones could hear such a  
3 conversation.

4 And think about this. You know, Mr. Jones,  
5 as you heard, went to the police that night. Based  
6 upon his information, they go to Mr. Richardson's  
7 house and they find the shirt. What is it? Mr. Jones  
8 has ESP that some day Ms. Newby two days later is  
9 going to say that Mr. Richardson and Mr. Claiborne did  
10 it? Or that on May the 11th, which would have been 14  
11 days later, that Shawn Wooden is going to come forward  
12 and say that Terence Richardson did it? Does he have  
13 ESP? He's got a lot of problems, but he doesn't have  
14 ESP.

15 How else could he know that? How else could  
16 he know that Terence Richardson was there? How else  
17 could he know that he would have an alibi that he  
18 would lie about unless he actually heard that  
19 admission at Dobie's Store?

20 You know that he told you the truth for that  
21 reason no matter how terrified he was on the witness  
22 stand. And you know he was scared. You could tell by  
23 his mannerisms. That goes back to that common sense  
24 that you all have. That's why I told you that is the  
25 tool that you have to determine what happened in case

1 that separates fact from fiction.

2 You can see that man was terrified when he  
3 was testifying in front of you, and you could see the  
4 person he was afraid of was Mr. Richardson. Why?  
5 Because he knows he killed a police officer. That's  
6 why he's so afraid.

7 What's the next admission that you hear him  
8 make? To Mr. Ellsworth. Well, you know, sadly,  
9 everything about Mr. Richardson's grandmother's  
10 funeral. You know that nobody in that family ever  
11 goes to the bathroom at any time. That instead with a  
12 party of 140 people, that all they do is sit there for  
13 seven hours eating barbecue, drinking and in a trance  
14 starring at Terence Richardson.

15 Does that make any sense to you, folks?  
16 Come on. You all have been to funerals, sadly, in  
17 your lives. You know that you're overcome with grief  
18 and you're socializing with your family, and the thing  
19 you're not doing is standing there starring at Terence  
20 Richardson for seven hours not going to the bathroom.

21 Kind of a coincidence, by the way, that the  
22 next witness after that was Mr. Richardson's mother.  
23 And where is she? She's in the bathroom when they  
24 call out her name. We hadn't even been here for seven  
25 hours that day. Does that make any sense to you?

1           And then you see on that program, which  
2 wasn't shown to me beforehand. As I started leafing  
3 through the program from the funeral, you saw  
4 Mr. Ellsworth's mother's name was in there, and his  
5 sister's name was in there. Why would Mr. Ellsworth  
6 go through this huge story about the funeral unless he  
7 actually heard the statement? Because you know he has  
8 to know that, boy, if I'm lying, there's at least 100  
9 people from Mr. Richardson's family are down there to  
10 say something the opposite.

11           Why would he do that? And if he's going to  
12 do that, why doesn't he say something like, "Yeah, Mr.  
13 Richardson said, 'yeah, I killed that cop and I was  
14 glad to kill that cop"?

15           He doesn't say that. He said he heard Mr.  
16 Richardson say that he was sorry, that he wished he  
17 hadn't done it, that it was an accident, and he was  
18 downplaying it.

19           Don't you think that those are all words  
20 that would come to the defendant when he's telling his  
21 other relatives who had gathered to have a few beers  
22 maybe down at the convenience store down the street  
23 while this funeral is going on about how he got  
24 himself into a pickle here and he's trying to minimize  
25 his own role. Doesn't that make sense?

1           And Mr. Ellsworth clearly had something to  
2 gain in this. He was trying to work off that gun  
3 charge. We don't hide that. Why else would he come  
4 in and talk about his family? But if he has this  
5 grandiose lie going on, why doesn't he make it a good  
6 lie? Why doesn't he say, "Oh, yeah, I wanted to kill  
7 that cop"?

8           No. He's using the words of the defendant.  
9 And he clearly had an opportunity to hear that.  
10 Because it just doesn't make sense that those family  
11 members are sitting there glued to Mr. Richardson for  
12 seven hours.

13           And you also heard how out of respect to the  
14 family they weren't drinking down there. And you  
15 can't tell me that out of 140 people, that somebody  
16 didn't get thirsty to have a beer down at the  
17 convenience store. You know that. And you know as  
18 often as Mr. Richardson drinks. It's not like he's  
19 Mr. Sober running around. You don't think he wandered  
20 down to the corner with his cousins to have a few  
21 beers for a couple of minutes. Doesn't that make  
22 sense? That's what his lifestyle is. You know  
23 everything about his lifestyle. Doesn't that make  
24 sense?

25           And doesn't it also make sense that they

1 would talk to him about his plight, the fact that he's  
2 got a trial coming up? Wouldn't he minimize his  
3 responsibility in that? Of course he would.

4 Again, more evidence of exactly what he did.  
5 Which brings us now to the famous T-shirt.

6 If I can have RS-1, please.

7 This T-shirt speaks to Mr. Richardson's  
8 guilt in so many different ways that I hope that you  
9 recognize that.

10 No. 1, you see the condition of the shirt.  
11 You see the dirt on it. Isn't this consistent with  
12 somebody that was in a struggle? You see the sleeve  
13 that had been torn off.

14 What did Mr. Westbrook tell you? Well,  
15 Mr. Westbrook said, Well, those officers, when they  
16 laid it out, that sleeve wasn't torn. The officers  
17 must have torn that sleeve and the reason they lost  
18 those pictures is all part of a cover-up. Apparently  
19 that's what the thought is here. That they are out to  
20 frame Mr. Richardson too.

21 Remember, this is the night of the murder.  
22 The only information that they have at this point is  
23 what Officer Gibson had told him, and what Joe Jones  
24 had said. There's no Ms. Newby at this point because  
25 this is 1 a.m. which is now Sunday morning. They



1 don't know anything else about this case. They don't  
2 know anything about Mr. Richardson or where he is at  
3 the time. They don't know if he's in California.  
4 They don't know where Mr. Claiborne is. They don't  
5 know anything.

6 But apparently these officers are out there  
7 framing Mr. Richardson. And if they are out there  
8 tearing the shirt and they are so stupid that they  
9 tear the shirt and they take pictures of it, because  
10 they are not smart enough to realize that if you're  
11 going to tear the shirt, you don't take a picture of  
12 it, so then they have to say that they lost the  
13 pictures. Does that make sense to you?

14 Ladies and gentlemen, if you believe that  
15 those officers intentionally tore that shirt, you find  
16 them not guilty. We don't want verdicts like that.  
17 If you believe that Officer Martell came in here and  
18 lied to you and that he trashed those pictures to  
19 cover-up the fact that he tore this shirt, you find  
20 them not guilty, both of them, because we want nothing  
21 to do with that.

22 But you know that's not what happened in  
23 this case. You know that that shirt got torn in the  
24 struggle. And how do you know that? You know that  
25 also for scientific reasons. Let's take the testimony

1 of Mr. Westbrook, Mr. Richardson's father, and the  
2 statement of the defendant. What did they tell you  
3 that this shirt is used for?

4 They told you they used this shirt to clean  
5 the sneakers. Is that right? Mr. Westbrook told you  
6 that approximately a month before the murder that he  
7 had used this very T-shirt to clean his sneakers.  
8 Remember, he told you he would dip it in the water and  
9 wring it out. I think you even saw him do that in  
10 front of you like that. Remember that?

11 Then you heard Mr. Richardson told Agent  
12 Richie that the night before the murder he did the  
13 exact same thing. Dipped it in the water, soap and  
14 water, to wipe off the sneakers.

15 One major problem with that. You put it in  
16 the water, you put it in soap, you're going to rinse  
17 out all your DNA. You're going to rinse out your  
18 perspiration and your sweat. How come there's DNA on  
19 it when the agents tested it? How come there's Mr.  
20 Richardson's sweat or perspiration or saliva on this  
21 shirt on four different spots around the collar and  
22 under the armpits consistent with somebody who's in a  
23 struggle who's sweating?

24 If it's being washed the night before to  
25 clean the sneakers, rinsed out like this, that's not

1 going to be here. It's only going to be there if he  
2 was wearing it.

3 You know now for scientific reasons that he  
4 was wearing that shirt. And he didn't tell you the  
5 truth when he said he had last had that shirt the  
6 night before. You know that.

7 Which brings us next to they then went to  
8 court on December the 8th of 1999. What happened in  
9 the courthouse down in Sussex County? They pled  
10 guilty. Mr. Richardson pled guilty to involuntary  
11 manslaughter, exposed himself to 10 years in the state  
12 penitentiary. You heard he only got five.

13 Mr. Claiborne pled guilty to accessory after  
14 the fact. Got time served. I guess the argument is  
15 it was such a good deal that they decided to plead  
16 guilty because they were facing capital murder  
17 charges.

18 Maybe that is a reasonable argument when  
19 you're Mr. Claiborne and you have already served all  
20 the jail time you have got to serve, but is that a  
21 reasonable argument for Mr. Richardson? That he was  
22 willing to serve up to 10 years in prison for  
23 something that he didn't do. Does that make any sense  
24 to you whatsoever?

25 Remember, there is an alternative. It's

1 called a trial. Just like they're having now. They  
2 could have gone to trial if they were not guilty. But  
3 they didn't. They tried to get the best deal that  
4 they could with their lawyers. They had experienced  
5 lawyers, some of the best lawyers in the city, and  
6 they did get them sweetheart deals. But to say that  
7 Mr. Richardson would do 10 years for a crime he didn't  
8 commit is ridiculous.

9 Of course he admitted that he did it. He  
10 tried to cut his loses and get the best he could  
11 because he knew that if he went to trial, he would be  
12 convicted because he knew that he did it.

13 Ladies and gentlemen, that this point alone,  
14 at this point alone right now you know without any  
15 doubt that those two men did it, and I have yet to  
16 utter the names of Evette Newby and Shawn Wooden.

17 You haven't even heard me mention them, and  
18 you know as you're sitting there right now that they  
19 did it. Let's talk about Ms. Newby and Mr. Wooden.  
20 The first question is did Ms. Newby have an  
21 opportunity to see what occurred?

22 I'm first showing you CS-4 and 5. You saw  
23 these. They are the vantage points looking out of her  
24 window. There's no question there are leaves out  
25 there, and we're not suggesting that she had the most

1 perfect vision in the world or the most perfect  
2 opportunity to see what happened, but you see that  
3 there are breaks in the trees, and she told you that.  
4 She told you that she saw bits and pieces of the  
5 struggle. She didn't see the whole thing.

6 But the most important fixture is really not  
7 that one, it's this one, looking backwards, CS-6.  
8 Remember, this is your evidence. This goes back to  
9 the jury room with you. You get a chance to look at  
10 this. This is not a souvenir. This is for you to  
11 decide what occurred. And you can see looking back,  
12 actually a much farther distance than where the  
13 shooting occurred, you can see the white of the  
14 building out there.

15 Remember, she is looking down from a second  
16 story. Remember, it's a bright sunshiny day in April.  
17 Looking down into that area. She had an opportunity  
18 to observe. She told you what she saw. She saw the  
19 struggle back and forth between two men and the  
20 officer. She did not see, even though some people may  
21 have pressured her to see it, she did not see the  
22 actual shooting. She told you that.

23 But what she did see then was Mr. Richardson  
24 come to the top of this berm? Come out here, and then  
25 turn around and go back. Doesn't that make sense?

1 Why would he come out here? Why would he run to where  
2 the crowd is? And how would she know that he had this  
3 white T-shirt? Does she have ESP, too, like  
4 Mr. Jones? How would she know about this white  
5 T-shirt unless she saw it? Because, you know,  
6 according to Mr. Richardson and his dad, that T-shirt,  
7 that stays in that stereo box all the time, "We only  
8 take it out to clean the sneakers."

9 Unless he's wearing the T-shirt, how does  
10 she know that he has it? How can she describe that  
11 T-shirt and how would she know that Mr. Richardson's  
12 DNA would be found on that T-shirt? It's because she  
13 saw him. She saw him.

14 Does she come out right away and tell the  
15 police? Absolutely not. Is she afraid? How many  
16 witnesses did you see on the witness stand that at a  
17 minimum were slow to get the truth coming out of them?  
18 How many of those people from Waverly do you think  
19 wanted nothing to do with this trial? Didn't want to  
20 have anything to do with testifying, who were like the  
21 Joe Jones school of thought, which is I want nothing  
22 to do with this at all. Don't you think that they  
23 know there's a reason to be afraid? That's because  
24 they know that these defendants did it.

25 That's what occurred with Ms. Newby. No,

1 she didn't tell the whole truth in the beginning.  
2 Would you expect her to tell the whole truth? She has  
3 to live in that apartment complex. You can imagine  
4 what's she's gone through.

5           What did she get out of coming forward in  
6 the first place? Nothing. All she's got is a jail  
7 cell now because afterwards, after she told what he  
8 she had seen, she didn't want to be involved anymore.  
9 She didn't want to go to the grand jury. Twice she  
10 didn't show up. And she's in jail now. All because  
11 she doesn't want to get involved.

12           Did they help her out down the road  
13 afterwards? Did the Sussex County people help her  
14 with giving her some food money? Absolutely.

15           But at the time that she came forward, she  
16 had nothing pending against her. She had no reason to  
17 come forward. Nothing. Why would she come forward  
18 unless she saw outside of her window what occurred?

19           And that brings us then to Shawn Wooden.  
20 The horrible Mr. Wooden. They have tried to attack  
21 Mr. Wooden all kinds of different ways because they  
22 know that if Mr. Wooden is telling the truth, they're  
23 guilty. Mr. Wooden's testimony alone convicts them of  
24 this crime. So they have to accuse Mr. Wooden of all  
25 these terrible things.

1 Well, let's remember one thing. This was  
2 Mr. Richardson's friend. He's not my friend. I  
3 wasn't staying at his trailer. Mr. Richardson was,  
4 for a week. Until April the 26th when Mr. Richardson  
5 got arrested they are big buddies.

6 In fact, Mr. Richardson is arrested in the  
7 presence of Mr. Wooden. What terrible thing could Mr.  
8 Richardson have done to Mr. Wooden all of a sudden  
9 that would make Mr. Wooden come in here and lie? Why?  
10 They are best chums up until then. They are  
11 drug-using buddies. They are hanging out together.

12 Why is it all of a sudden that Mr. Wooden on  
13 May the 11th -- what did he have going for him?  
14 Nothing. None of the charges that he got helped on  
15 down the road, none of those existed at that time.

16 Remember something else, and I want you to  
17 think about this, folks. While Mr. Wooden was Mr.  
18 Richardson's alibi, the reverse is true. Mr.  
19 Richardson is Mr. Wooden's alibi. So if Mr.  
20 Richardson is telling the truth, Mr. Wooden is at the  
21 trailer. He had nothing to do with this crime. He  
22 had no reason to try to work out a deal. He had no  
23 reason to lie. He had no reason to serve 10 years in  
24 prison for obstruction of justice. All he had to say  
25 is, look, hey, I'm with Mr. Richardson. We're



1 watching cartoons. Because they are each other's  
2 alibis.

3 He had absolutely no reason to come forward  
4 against Mr. Richardson unless he was in the woods,  
5 too, and he was afraid he was going to get in a jam,  
6 and he didn't want to get stuck with a capital murder  
7 charge, too, which is, I suggest to you, exactly what  
8 happened.

9 And that's the reason he came up with the  
10 lookout story first. He never said somebody else did  
11 it. He always said that Terence Richardson and  
12 Ferrone Claiborne did it. The only thing that he did  
13 was minimize his responsibility in the crime. But he  
14 only had to do that -- he only had to minimize his  
15 responsibility if he is there in the first place. And  
16 if he is there, Mr. Richardson is there, and  
17 Mr. Claiborne is there. He has no reason to lie  
18 unless he's in the woods himself. Remember that.

19 Mr. Richardson or Mr. Wooden are each  
20 other's alibis. If Mr. Wooden wasn't there, all he  
21 had to do is say, "I was with Mr. Richardson watching  
22 cartoons," just like Mr. Richardson said he was with  
23 Mr. Wooden watching cartoons. He had absolutely no  
24 reason to lie.

25 And absolutely every other thing that he

1 told you after he came forward has been corroborated  
2 by all the evidence in the case that we've talked  
3 about so far.

4           What did he tell you? He told you that day  
5 that they met, Mr. Richardson and himself had met  
6 Mr. Claiborne by the Peace Funeral Home right down the  
7 street from where Jontay and Eon Shaw saw  
8 Mr. Claiborne.

9           That they walked down to Waverly Village  
10 Apartments, and they walked down to the playground  
11 area. And I suggest to you that this is when Officer  
12 Gibson, by the way, is leaving the first time.  
13 Remember, he comes into the Village Apartments twice.  
14 And that's when he's leaving.

15           And Officer Gibson turns around because he  
16 knows what's going on. He can recognize what's going  
17 on here. That Mr. Wooden and Mr. Richardson, they  
18 then go back to the back. Mr. Claiborne goes to Nicky  
19 Coleman's apartment. That's where he goes because he  
20 has to pick up the stash because that's where his  
21 drugs are. That's why they don't do a deal at Dobie's  
22 because he didn't have the drugs yet.

23           And then after that Mr. Claiborne goes to  
24 the back around this side, and that's when the officer  
25 comes back and stops Eric Garrett because Mr. Garrett

1 was a ways back, was eventually behind Mr. Claiborne.

2           Mr. Claiborne goes in towards the woods.  
3 Mr. Garrett is walking down this way when the officer  
4 calls him back and says, "Do you see anybody?" Of  
5 course, Mr. Garrett says, "I don't want to see  
6 anything in those woods." Remember, he's afraid of  
7 cats. He's afraid of everything. He doesn't want to  
8 look. He knows what goes on in those woods back  
9 there. He doesn't want to see it.

10           So the officer calls him back. They talk.  
11 Then after he lets him go, the officer goes back to  
12 his car, turns back around, and by this time the drug  
13 deal is going on.

14           And Officer Gibson goes back there and  
15 that's when he comes across Mr. Claiborne and  
16 Mr. Richardson. And he grabs Mr. Richardson as  
17 Mr. Claiborne starts to run away. And Mr. Claiborne  
18 goes back and he jumps the officer, and the two of  
19 them struggle for the gun, and Mr. Richardson takes  
20 that gun off of him and intentionally shoots the  
21 officer in the stomach right below the bulletproof  
22 vest, and he kills him.

23           That, ladies and gentlemen, is what  
24 occurred. And when you put all that evidence  
25 together, there is absolutely no question that's what

1 occurred in this case. And that is that these two  
2 defendants, these two defendants, murdered that  
3 officer that day when he went back there to arrest  
4 them for the drug trafficking, the drug trafficking  
5 that they had been doing in the Waverly Village  
6 Apartments since at least 1991.

7 And for those reasons, all the evidence  
8 points to one conclusion and one conclusion alone, and  
9 that is that both the defendants, Terence Richardson  
10 and Ferrone Claiborne, are guilty of all three charges  
11 in the indictment. Thank you for your time.

12 THE COURT: Mr. Boatwright.

13 MR. BOATWRIGHT: Yes, sir. May it please  
14 the Court, counsel, those present and you 14 ladies  
15 and gentlemen.

16 He's good, isn't he? He's real good. He's  
17 just about the best. He's a very good arguer. He's a  
18 very good questioner, and he expresses himself  
19 extremely well. My hat's off to him.

20 If I can be half as eloquent on behalf of  
21 Mr. Richardson as he was on behalf of the United  
22 States, I will have done a good job.

23 But let's talk about the case, what the case  
24 is about and what the case is not about, and I want to  
25 reiterate something that I said when the case began.

1 We can go to that.

2 Before I do that, I want to say pretty much  
3 what Mr. Novak said to you. I, too, from time to time  
4 have watched what y'all were doing while I wasn't  
5 questioning someone or the evidence wasn't touching on  
6 Mr. Richardson.

7 I noticed y'all were taking notes, paying  
8 attention, doing the exact job that we asked you to  
9 do, and on behalf of Mr. Richardson, I wanted to thank  
10 you for that because that's what we need, very close  
11 and careful examination of all the evidence in the  
12 case.

13 I want to thank you for something else, too.  
14 Thank you for not wanting to work on Saturday. I  
15 needed that day off, and it was very valuable. Thank  
16 you. I think everybody felt that way.

17 Now, this bears repeating. The case is not  
18 about whether Allen Gibson was a good police officer  
19 because the evidence certainly shows that he was.

20 It's not about whether he was well-respected  
21 because apparently he was well-respected, whether he  
22 was well-liked because apparently he was and whether  
23 he was loved by his family because obviously he was  
24 and still is to this day and will be.

25 And it's not about whether it's a good

1 lifestyle that Mr. Richardson was living, whether it's  
2 something that you would want to do for yourself. And  
3 it's not about putting labels on people.

4 Mr. Novak knows, as you know if you think  
5 about it, it's a whole lot easier to convict a bum  
6 than it is a person. It's a whole lot easier to  
7 convict a defendant than it is someone named Terence  
8 Richardson because when you put labels on people, you  
9 dehumanize them. They become something less, just a  
10 little bit less than just a person.

11 We certainly don't agree that Mr. Richardson  
12 is a bum, is or was a bum. You heard, you know, his  
13 parents made a mistake of basically supporting him and  
14 allowing him to have no real responsibility in life,  
15 and he made the mistake of continuing to do that.  
16 They just got the process started.

17 But it's not about whether they made a  
18 mistake in doing that. It's about whether there's  
19 been a sufficient quantity and quality of evidence  
20 brought forward for you to decide about this case.

21 And let's start, when we talk about  
22 examination of the United States' evidence, with  
23 Mr. Ellsworth because he typifies so many of the  
24 problems that Mr. Novak hasn't even spoken to you  
25 about and may never speak to you about.

1 Terence's grandmother died and was buried  
2 February 6th, 1999. Now, Mr. Ellsworth unfortunately  
3 didn't know two things that destroyed his story. He  
4 just didn't know these things.

5 What he didn't know was that Terence was  
6 under a specific bond condition that he had to remain  
7 with a family member at all times. He didn't know  
8 that.

9 And the other thing he didn't know was that  
10 there were no stops along the way, during the time of  
11 the formal funeral activities and even on the way back  
12 to Richmond when he travelled with his uncle, Malcolm  
13 Westbrook. He didn't know those things.

14 He made the assumption that he could get  
15 away with telling a lie because he didn't know those  
16 two things, and then fortunately, those two things  
17 along with the other evidence you've heard about him  
18 tell you that he was a liar. There's no question  
19 about it. He was lying. It's not even possible that  
20 he was telling the truth.

21 Now, you heard Mr. Novak use -- he's got two  
22 favorite questions, not one. The bathroom one is one  
23 of them, but the other one is, is it possible? How  
24 many times did you hear that? Particularly with the  
25 evidence that Mr. Claiborne's lawyer put on but with

1 ours as well, is it possible?

2 He asked Christie and Ms. Westbrook, "Is it  
3 possible?" Well, I guess anything is possible today.  
4 Things that were formerly impossible, we know are  
5 possible today.

6 But is it possible that Mr. Westbrook --  
7 pardon me, Mr. Richardson while at this family  
8 gathering, not of 140 people, Mr. Novak -- remember  
9 the book, the funeral book, the book that the guests  
10 signed off on.

11 It was there all week. People were coming  
12 and going all week. That's the number of people that  
13 came and signed in all week, not all the day of the  
14 funeral. The estimates of the number of people by  
15 family members who did testify were lower than that.

16 Still, it was a considerable number of  
17 people, sure, but how does Mr. Richardson get down to  
18 the convenience store? No one said that he had keys  
19 to their car. No one said that he could walk down  
20 there, because it was too far away. He had to get  
21 somebody to drive him down there.

22 Come on. Come on. Is it possible? Is that  
23 a fair question? The answer is, no, it's not. The  
24 fair question is, is it likely? Is it likely that  
25 that happened? And the answer is absolutely not.



1           We know it's impossible, not even close to  
2 possible for Mr. Richardson to have been back behind  
3 some convenience store from Stony Creek to the funeral  
4 and the funeral to the graveside service and from the  
5 graveside service back to his aunt's home, not  
6 possible.

7           He's in the family car with other family  
8 members. They're not stopping along the way to pick  
9 up a beer. They're dealing with what they have to  
10 deal with that day in terms of the activities  
11 surrounding the death of his grandmother.

12           You know it's not possible that it happened  
13 from Stony Creek to Richmond because Malcolm Westbrook  
14 told you so. And Mr. Novak hasn't suggested that  
15 Malcolm was lying, and the reason he hasn't suggested  
16 that is because he wasn't lying.

17           So the only reason it's even remotely  
18 possible is while he's at Christie's house, and sure,  
19 sure, they're not standing around gazing at him  
20 intently for the entire time that they're there.  
21 Absolutely.

22           But they're not so blinded by their grief  
23 and emotions that they aren't aware of what's going on  
24 around them. If you've been through that experience,  
25 you know. You don't lose your ability to interact

1 with other people.

2           You don't lose your ability to know what's  
3 going on around you, and you don't lose the ability to  
4 remember what took place during that period of time.  
5 It just doesn't happen that way. Grief is a very  
6 powerful emotion, but it doesn't wipe out everything.

7           When does Mr. Ellsworth come up with a  
8 story? Let's see. Now, you've got remember what he  
9 knows when he gets arrested down in Sussex for  
10 possession of a firearm by a convicted felon.

11           And by the way, Judge Payne is going to tell  
12 you that one of the things you can use in deciding  
13 whether people are believable or not is whether or not  
14 they have been convicted of a felony or a crime  
15 involving what we commonly refer to as moral  
16 turpitude, meaning stealing or lying, that type of  
17 thing.

18           He's been convicted of a felony, and then  
19 he's got these two new felonies coming at him. He's  
20 got the possession of a firearm by a convicted felon,  
21 and he's got this felony driving charge. And, you  
22 know, he doesn't want to go to jail. Easy enough to  
23 understand. Nobody wants to go to jail.

24           It's only then that this story comes forth,  
25 and you know what thought process is almost --

1 definitely what went through his head. I have this  
2 problem. I can tell them that I ran into Terence.  
3 Nobody will say I didn't.

4 Remember, he just didn't know what the real  
5 facts are. So that's a problem, but then I could tell  
6 them and I won't hurt him so bad. I mean, Terence has  
7 already been arrested. He's already in trouble. They  
8 have other evidence.

9 All I have to do is say I can help him out a  
10 little bit. I can say he was involved but it was an  
11 accident. I won't hurt him too bad that way. He's  
12 already in trouble.

13 But if I say he said it was an accident and  
14 all these wonderful things, I didn't mean it and I  
15 wish I could trade my life for his and so forth, if I  
16 say that, that will really help him out and maybe  
17 things will work out a whole lot better than they are  
18 right now.

19 So he kind of takes away some of the guilt  
20 about lying on a family member by doing that, and  
21 guess what? The charges go away. He doesn't get  
22 convicted of anything. He doesn't spend a moment in  
23 jail, and it worked.

24 The problem is he has to come back and  
25 repeat it down here. He didn't know at the time,

1 nobody knew at the time that he was going to have to  
2 walk into a federal courthouse, talk to a grand jury  
3 about it and then come into the courtroom and have to  
4 repeat it in front of 14 strangers and try to get them  
5 to believe him.

6 He didn't know that he was going to have to  
7 go through all that. He probably, like a lot of  
8 people, figured, well, once Terence goes to the  
9 penitentiary on state charges, the case is over. I'm  
10 free. Everything is cool. Nothing to worry about.  
11 Everything worked out fine for me and for him, but he  
12 had to come in here and answer some questions.

13 Also, you know that he didn't in all  
14 likelihood attend any of the funeral activities.  
15 First off, he said his wife was with him. We never  
16 heard from her.

17 Second off, he didn't even sign his name in  
18 the book. His other family members did, but he didn't  
19 even put his name in the book. That's because he  
20 never saw the book. He couldn't put his name in it if  
21 he didn't see it.

22 He lied to you. He came in and lied to you  
23 just like that. Bam, bam, bam. He got his payment a  
24 long time ago. He thought he would never have to do  
25 anything more.

1           Doggone it, he had to come back down here  
2 and tell the story all over again, first to the grand  
3 jury where there's nobody doing anything but just  
4 throwing the softball. The grand jury, that's how it  
5 works. Nobody asks him questions but Mr. Novak.

6           Then he had to come in here and subject  
7 himself to cross-examination. Uh-oh. And doggone it,  
8 the family members prove that he's lying. Now, he's  
9 not one of the drug guys, but what I've had to say  
10 about him applies to a lot of them as well.

11           But let's talk about some other things. All  
12 right? Let's talk about these admissions. Let's  
13 start with the state court case.

14           Mr. Novak has an incredible amount of faith  
15 in the criminal justice system, and that's good  
16 because it almost always works out fine, key word  
17 being "almost."

18           He says, well, you know, who in their right  
19 mind if you're looking at capital murder charges where  
20 the only possible penalty is either spend the rest of  
21 your life in the penitentiary until you die or if  
22 worse comes to worse they take your life and you  
23 receive the same fate that Timothy McVey got just this  
24 very morning or somebody says, look, you can plead  
25 guilty to a manslaughter charge and the worst that can

1 happen to you is you get ten years. That's the worst  
2 that can happen.

3 It turns out that he got five years. The  
4 worst that can happen is you get ten years. You don't  
5 run -- even run the risk of spending the rest of your  
6 God-given days in the penitentiary or worse yet,  
7 having your life taken.

8 Now, obviously Mr. Novak assumes that nobody  
9 would ever -- if they're reasonable and rational and  
10 innocent, would ever do that. Obviously he's never  
11 faced that, and you've got to think about what someone  
12 would have to consider, the factors they'd have to  
13 consider if they found themselves in that position.

14 To say that that's an awkward position is a  
15 considerable understatement. It's a very, very tough  
16 choice. And Mr. Richardson took the choice that  
17 allowed him to get out of prison while he was still a  
18 relatively young man.

19 Is it the choice that everybody would have  
20 made? Who knows. It is the choice that he made, and  
21 to say that no one would ever do that if they were  
22 facing it is laughable, laughable. That's an argument  
23 you should just reject outright because it's an awful,  
24 terrible choice. Awful, terrible choice.

25 Let's face it, folks, he's standing here

1 charged with killing a police officer. It's one of  
2 the worst things you can possibly be accused of doing.  
3 Do you think that there's a reasonable likelihood that  
4 if the jury found you guilty, they might give you the  
5 death penalty for doing that? Maybe so.

6 Do only innocent people end up getting  
7 convicted? You know that's not true. You know that's  
8 not true. Do only innocent people get the death  
9 penalty? You know that's not true.

10 So when you criticize somebody for making  
11 that choice, be realistic and think. What do you do?  
12 What do you do if you're facing that?

13 Mr. Richardson answers the judge's question  
14 by saying, yes, he's pleading guilty because he's  
15 guilty because if he says no, what happens? Out the  
16 window, back to square one, looking at the death  
17 penalty, looking at life without parole. That's the  
18 answer and no more max exposure of ten years.

19 It's an awful position to be in. Well, the  
20 sad thing about that from one perspective is that is a  
21 result that pleases nobody, nobody. Okay? Really no  
22 one at all.

23 It's in December of 1999 that that occurs.  
24 It doesn't please Mr. Richardson obviously in the  
25 sense that he knows he's going to have to go to the

1 penitentiary. There's no way he's going to get a  
2 suspended sentence or probation for a crime involving  
3 the death of a police officer even if it's  
4 manslaughter.

5 And he went to the penitentiary. You know  
6 that because, A, we stipulated he got five years; and  
7 B, Special Agent Ritchie visited him a couple times in  
8 two different institutions back last year.

9 What happened almost immediately thereafter?  
10 A federal investigation began, that very same month,  
11 if I'm not mistaken.

12 Now, in order for this to be a federal case,  
13 you know now they have to show that there is a drug  
14 link, so to speak, to the killing in order to make it  
15 a crime that you can consider. So what did they do?

16 They took Waverly like this and turned it  
17 upside down and shook it. And you know that this  
18 event was the single biggest thing that had ever  
19 happened down there, that everybody remembers where  
20 they were when it happened because every witness was  
21 basically asked that question.

22 Police attention was focused on it, and then  
23 ultimately, the federal attention was focused on it.  
24 People were being brought to the grand jury.

25 Mr. Ritchie said himself he interviewed over 100



1 people, and a bunch of them came in here for you to  
2 listen to.

3           Everybody knows, first, that Terence  
4 Richardson is charged, later, that Mr. Claiborne is  
5 charged. Everybody knows of the state court  
6 resolution because it was so unsatisfactory to  
7 everyone for reasons that should be obvious.

8           And then the federal investigation starts,  
9 and everybody has to start trekking up here to go to  
10 the grand jury and talk to Mr. Novak. And Mr. Ritchie  
11 and Mr. Talbert are running around Waverly  
12 interviewing people, finding out what they have to say  
13 about the case.

14           It's not exactly a secret. It's quite the  
15 opposite. Everybody knows what's going on, and  
16 everybody knows that Terence Richardson and Ferrone  
17 Claiborne are the people that they have to point the  
18 finger at.

19           Now, Mr. Novak says people like Keith  
20 Jackson had nothing to gain by testifying. True in  
21 one sense but completely untrue in another. What's  
22 the first thing he told you about people like  
23 Mr. Jackson?

24           You bring him in in front of the grand jury.  
25 They're all wondering, why are they bringing me here?

1 What have I done that can get me in trouble? I'm a  
2 drug dealer. Oh, boy, maybe that's what they want to  
3 talk to me about. Maybe that's what they want to talk  
4 to me about. Maybe everybody knows.

5 By the time the federal investigation  
6 starts, these guys are the ones that the law  
7 enforcement still think did this. Well, what's the  
8 first thing Mr. Novak says to him when they clear the  
9 door and start to warm up the seat?

10 If you testify truthfully, we won't  
11 prosecute you for any of your drug trafficking crimes  
12 ever, ever. You're off the hook as far as we're  
13 concerned. Now, tell us about Mr. Richardson and  
14 Mr. Claiborne. They were dealing drugs down there,  
15 weren't they? Okay.

16 Now, how smart do you have to be to figure  
17 out what the right answer to that question is? No, I  
18 never heard of them dealing drugs for a moment. No.

19 What's that? Let's try that again. When  
20 Mr. Richardson and Mr. Claiborne down there dealing  
21 drugs or not? How long does it take for people to get  
22 the message?

23 Keith Jackson, he's not a real nice guy.  
24 He's got a little sense of humor and so forth, but is  
25 he dumb to the point where he can't figure that out?

1 Come on.

2 Mr. Novak thinks that people are inherently  
3 lazy. I disagree with him about that. I know you  
4 guys aren't because I watched how hard you worked.  
5 But people are motivated by self-interest.

6 And just about everybody that testified  
7 about drug dealing activities that they attributed to  
8 Mr. Richardson and Mr. Claiborne was motivated by  
9 self-interest.

10 And that interest is, please, Mr. Novak,  
11 please don't charge me with what I did back on the  
12 street, back in the day. I don't want that to happen.  
13 He gets nothing for the testimony? Come on. That's  
14 absurd.

15 He's got the one thing that he feared the  
16 most that won't happen to him. You're brought to a  
17 federal courthouse, and guess what, we're not going to  
18 charge you so long as -- Terence Richardson, we want  
19 to talk to you about him.

20 All right. And Mr. Novak has a way of sort  
21 of adopting terms that nobody else did, and he's very  
22 clever about some things, like the 140 people. If you  
23 didn't stop and think about that and remember the  
24 testimony, you might say, hey, there were 140 people  
25 at Christie's house there. Well, there weren't. It

1 was 140 people who signed the book during the week.

2 Now, the Dogwood crew, that's Mr. Novak's  
3 term. That's nobody else's term. That's what he came  
4 up with. Yes, there was sort of a crew down there,  
5 wasn't it? Well, yeah. Nobody else used that term  
6 but him.

7 Let's talk first now about what Deputy  
8 Aldridge testified to and Trooper Williams. Now, I  
9 don't want to downplay the fact that obviously when  
10 Officer Gibson was speaking first to Aldridge and then  
11 to Trooper Williams that he was obviously in some  
12 considerable pain. Again, an understatement.

13 But look, folks, we didn't put Aldridge and  
14 Williams on the stand. We didn't ask them questions  
15 about what was said by Officer Gibson. He did.  
16 That's his witness. His evidence, not ours.

17 He put it on, and then he very cleverly  
18 says, well, you should discard a lot of what he said  
19 because, first off, Aldridge can't hear worth a hoot  
20 and obviously, secondly, the officer was in a great  
21 deal of pain. So the stuff that doesn't add up,  
22 that's the part you should discard because Aldridge  
23 can't hear and Officer Gibson was in pain.

24 The stuff that does fit our theory of the  
25 case, well, you can accept that. Now come on. Come

1 on. He put this evidence on. He's the one that has  
2 to explain it.

3 If I may, Your Honor, I'd like to have  
4 Mr. Richardson stand up just for a moment. Would you  
5 stand up, please, Terence? Thank you. That's the  
6 tall one, right? Right, that's the tall one.

7 Folks, your common sense tells you that you  
8 don't refer to people as being tall unless they're at  
9 least as tall as you if you're tall yourself or  
10 they're taller than you. When was the last time you  
11 heard someone refer to someone as tall who was shorter  
12 than them?

13 Now, oh, yes, Mr. Novak, it's a struggle,  
14 according to Mr. Novak. That explains why the officer  
15 described the primary assailant as being tall. Now  
16 come on. Mr. Richardson can't be called tall by  
17 anybody except a child. He is 5'8" tall.

18 He's shorter than I am, and I'm certainly no  
19 big guy. He's about Mr. Novak's height. That's not  
20 tall. Nothing personal, Mr. Novak, but that's not  
21 tall.

22 The description that Mr. Aldridge gives --  
23 and I'd love to know what it is in Trooper Williams's  
24 mind that makes him believe that Terence Richardson  
25 fit the description that he got because he's reported

1 that tall thing as well. Okay?

2 Mr. Aldridge says -- first time he said it  
3 was two of them, black males. He said he saw two  
4 black males. He saw them enter the woods. He  
5 suspected a drug transaction. Didn't know either one.

6 Now, admittedly, Officer Gibson had been  
7 working there just several months at the time of his  
8 death, but according to the witnesses, Terence and  
9 Ferrone are down there at the Waverly Village full  
10 time. How is it he doesn't know either one of them if  
11 they are the ones who did this?

12 All right. The description, they had  
13 dreadlocks. One possibly had a ponytail. Both had  
14 jeans and white shirts. One was tall and thin. I'll  
15 give you the thin. He's thin. No question. Is he  
16 tall? Answer, no. No question about that, either.

17 Then he says he was fighting with the tall,  
18 thin one when the gun went off. Now, look,  
19 Mr. Aldridge wrote this stuff down. He put it in  
20 report form, and he testified about it in front of you  
21 last week, a week ago today.

22 Was he telling you something that wasn't  
23 true? Is that what Mr. Novak is saying? Is he saying  
24 that he got it wrong? That very day he prepared a  
25 report so it would be preserved, so he wouldn't have

1 to rely solely on his memory, and that's what he put  
2 in his report. Was he right or wrong?

3 Well, he's probably right because Trooper  
4 Williams, when he talks about his description, he  
5 believed from what Officer Gibson told him. Now he  
6 says he chased a black male into the woods. In the  
7 woods, he scuffled with two black males.

8 One black male had dreadlocks and was tall  
9 and skinny. The other was a medium build and bald.  
10 He said they were wearing black T-shirts twice, and  
11 then he said white T-shirts. Remember that? On  
12 direct, twice he said black T-shirts, and then we  
13 asked him about it, he said, oh, no, no, white  
14 T-shirts.

15 He said they were trying to get his gun,  
16 they shot me with my own damn gun, then said again,  
17 and apparently said several times, two black males,  
18 one tall and skinny with dreads pulled into a  
19 ponytail.

20 Now, only a person who has ever described  
21 the hairstyle that Mr. Richardson had at that time as  
22 dreadlocks is Mr. Novak. Not one single witness  
23 called it deadlocks. What did they say? Braided,  
24 plaited, cornrows, those are the words they used, the  
25 witnesses used.

1           Mr. Novak is the one who used dreadlocks to  
2 refer to it. Those are not dreadlocks, folks. They  
3 are cornrows. They might be plaited. You might call  
4 it braided, but it ain't dreadlocks. Could you pull  
5 it back into a ponytail? Maybe. Maybe.

6           I mean, he's got about that much  
7 (indicating). How do you make a ponytail out of that?  
8 You might be able to make a ponytail out of this, not  
9 much of one, but mine is a little longer than his was.  
10 Is that Terence Richardson? Is that consistent with  
11 the description that was given? Absolutely not.

12           Now, again, I have to emphasize that was his  
13 witness, his questions, his evidence. None of us  
14 asked those questions. We followed up on them, but he  
15 brought that out. He didn't have to, but there it is.

16           Now, you can't -- you've got to take the  
17 good with the bad and the rough with the smooth, Mr.  
18 Novak. If that's what he said on the separate  
19 occasions when he was out there laying dying in the  
20 woods, then that's what he said.

21           And you've got to take the stuff that fits  
22 your theory, but you also have to accept the stuff  
23 that doesn't. And the tall part doesn't. The  
24 deadlocks part doesn't. The whole description of  
25 Mr. Richardson, supposedly, does not fit.



1           Now, if he's wearing RS-1, the T-shirt,  
2 don't you think that big marijuana leaf would be  
3 something that you'd see and remember? Supposedly  
4 he's struggling with him face-to-face, right there,  
5 white T-shirt.

6           Now, let's talk about Evette Newby just for  
7 a moment. I'm going to come back to her.

8           But can I see your CS-4 and 5, please?  
9 Thank you.

10           Now, there's some overlap on this. I'm not  
11 going to try to do it. But let's take a look here.  
12 These are the views from Evette Newby's home, an  
13 upstairs window, into the woods.

14           Here you see the path overtop of the berm,  
15 and you can see a little bit over into there. And  
16 here's the other -- looking the other way, I believe  
17 it is, and you can see a little bit in there. It's  
18 the day after the killing, just about as good of  
19 evidence as you'll ever get as to how they actually  
20 looked the day before.

21           Now, for whatever reason, Aldridge chose not  
22 to have somebody stand out there in a white T-shirt at  
23 the place where Officer Gibson's body had been.  
24 Wouldn't that be good so you could see whether -- or  
25 at least how much you can see somebody over there in

1 that area of the woods? He chose not to do that, and  
2 you can't really tell how much you could see.

3 Remember the other photo that was taken from  
4 inside the woods looking back toward the apartment?  
5 What do you see? A big white blur. That's what you  
6 see. A big white blur. You might be able to tell  
7 it's a building, maybe. We know it's a building  
8 because we've heard all the evidence about it.

9 But can you see enough to identify people if  
10 somebody was sitting in a window up there? No.  
11 You'll have it back in the jury room to take a look  
12 at.

13 Now, on the other hand, inside the woods,  
14 you can see fairly well. There's not a lot of  
15 underbrush. You saw all the photographs that were  
16 taken. We're not going to haul them all out right now  
17 because you'll have a chance to look at them very soon  
18 today.

19 Obviously if somebody is back there, you can  
20 see them. Did Eric Garrett see anybody back in the  
21 woods on his two trips to the woods? Remember he goes  
22 in and comes back out to speak to the officer. The  
23 officer apparently asked if he saw anybody back there.  
24 He says no.

25 Then he goes back on his way to go get the

1 lawn mower. Does he see anybody back there then? No.  
2 How come? How come? Now, remember he knows these  
3 guys. If he saw them, he's certainly going to know,  
4 and he's certainly going to remember. Did he see  
5 them? No.

6 Remember those two elderly gentlemen who  
7 testified at the end of the case for us, Mr. Goodwyn  
8 and Mr. Boling? Now, they are both older guys, and  
9 Mr. Boling obviously is getting along in years. But I  
10 mean, he still knows what's happening around him.

11 They go out there every day, and that day  
12 obviously was a day they definitely would have been  
13 sitting out there because it's a nice day. They're  
14 sitting out there in that playground area. They don't  
15 see anybody. They don't see anybody.

16 Did they come in and start quivering at the  
17 sight of Terence Richardson and Ferrone Claiborne?  
18 Come on. Let's talk about Joe Jones for a minute.  
19 The first thing Joe Jones said is he overheard this  
20 conversation at Dobie's Store.

21 He's drunk when he says it, and he also  
22 tells everybody he was at Waverly Village when this  
23 all happened. You know what he wants? He wants to be  
24 part of it. He wants to be part of it. He wants to  
25 be important. He wants to be a part of it. He wants

1 to help.

2 But it just didn't happen that way. And  
3 Mr. Novak says he's terrified. Maybe he's terrified  
4 of having to come to court, to start off with.  
5 Remember, he's been up. This is the second time he's  
6 been up here because Mr. Novak brought him up here and  
7 brought him in front of the grand jury.

8 And it can't be for a guy like him all that  
9 pleasant of an experience to go through. The fact is  
10 Joe Jones doesn't know anything about this case.  
11 Maybe the reason that he wasn't so comfortable is that  
12 he wasn't drinking, and he drinks a lot, obviously.

13 And he was nervous, and he knew that he had  
14 said something that wasn't so while he was drinking,  
15 while he was drunk, and he was going to be called upon  
16 to repeat it.

17 And you know, sure, he looked over in our  
18 direction. Maybe it was me that scared him. I can be  
19 kind of threatening looking sometimes. Maybe it was  
20 Mr. Everhart. He's a big guy. You know? Come on.

21 Mr. Jones just simply -- he doesn't now and  
22 didn't then know what he was talking about. And you  
23 don't need a tape measure, Mr. Novak, to know whether  
24 somebody is taller or shorter than you are. You need  
25 these, your eyes. That's it.

1 I have never heard the expression "drunks  
2 don't lie." Have you ever heard that? Drunks don't  
3 lie? What, do you lose your ability to fabricate when  
4 you get drunk? That's when we ought to get people  
5 drunk to come into court then so they won't lie on the  
6 stand.

7 Like Tony Tyler did. He's been convicted of  
8 perjury before, before any of this ever happened.  
9 Convicted, not just an admitted perjurer like Shawn  
10 Wooden, but he's been convicted of it, and he went to  
11 the penitentiary for it.

12 I mean, you know, he has admitted to lying  
13 under oath before. You think things get easier the  
14 more you do them? What do you think? Hard or easy?  
15 I just have to be careful I don't get caught this time  
16 so I won't have to go to the penitentiary for that,  
17 too.

18 You have got people who have been convicted  
19 of, in Mr. Ellsworth's case, abduction, kidnapping,  
20 which is the nonlegal term. You've got Mr. Tyler has  
21 been convicted of drug offenses plus perjury.

22 You've got Mr. Wooden who because he changes  
23 his story around like he changes his underwear, he got  
24 ten years in the penitentiary for obstruction of  
25 justice. The government believes that how he

1 obstructed them was by denying any of his previous  
2 statements about the case were true.

3 We suggest to you he's guilty of it all  
4 right, but he's guilty of it because he's been telling  
5 the wrong story. It's a lie. It's what he's been  
6 making up. He lied under oath in state court. Okay?

7 So it was no surprise to Terence when  
8 Mr. Ritchie shows up and says guess what, Shawn  
9 doesn't support your alibi. Wow. When did he find  
10 that out?

11 He found that out at the preliminary hearing  
12 in the state court proceedings, which have long since  
13 concluded by the time Mr. Ritchie comes to see him.  
14 No, big surprise. He knows that. But Mr. Wooden has  
15 shown and demonstrated and admitted that it doesn't  
16 bother him to lie under oath.

17 He did it once. We suggest to you that he  
18 did it again. The difference now is he has to tell  
19 the story that Terence is out there and that he's  
20 there because he's finally learned what the price for  
21 not saying it is. The price in his case was ten  
22 years.

23 Now, he hopes that that ten years is going  
24 to turn into something much less. Now, we went  
25 through a lot of talk about how federal plea

1 agreements work and how the process is arranged in  
2 terms of attempting to get sentence reductions for  
3 people.

4 Now, the first thing that happens before  
5 Judge Payne can even give a thought to considering a  
6 motion for sentence reduction for him and for the rest  
7 of them who are in that position is that Mr. Novak has  
8 to put pen to paper. That's what happens.

9 If that doesn't happen, Judge Payne has no  
10 role to play in terms of a sentence reduction because  
11 there's no motion on the table. And Shawn's stuck  
12 with ten years, no way around that. That's the only  
13 way it can happen.

14 His lawyer can jump up and down, call the  
15 Court, file any kind of motion he wants, but Dave  
16 Novak has to get the ball rolling before Shawn can do  
17 that. This is the man that must be satisfied before  
18 Judge Payne even gets a chance to consider it.

19 And who decides what the truth is?  
20 Mr. Novak does. The witnesses admitted that because  
21 they told you who determines what the truth is.  
22 Mr. Novak is the one who determines whether I've  
23 testified truthfully or not.

24 There's a provision that's in the plea  
25 agreement for these folks that says that they must, if

**Comm. Exh. D, page 1096 of 1254**

1 requested, submit to a polygraph, lie detector  
2 examination. And guess what? Nobody has been asked.  
3 How about that?

4 Sure, they could ask them sometime later.  
5 What's the point? What's the point? If Shawn Wooden  
6 does that two months from now, what difference is that  
7 going to make? What difference is that going to make?

8 You have to decide it based on how things  
9 are today, not what might happen maybe way down the  
10 road. You have to decide it based on what you heard  
11 here and how things stand today.

12 And how things stand today is Shawn Wooden,  
13 the No. 1 thing he wants most in life is a sentence  
14 reduction, obviously. He'd be crazy if that wasn't  
15 what he wanted.

16 There's only one way to get it. Terence.  
17 That's it. Terence is his currency, his money. The  
18 only thing of value he has to give to the government  
19 is Terence.

20 First thing Shawn says about this case,  
21 Terence was with me. He didn't have anything to do  
22 with this. Second thing, Oh, yeah, Terence and  
23 Ferrone had something to do with it, but I was just a  
24 lookout. You know, I'm just a lookout, supposedly  
25 motivated by his fear of being prosecuted himself.



1           Now remember, if what he says is true, he's  
2 indeed as guilty as they are. Okay? He's out there  
3 helping out. He's aiding and abetting. Nobody seems  
4 to have mentioned to him that he can be prosecuted.  
5 But do you think he knows it?

6           Well, obviously. He said the reason he lied  
7 is because he didn't want to get the finger pointed at  
8 him. Then -- and this is a total lie. When he was  
9 being interviewed by Special Agent Duncan and he asked  
10 if he knew who shot the officer.

11           He said, "No."

12           "Did you shoot the officer?"

13           "No. I might do a little crazy stuff back  
14 in the day, but now I got to be a family man. I  
15 straightened up now."

16           Well, guess what? No matter how you cut it,  
17 he hasn't straightened up now. Whether he's telling  
18 the truth or not, he hasn't straightened up, and that  
19 was a lie. And the truth to him, folks, is one of  
20 those things that's really irrelevant.

21           What is relevant is what does he need to do  
22 so he can get home, so he can get home and do what he  
23 needs to do or do what he wants to do or do whatever.

24           Did you see how Eric Garrett reacted when he  
25 was asked if he knew Shawn Wooden? Did you see that

1 look on his face? It's almost hard to describe. I  
2 couldn't imitate it if I wanted to. But what do you  
3 think it signified that he thought about Shawn Wooden?  
4 What do you think he thought?

5 Now, Mr. Novak says these are the people  
6 Mr. Richardson picked. Okay. Mr. Richardson is  
7 guilty of not working, and he's guilty of hanging with  
8 the wrong crowd, for lack of a better term. Sure.  
9 But is he guilty of this charge?

10 Those aren't crimes what I just referred to.  
11 We're talking about crimes here. We're talking about  
12 very, very serious crimes. Is he guilty of those  
13 crimes?

14 What happens to Mr. Wooden? Well, then he  
15 changes the story that very day, and remember, he also  
16 said he thought Leonard Newby might have done this  
17 because Leonard Newby had dreads and a ponytail. And  
18 he already cut off his hair, and that was kind of  
19 surprising because he knew that Leonard really liked  
20 his dreads, his hairstyle.

21 Then boom, shortly thereafter, bingo, he  
22 says, Oh, Terence Richardson had something to do with  
23 this, May 11th. Then he testifies in state court.

24 Then the year 2000 rolls around. March 8th,  
25 2000, rolls around. Bob Ritchie's on the case. He

1 goes down to the Sussex County Jail. Shawn is in  
2 there. He goes, hey, Shawn, what's up? Tell me --  
3 you know, I want to talk to you about this case.

4 I made the whole thing up. Mo Williams  
5 threatened me they'd charge me with a homicide if I  
6 didn't say that I was a drug lookout. Now, isn't that  
7 funny? Who else said that?

8 Evette Newby said that. Remember? Remember  
9 she said that she stopped Chief Sturup driving down  
10 the street and told him that she was being pressured  
11 to lie by the Sussex County authorities to say that in  
12 her case that not only did she see the struggle in the  
13 woods but that Terence Richardson was -- that she saw  
14 Terence Richardson shoot Officer Gibson.

15 Well, isn't that strange that they said that  
16 at different times about the same organization? And  
17 that statement right there, Shawn doesn't know it at  
18 the time, but then boom, some months later he gets  
19 charged with obstruction of justice.

20 And he goes, they're saying I was lying in  
21 that, and he's telling people things now. Oh, boy.  
22 And he, you know, gets prosecuted. He gets his time,  
23 and you know, it's obvious. There's only one way that  
24 he can make things happen for himself, now. You know  
25 what it is.

1           Let's talk about this now. Let's talk about  
2 Terence's discussion with Special Agent Ritchie at the  
3 Deep Meadow Correctional Center. What happens during  
4 that period?

5           Now, before we talk about it, let's  
6 remember. Terence knows that Shawn is not supporting  
7 his alibi. He knows that. Why? Because he's already  
8 heard him testify in state court. He knows that he  
9 said that he was only a lookout and all that other  
10 stuff.

11           But he knows that Shawn is no longer  
12 supporting him. He's known it for quite a while, and  
13 that's one of the reasons why he's in the  
14 penitentiary. So what happens?

15           October 27th of last year, Mr. Ritchie goes  
16 to talk to him. He reads him his Miranda rights,  
17 which as we all know is one thing you tell him is you  
18 don't have to say anything to me at all if you don't  
19 want to.

20           All right? Now, Terence knows that he  
21 doesn't have to talk to Ritchie, and he knows that  
22 Shawn has apparently talked to someone and pointed the  
23 finger at him. Now, does he have to talk to Ritchie?  
24 No. But he decides to anyway.

25           And what does he tell him? He tells him

**Comm. Exh. D, page 1101 of 1254**

1 that he stayed with Shawn Wooden that week and then  
2 amended to say that I did spend Thursday night at my  
3 father's house.

4 He talked about the shirt. He talked about  
5 Jovanna Jones, and he talked about the people that he  
6 was with. And he talked about the events of that  
7 night.

8 Now, they asked him specifically about the  
9 shows that he watched. Now, okay, he does -- he's  
10 wrong about the time of some of the shows. He is  
11 right about the Silver Surfer.

12 Now, struggling to fit that correct answer  
13 into his theory, Mr. Novak makes the argument, well,  
14 the reason he's right about that is because right  
15 after he killed the officer, he ran straight back to  
16 the trailer, and he catches the tail end of the Silver  
17 Surfer. That's how he knows that's on at eleven.  
18 Come on.

19 If that's true, then Shawn Wooden is lying.  
20 Okay? Because remember Shawn Wooden says he gets back  
21 to the trailer before Terence does, right? And that's  
22 after. Supposedly after the shooting, where is the  
23 first place Shawn goes? To his great-grandmother's  
24 house. He goes in, stays there a little bit and then  
25 decides to go back to the trailer.

1           And then once he gets back to the trailer,  
2 some time passes, and then Terence arrives. So is the  
3 Silver Surfer still on then? How long does the show  
4 run? Nobody knows. But if it's a half-an-hour show  
5 as he suggested, that just doesn't work. That doesn't  
6 play out. It's impossible.

7           And again, discard the stuff that doesn't  
8 fit into your theory even if it's a fact in evidence  
9 because it's favorable to Mr. Richardson.  
10 Mr. Richardson is right about that.

11           And if he saw that start, if he saw that  
12 show start, guess what? He couldn't have committed  
13 this murder. There's no way unless he just tore out  
14 of there, rode the bicycle at something like lighting  
15 speed, didn't do any of the things that Mr. Wooden  
16 says happened and got over there just in time to be  
17 there for the killing.

18           That doesn't fit into Mr. Novak's theory.  
19 So he tells you he's got this other alternate  
20 explanation for it. Well, he got back in time to see  
21 the end of it. Come on.

22           Think about the times of the shows. You  
23 know that because of Mr. Richardson's relaxed  
24 lifestyle that time was not something that was a huge  
25 factor to him. He didn't have to be at work at a

**Comm. Exh. D, page 1103 of 1254**

1 particular time. He didn't have to get up at a  
2 particular time. He didn't have to be anywhere at a  
3 particular time.

4 And nobody knows whether there was even a  
5 clock or any kind of display in Shawn Wooden's trailer  
6 because nobody ever saw the inside of Shawn Wooden's  
7 trailer that testified here in this case about that.

8 I asked Mr. Ritchie about that. By the time  
9 they got involved, Mr. Wooden lived somewhere else.  
10 So you can't go there. So you know Terence isn't  
11 wearing a watch, and you know that we all have been  
12 wrong about things like that before.

13 But in this case because he's the one who's  
14 charged, his honest mistake becomes consciousness of  
15 guilt. That's what happens when the United States  
16 points the finger at you. That's what happens.

17 Mr. Novak is pointing his finger at him all  
18 morning long when he's arguing. That's what happens.  
19 You get charged. Anything that you say that is  
20 correct, you explain away or disregard. Anything you  
21 say that could be the product of an honest mistake,  
22 you call it a lie and characterize it as consciousness  
23 of guilt.

24 The only time -- now, Agent Ritchie is doing  
25 something pretty clever at this point, now. He is

**Comm. Exh. D, page 1104 of 1254**

1 just letting Terence talk. Okay? He let him talk.  
2 He takes down what he says. He takes good notes.

3 And I will never understand why the FBI has  
4 a policy of not taping anyone. What sense does that  
5 make? Tapes can't lie, be mistaken or change their  
6 minds. I'm not saying that Mr. Ritchie did any of  
7 those things, but what sense does that make?

8 But in any event, he takes down pretty good  
9 notes and goes back and probably talks to Mr. Novak  
10 and says here's what he said. And they look into it.  
11 They look at the times of the TV shows and say,  
12 uh-huh, they have the thing off by half an hour.

13 All right. Now we've got a problem. We can  
14 go down there and talk to him about that and see what  
15 he has to say about that. So, what happens?  
16 Mr. Ritchie gets back in his car.

17 And this time he has to go a lot further to  
18 go see him because now Terence has been sent to a  
19 maximum security facility for Lord knows what reason.  
20 And he talks to him now about the times, and Terence  
21 said those are the times I remember. Okay? He's  
22 wrong. Consciousness of guilt. Honest mistake. You  
23 make the call.

24 He says, I may have sold some drugs back in  
25 the day. That's an expression that Mr. Novak just



1 couldn't figure out, but you knew what it meant when  
2 you heard it. It meant a long time ago. That's what  
3 it meant.

4           You knew that. You knew that the first time  
5 you heard it. You didn't have to have someone  
6 interpret that for him, and he said he sold some  
7 drugs. Now, I asked Mr. Ritchie about this  
8 specifically. You may recall.

9           What drugs did he say he was selling? He  
10 said drugs, just drugs. Now, is marijuana a drug? It  
11 certainly is. Can you sell marijuana? Yes, you can.  
12 Is it illegal to do that? Yes, it is. Can you go to  
13 the penitentiary for it? You bet.

14           And Mr. Ritchie does something else that's  
15 clever in this interview. What does he do? He kind  
16 of says, look, this could have been an accident. This  
17 could have happened in a way that you didn't mean for  
18 this to happen. Give him an easy way out, right?

19           He said, come on, we know things can happen  
20 that you didn't mean to have happen. It wasn't your  
21 intention. You're not that kind of guy. But Terence  
22 says, no, that's not what happened. Sorry. That's  
23 not what happened. That's what he said.

24           And Mr. Novak, that was his evidence. He  
25 put that evidence on. He asked those questions, and

1 to the extent that Terence is right about the things  
2 that he said, like, for example, that Joe Mack after  
3 asked if his car had been impounded, true. That was a  
4 fact. He's right about it.

5 Does that mean that everything he said is  
6 right? No. Does it mean everything he says is wrong  
7 because he gets the times wrong? No. Does it mean  
8 that everything he says is wrong because Shawn Wooden  
9 says he's not telling the truth? Come on.

10 Look, you're being asked to make one of the  
11 most important decisions about another person's life  
12 that anybody can ever make, and it's -- you've been  
13 called to do a lot. You've been here for a week.  
14 It's now the sixth day.

15 And you're going back when the time comes  
16 and sit down among yourselves and discuss this  
17 thoroughly, and it's going to probably take awhile.  
18 And you know that the decision you make is important  
19 to an awful lot of people. It's important to almost  
20 everybody who's here in the courtroom.

21 It's important to Mr. Novak. It's important  
22 to me, but it's certainly important for Ferrone  
23 Claiborne and Terence Richardson, obviously, and it's  
24 important to the officer's family.

25 But you're going to do that job based on the

**Comm. Exh. D, page 1107 of 1254**

1 evidence, not on sympathy for anyone or prejudice  
2 against anyone. You're going to do that based on the  
3 law and the facts. You promised us that, and I have  
4 every confidence that's exactly what you're going to  
5 do.

6 But remember, when you're making this  
7 decision, don't do what Mr. Novak does. See,  
8 Mr. Novak's argument flows from one premise. It all  
9 starts with one premise, that those guys are guilty.  
10 And he's making everything fit into that. He's  
11 pushing things into pigeon holes because that's how  
12 he's starting off.

13 You can't do that. You said you won't do  
14 that, and you promised that you won't do it. And I'm  
15 sure you won't. You have to start off and look at --  
16 as the Judge says, you start off with a clean slate,  
17 no preconceptions, no prior knowledge of the case.  
18 You just look at it coldly and dispassionately, which  
19 is how you have to do it.

20 Both Mr. Novak and I and probably  
21 Mr. Everhart, too, we tend to get a little excited  
22 sometimes. We tend to carry on a little bit, probably  
23 talk a little more than we should. Pardon us. It  
24 comes with territory, I guess.

25 But in the final analysis, we're asking you

**Comm. Exh. D, page 1108 of 1254**

1 to start off the right way. Look at it coldly,  
2 dispassionately and with an eye toward reaching the  
3 proper decision in the case like we know you will.

4 Now remember, Terence gets his times wrong.  
5 Okay? But Steve Vaughan got the time wrong, too.  
6 Remember he said he's giving Terence a ride home,  
7 supposedly, and Terence is all drunk the night of the  
8 killing. He said he picked him up about 8:00 or 8:30,  
9 and you know that's not true. He got home  
10 considerably later.

11 Does that make him a suspect in some way?  
12 Is he a murderer because he got the time wrong? He  
13 made an honest, human mistake, and are we  
14 characterizing that as consciousness of guilt? The  
15 answer is no.

16 Evette Newby. Now, Evette Newby is not  
17 Terence's buddy. Okay? They aren't like this  
18 (gesturing). They're not hanging out together. She's  
19 just a woman who lives in Waverly Village or lived in  
20 there at the time.

21 And she will steal anything that isn't  
22 nailed down if she needs it, A, to get money for  
23 drugs; B, to get money for her kids or C, to make her  
24 lifestyle more comfortable, like stealing cable  
25 television, like stealing electricity, like stealing

1 water, all those things. She steals anything she  
2 needs. That's the kind of person that she is.

3 Terence didn't select her. The government  
4 brought her in here. She says she sees this thing out  
5 in the woods. She lies about it at first, supposedly.  
6 She said, I don't know anything about that. And she  
7 comes in and says, Oh, here's what I saw. Here's what  
8 I saw.

9 First off, the question is can you see it at  
10 all? Can she have seen what she said she saw? Look  
11 at those exhibits, ladies and gentlemen, and I think  
12 you're going to have considerable difficulty  
13 concluding that she could have even seen any of it,  
14 any of it from the vantage point that she had.

15 Yeah, she's gotten a little bit out of the  
16 case. She's gotten some money. She's gotten some  
17 help. Then what happens is when you start to tell  
18 these lies, then what happens is she got herself  
19 caught in a vise.

20 And the vise is on the one hand she really  
21 didn't want to have much to do with this, but now  
22 she's gotten herself involved by saying one thing and  
23 now the police in Sussex County are beating on her to  
24 say things. You're just saying you saw a struggle.  
25 Aren't you sure that you saw Terence Richardson shoot

1 that police officer? Come on, you can say that, can't  
2 you?

3 Now she's in trouble. Now she's got  
4 pressure on her to say even more things, and that's  
5 not a very comfortable feeling. Maybe, folks, the  
6 reason that she didn't come to the grand jury twice  
7 was she was tired of telling the story. She was tired  
8 of lying, and she was afraid of going in front of the  
9 grand jury and telling that story under oath because  
10 if it were found out that she lied about it, she could  
11 go to the penitentiary for perjury.

12 But she found out that the only way for her  
13 to avoid further problems for her was to repeat that  
14 lie. She repeats it at the grand jury. She comes in  
15 here and tells you the same thing. That way, yes, she  
16 still had to stay in jail because of the fact she  
17 violated the conditions of her bond.

18 That's another mistake she made, but that  
19 way at least she doesn't get charged with a crime and  
20 have to look at going to the penitentiary herself.  
21 You know, she will steal anything that's not nailed  
22 down in order to get drugs for herself.

23 And she's not proud of it, and she certainly  
24 should not be. But she -- and she used every asset  
25 that she has, including her own body, to get drugs.

1           And the Judge is going to instruct you that  
2 when you consider the question of a witness's  
3 believability or credibility, you can look at whether  
4 they were an alcohol and/or drug abuser during the  
5 period of time about which they testify, and she  
6 certainly was. And it's a factor that you can take  
7 into consideration in assessing her believability.

8           And her convictions of crimes I described  
9 are also factors you can take into account and the way  
10 she testified on the stand and whether in the final  
11 analysis she had the opportunity to see what she said  
12 she saw.

13           Now, one thing I need to say parenthetically  
14 at this point is you heard a week's worth of testimony  
15 last week, and I'm going to make you happy by telling  
16 you I'm not going to discuss with you each and every  
17 witness who testified.

18           Some of them, for example, had nothing to do  
19 with Mr. Richardson specifically, and some of them  
20 just didn't have anything to do with anything at all.  
21 But in any event, you don't want me to rehash it all,  
22 do you? I know you don't. I know you don't.

23           I'm trying to hit the important parts, the  
24 parts we feel are important, and obviously

25 Mr. Everhart is going to have some remarks, too. I

1 want to leave something for him to say. So don't  
2 expect me to address everything Mr. Novak said because  
3 I can't, because we don't have the luxury of unlimited  
4 time. But please remember there are things to be said  
5 about all of these things.

6 Now, Mr. Novak mentioned Sheila Jones. You  
7 have notes, and you have your memory. But the  
8 recollection we have is that Ms. Jones did not say she  
9 had seen Terence Richardson with Ferrone Claiborne or  
10 with drugs.

11 And the big question is -- one of the big  
12 questions is why did they need to go into the woods?  
13 If these two guys, if all this stuff about drug  
14 dealing in the past is true, why do they need to go in  
15 the woods for?

16 Mr. Novak hypothesizes that they might have  
17 seen the police officer. Come on. There's no  
18 evidence of that. There's no evidence of that at all.  
19 The police officer didn't call that in. We don't  
20 know. You can't just make this stuff up. You have to  
21 have a basis for it.

22 He hypothesizes that Ferrone Claiborne goes  
23 to Niki Coleman's apartment. Based on what? Nothing.  
24 Did she come in and say she was running a stash house  
25 for him? All we know from the evidence is that she



1 was a friend of his. Is that something suspicious?

2 No.

3 So why do they need to go in the woods at  
4 all? If the drug dealing is taking place 24 hours a  
5 day, 365 days a year, particularly on the weekends,  
6 right out there where the playground stuff is, right  
7 where those old men are sitting, if they do that all  
8 time anyway, why not do it that day?

9 Remember, this is the weekend. And that's  
10 another problem. If this is a weekend and everybody  
11 has got drugs pouring out of their pockets so they can  
12 come down there and sell them, how come they can't  
13 find any? How come they can't find any?

14 What, is everybody out all of a sudden, just  
15 boom, a big shortage hit or something? They can't  
16 find any, supposedly. But Ferrone Claiborne  
17 supposedly came up with some. They go back in the  
18 woods, which is something you never heard anybody say  
19 there was dealing back in the woods before. Did you?  
20 No.

21 All right. Let's talk about what happened  
22 in John Brown's trailer. Sometimes after a long trial  
23 you get a little punchy, but I'm still having trouble  
24 understanding why Mr. Novak feels that Keith Jackson  
25 would hear this remark about having killed someone

1 before I'll kill somebody now and Brandon Gilchrist  
2 wouldn't.

3           The argument that Derrick is having is with  
4 Brandon Gilchrist. He's the guy, if anybody, that  
5 he's angry with. Do you think he's just going to  
6 mutter that as an aside to somebody who's standing off  
7 over here, or is he going to speak those words to the  
8 person that he's beefing with right there?

9           But Brandon Gilchrist does not recall  
10 anything of that nature. You heard that stipulation.  
11 Sure, they weren't standing right next to each other,  
12 but as Keith Jackson tells you, he was closer and  
13 could hear better than Brandon Gilchrist. Come on.

14           Brandon Gilchrist's testimony came in by  
15 stipulation, but apparently there's one difference  
16 between him and Mr. Jackson. He isn't a drug dealer.  
17 He's not a convicted felon. That's what Keith Jackson  
18 is.

19           Now, you know, to say that -- again, to say  
20 that the government hasn't done anything for him is  
21 ludicrous. He had that possibility of federal drug  
22 prosecution excluded by Mr. Novak as soon as he came  
23 in the door of the grand jury room. So many of the  
24 others did as well. There's no question about that,  
25 either.

1           This is the last time anybody is going to  
2 speak to you on behalf of Terence Richardson. This is  
3 it. We don't get a chance to get back up here like  
4 Mr. Novak does. He gets to get back up here because  
5 he has what we call the burden of proof.

6           He's got to bear the responsibility of  
7 proving to you beyond a reasonable doubt everything  
8 that they allege against, in this case,  
9 Mr. Richardson. So the law gives him a second shot at  
10 it, so to speak.

11           He gets to get up and try to tell you why  
12 with reference to Mr. Richardson why I'm wrong about  
13 the things I'm arguing to you here, and we will not be  
14 heard again.

15           So what I'm asking you is this: The  
16 decision that you're called upon to make, as I said,  
17 it's extremely important. It goes without saying.  
18 But it's not just a decision like some of the other  
19 important decisions you make.

20           It's like up there at the top of the  
21 important decisions you make, like the ones about, you  
22 know, will I attend this school or that school or will  
23 I select this career or that or will I marry this  
24 person or that person or will I, you know, take a new  
25 job, things of that nature, things that are the kind

1 of decisions that you make only after considerable  
2 reflection.

3           So many of the decisions we make in life we  
4 tend to make on the basis of, well, this is probably  
5 the better choice. I'm talking about the less  
6 important decisions. But this one is as important as  
7 it gets, and you know that. And that's why you've  
8 worked so hard at this.

9           The question you're going to have to answer  
10 for yourself is would you make a similarly  
11 important-type decision based on the testimony of the  
12 people that you heard here today -- pardon me, last  
13 week?

14           Are those the kind of people that are going  
15 to provide information of sufficient quality and  
16 quantity to convince you that you should make an  
17 important decision in one particular way, or indeed,  
18 are these people by their nature the type of people  
19 that you wouldn't trust unless there was really,  
20 really some very good, strong corroboration for what  
21 they say?

22           Now, if Shawn Wooden told you that the sun  
23 rises in the east, as it does, and you had to depend  
24 upon that in making an important decision, I suggest  
25 you get up tomorrow morning and look to see where the

1 sun comes from before you rely upon it and the same  
2 for the rest of them, Evette Newby, same way.

3 Tony Tyler, he's a convicted perjurer.  
4 Truth is flexible to him. Mr. Ellsworth, all the rest  
5 of them, you decide what the truth is. You decide,  
6 but are you going to decide someone has committed  
7 these horrible crimes based upon the testimony of  
8 people like that? Based on the testimony of people  
9 like that? Think about it.

10 You probably got a little used to them after  
11 awhile. The parade of those type of people, you kind  
12 of get -- the shock of hearing what kind of lives they  
13 live or what kind of people they are tends to wear off  
14 a little bit.

15 Think about each one of them. Think about  
16 them individually and collectively. Are they going to  
17 support the type of conviction that Mr. Novak wants  
18 here? And consider, if you will, what the officer had  
19 to say as he laid down there out in the woods.

20 Mr. Novak either has to rely on it or not,  
21 and he's got to get up here and tell you does he rely  
22 on it or not because if he is relying on it, he's got  
23 to take the good with the bad. And regardless of what  
24 Trooper Williams thinks, decide for yourself does he  
25 fit the description of the tall, skinny guy.

1 I thank you very much. This is the last you  
2 will hear from Mr. Richardson or people on his behalf.  
3 It's been an honor working in this case with Mr. Novak  
4 and with the other attorneys involved. It's been an  
5 honor having the opportunity to speak to y'all now.

6 On behalf of Mr. Richardson and his family,  
7 we thank you for your efforts, both up until now and  
8 what you're going to do here shortly. We ask that you  
9 consider the evidence carefully, dispassionately, as  
10 I've asked, and that you find Mr. Richardson not  
11 guilty. Thank you, now.

12 THE COURT: Ladies and gentlemen, we will  
13 take a 20-minute morning recess at this time. Just  
14 take your books with you, please.

15  
16 (Jury exited the courtroom at 11:30 a.m.)

17  
18 THE COURT: We'll take a 20-minute recess.

19  
20 (Recess taken.)

21 (Jury entered the courtroom at 11:55 a.m.)

22 THE COURT: All right, Mr. Everhart.

23 MR. EVERHART: Thank you, Your Honor. May  
24 it please the Court, counsel, ladies and gentlemen.  
25 Good morning, barely.

1           As you know, I'm Jeffrey Everhart, and along  
2 with Charles Gavin, I've had the opportunity to  
3 represent Ferrone Claiborne this week. As you-all  
4 know, Mr. Claiborne is charged in a three-count  
5 superseding indictment.

6           He's charged by the United States of America  
7 with engaging in drug trafficking, distribution of  
8 crack cocaine. He's charged with using a firearm in  
9 the commission of the murder of Allen Gibson, and he's  
10 charged with, of course, murdering Allen Gibson in  
11 furtherance of or during the commission of a drug  
12 trafficking offense.

13           You've heard from, by my count, 40 or 41  
14 witnesses called by the United States. You've also  
15 heard from several witnesses called by Mr. Richardson  
16 and by Mr. Claiborne. After I finish my closing  
17 argument on behalf of Ferrone Claiborne, Mr. Novak  
18 will have rebuttal, and Mr. Boatwright mentioned that.

19           Let me tell you, rebuttal is worth its  
20 weight in the gold. Mr. Novak will have the  
21 opportunity to shoot holes in everything I say.  
22 That's his right. That's his obligation. I say have  
23 at it.

24           Then Judge Payne is going to read you the  
25 jury instructions. There are somewhere in the

1 neighborhood of 58 instructions. Judge Payne  
2 instructs you on what the law is in this case.

3 And as he told you -- or I should say as he  
4 asked/inquired of you during voir dire, one of the  
5 basic, most fundamental tenets of our criminal justice  
6 system is the burden is on the United States in this  
7 case to prove to you each and every element that they  
8 allege beyond a reasonable doubt.

9 And Judge Payne is going to read you that  
10 instruction and many more. I know you have been  
11 taking notes. Your notes are better in this case than  
12 my notes because I and Mr. Gavin are held captive by  
13 the fact that coming in we know certain things.

14 We probably are hampered by the fact that we  
15 have some preconceived notions about what we're going  
16 to hear, and so maybe we're not as attuned to what the  
17 witnesses are saying as you are. So please rely on  
18 your recollections.

19 I am going to in a moment present to you an  
20 argument which I believe will convince you that the  
21 government has failed utterly to prove beyond a  
22 reasonable doubt what they allege against Ferrone  
23 Claiborne.

24 I will not intentionally misstate anything.  
25 If I do, I apologize. You rely on what you remember,



1 not on what I remember. All that said, now let's  
2 address the charges against Ferrone Claiborne.

3 First, Mr. Claiborne is charged with  
4 distribution of crack cocaine. As Mr. Novak told you,  
5 he presented a number of witnesses who told you that  
6 during the course of the last decade Mr. Claiborne  
7 engaged in dealing crack cocaine.

8 There were different elements, if you will,  
9 in Waverly, Virginia, that dealt crack cocaine. Quite  
10 frankly, the picture that has been painted during this  
11 trial of Waverly, Virginia, is one of the most  
12 depressing pictures of a town I've ever been  
13 confronted with.

14 If you believe what we've heard, we can all  
15 swing off 460 on the way to the beach and pick up some  
16 crack cocaine pretty much any time of the day or  
17 night, and I think that's a sad commentary.

18 The question, of course, is: Was Ferrone  
19 Claiborne involved in that? I'm not going to sit here  
20 and beat up or belabor the point. A lot of people  
21 said it.

22 It's tough to argue that a whole bunch of  
23 people got together and decided to tell the same lie.  
24 Do a lot of these people have motives to lie?  
25 Absolutely. Can they benefit from lying? Without

1 question, they can.

2 I don't know, quite frankly, whether they're  
3 telling the truth, whether they're lying. That's up  
4 to you to determine. The government charges, however,  
5 that Ferrone Claiborne distributed more than 50 grams  
6 of crack cocaine.

7 Now, Mr. Novak said, well, that's easy.  
8 Witness 1 said they dealt this much crack cocaine a  
9 week. And you extrapolate and you do the mathematics.  
10 Well, I guarantee you I did worse in math than  
11 Mr. Novak. I was an English major. That's how I  
12 ended up being a lawyer.

13 Well, you do the math, but I think if you  
14 think back, the primary witness that dealt with any  
15 substantial weight in this case was Tony Tyler. And  
16 if you believe Tony Tyler, he dealt -- what did he  
17 say?

18 He said he supplied Ferrone Claiborne with  
19 drugs on several occasions. He was -- remember  
20 Mr. Novak went through that. They were trying to  
21 improve him, make a bigger, better drug dealer and all  
22 that.

23 Well, I suggest to you, to single him out,  
24 Tony Tyler absolutely lied to you. What makes you  
25 think that, you say, Mr. Everhart? As Mr. Boatwright

1 correctly pointed out, he's an admitted perjurer.  
2 He's been convicted of it. He's lied before.

3 And Judge Payne will instruct you that you  
4 can look at -- you can look at that more carefully  
5 than for other witnesses. I think that that is  
6 particularly Jury Instruction No. 17, and you'll  
7 have --

8 Your Honor, you do send them back, do you  
9 not? You send the jury instructions back?

10 THE COURT: Yes.

11 MR. EVERHART: Thank you.

12 You will have that. Jury Instruction  
13 No. 17, it says, "If there has been evidence that a  
14 witness who testified at this trial lied under oath at  
15 another proceeding, I must warn you that the testimony  
16 of this witness should be viewed cautiously and  
17 weighed with great care. It is, however, for you to  
18 decide how much of his or her testimony, if any, you  
19 wish to believe."

20 Well, that applies to two witnesses. We're  
21 only talking about Tony Tyler now. But look at Tony  
22 Tyler. Think also, remember Tony Tyler told you that  
23 he was supplying Frankie Richardson. Frankie  
24 Richardson said he was being supplied by Tony Tyler.

25 Well, that's convenient. Certainly has a

1 ring of truth about it. Now, separate the two. Tony  
2 Tyler says I was providing drugs, if you will, to  
3 Ferrone Claiborne, but what did Frankie Richardson,  
4 say?

5 He said, yeah, I know Ferrone Claiborne. I  
6 never knew him to have anything to do with drugs. I  
7 don't know him that way, I think is the way he phrased  
8 it. So that at a minimum should cause you to question  
9 the voracity of what Tony Tyler says.

10 How else did the government try to dovetail  
11 and make it fit Tony Tyler's testimony? Well, we all  
12 remember hearing about Eulanda Holloman. Do you  
13 remember her? They were commonly called Rosie Allen.  
14 We also heard about her husband Bootie.

15 Well, interestingly enough, they both  
16 testified that they were living down in Waverly. They  
17 were involved in the drug trade. Ms. Holloman says  
18 she didn't provide drugs to Ferrone Claiborne. Bootie  
19 said he did.

20 In an attempt to give his testimony the ring  
21 of truth, Tony Tyler says, oh, yeah, I met Ferrone  
22 Claiborne when Roxie Allen was married to Bootie?  
23 Scrap Holloman, did we hear the name "Scrap Holloman"  
24 from anyone else during this trial other than Tony  
25 Tyler? No, we didn't.

1           And you remember, if you do -- and I hope  
2 you do. I got up on cross and gave him the chance to  
3 back out of that. I said, now let me get this  
4 straight. Back in the early Nineties when this  
5 started, you were down there dealing with Roxie and  
6 Bootie and Tony. And tell me again, who is this Scrap  
7 Holland or Scrap Holloman?

8           He said, that's who Roxie was married to.

9           Well, that's not who Roxie was married to  
10 then. She may have been married to him sometime  
11 later. I don't know that, and you don't either, I  
12 suggest to you.

13           But what you do know is by the government's  
14 own evidence they weren't married back then. That's  
15 just another way Tony Tyler is lying to you. I  
16 suggest it is.

17           Now, I don't know how y'all took notes. I  
18 numbered each witness. Tony Tyler was Witness No. 34  
19 called by the government. Let's talk about who else  
20 talked about drugs. Witness No. 15, Michael Winfield.

21           What did Michael Winfield say about Ferrone  
22 Claiborne? He never knew Ferrone Claiborne to deal  
23 drugs. Witness No. 29, Eulanda Holloman, I just  
24 touched on her. That's Roxie. She sold crack to  
25 Bootie. She was not giving drugs to Ferrone. She

1 didn't know if Bootie was or not.

2 Obviously, Bootie comes up. I don't know if  
3 he was the next witness or two later. And he says, I  
4 was giving Ferrone drugs. Ronald Williams, he dealt  
5 with Bootie, and he dealt with Roxie.

6 Frankie Richardson, I touched on him a  
7 moment ago. He was the 28th witness called by the  
8 United States. He says he did not know Ferrone  
9 Claiborne with regard to dealing drugs.

10 And last, George Drew, on cross-examination,  
11 he said, Ferrone Claiborne was a user. Occasionally,  
12 he may have sold -- pardon me. Occasionally, he sold  
13 to support his drug habit.

14 So I suggest to you, ladies and gentlemen,  
15 if the government has proven to your satisfaction that  
16 Ferrone Claiborne was dealing drugs, they have not  
17 proven to your satisfaction he dealt over 50 grams of  
18 crack cocaine.

19 Now, all that said, let's face it. We're  
20 not here about a piddling drug conspiracy in Waverly,  
21 Virginia. We're here to try the case of the murder of  
22 Officer Allen Gibson. They call it a murder. "They"  
23 being the United States.

24 Now, of course when you charge someone with  
25 murder, the first thing you have to prove is it is in

1 fact a murder. Now, when you go back, I want you --  
2 please, I ask you please to pay attention to these  
3 particular instructions, not to the detriment of any  
4 others, but this goes with the arguments I'm making  
5 now.

6 And the Judge will tell you, you don't pay  
7 attention to one over the others. You look at all of  
8 them and mix it up like a stew and taste it. Well,  
9 look at Jury Instructions 52, 53, 56, 46 and 58  
10 because they deal with what the United States has to  
11 show, prove beyond a reasonable doubt to make this a  
12 murder case.

13 Jury Instruction No. 53 deals with malice  
14 aforethought. I believe Mr. Novak mentioned it. I'm  
15 not sure if he did. I'm sure he'll mention it in a  
16 few minutes. "Malice aforethought" means when you  
17 kill another person deliberately and intentionally or  
18 act with callous and wanton disregard for human life.

19 Has the government proved that beyond a  
20 reasonable doubt? I suggest to you they have not, and  
21 I'll tell you why in just a minute. Number 46, Jury  
22 Instruction No. 46 deals with intent. It says, "A  
23 person intends the natural and probable consequences  
24 of acts knowingly done or knowingly omitted."

25 And then if you listen to Mr. Novak's theory

1 of the case or the government's theory -- I'm sorry,  
2 the United States' theory -- it is this: That Ferrone  
3 Claiborne aided and abetted Terence Richardson in the  
4 commission of the killing of Officer Allen Gibson.

5 Jury Instruction No. 58 deals with aiding  
6 and abetting. It tells you that the government must  
7 prove beyond a reasonable doubt that, in this case,  
8 Ferrone Claiborne, one, knew that the crime charged,  
9 the murder, was to be committed or was being  
10 committed.

11 We're going to commit murder, or we're in  
12 the process of committing it. That's what they have  
13 to prove to you.

14 Two, that he knowingly did some act for the  
15 purpose of aiding the commission of that crime, that  
16 crime being the murder, and he acted with the  
17 intention of causing the crime charged to be  
18 committed.

19 The government must prove that Ferrone  
20 Claiborne wanted the crime to be committed. That's  
21 Jury Instruction No. 58. That's not me, defense  
22 lawyer, talking. That's the Court telling you what  
23 the law is.

24 And you say, you know, I heard the United  
25 States Attorney stand up a little while ago, and he



1 told me how simple this is. He pretty much glossed  
2 over it. There's no question in your mind this is  
3 murder. It has to be a murder.

4 Well, let's look at the evidence that the  
5 United States presented. Let's talk about Evette  
6 Newby. Evette Newby told you what she saw, how she  
7 was able to see it. She explained to you the reasons  
8 that her story is reluctant, changed, etc.

9 What did she say? She says Terence  
10 Richardson came running up to the top of the berm --  
11 remember that -- and had something in his hand. How  
12 did she describe him? She said he looked stunned.  
13 That's pretty much a small thing, I suppose.

14 But does it occur to you that if you're  
15 doing something intentionally, if you're meaning to  
16 kill somebody, are you then stunned when it happens?  
17 If I'm chopping down a tree in my back yard with an ax  
18 and it falls down, am I stunned when it comes down?  
19 No, you're not.

20 Use your common sense. I suggest to you  
21 that's a small thing, but something that indicates to  
22 you or should indicate to you that this was not an  
23 intentional homicide. It was not an intentional  
24 killing.

25 Shawn Wooden, Shawn Wooden, if you believe

1 his testimony, is the invisible person or the third  
2 person involved. What did he say? Does his testimony  
3 damn Ferrone Claiborne in some way? Sure it does. It  
4 places him there.

5 But what does he say? He says he was bent  
6 over. "He" being Shawn Wooden was bent over, testing,  
7 getting ready to light up a rock. He heard a voice  
8 say either halt or don't move. I don't recall which  
9 it was. The difference it makes is inconsequential.

10 He turned, and he saw what would be the  
11 officer, who we now know to be Officer Allen Gibson.  
12 Ferrone Claiborne started to run. Officer Gibson  
13 grabbed Terence Richardson.

14 Ferrone Claiborne turned -- and these are  
15 Shawn Wooden's words. Ferrone Claiborne grabbed  
16 Officer Gibson to try to help Terence Richardson get  
17 away, not he shouted out "kill that man, get his gun."  
18 He turned and tried to extricate Terence Richardson  
19 from being arrested.

20 Now, I grant you you can't resist an arrest.  
21 Whether it's lawful or unlawful, you can't resist it.  
22 But it's a big step from resisting arrest to murder.  
23 It's a huge step.

24 Mr. Wooden says Ferrone tried to pull  
25 Officer Gibson away. I could see the struggle.

1 Officer Gibson was getting his gun. I, Shawn Wooden,  
2 turned and started to run away. I heard a shot. I  
3 turned. Terence Richardson had the gun, and Ferrone  
4 Claiborne was running the other way.

5 Well, if you accept that, I suggest to you  
6 Ferrone Claiborne is not guilty of murder. I suggest  
7 to you Ferrone Claiborne attempted to extricate his  
8 friend. We don't know what he saw because  
9 Mr. Wooden's back is turned.

10 But Wooden said I heard a shot. I turned,  
11 and Ferrone Claiborne was already running the other  
12 way. To quote Mr. Novak, "Is it possible that Ferrone  
13 Claiborne saw the gun, retrieved by the person who  
14 shouldn't have had it and said, wait a minute, this is  
15 out of hand, I am beating feet for the hills?"

16 Is it possible? I suggest to you it's not  
17 only possible, it is probable because that's what  
18 Shawn Wooden said, and if you believe what he says, as  
19 Mr. Boatwright pointed out, you don't just pick and  
20 choose the things that help you and hurt you and  
21 disregard the ones that hurt you.

22 So again, is it murder? When you look at  
23 those instructions, they tell you what constitutes  
24 murder, and I suggest to you when you look at the  
25 evidence that's been presented, it's not murder.

1           Now, Mr. Novak says clearly, clearly these  
2 guys knew where his body armor was, his bulletproof  
3 vest, because they were struggling with him. You can  
4 look at this. This is your evidence.

5           The bullet hit right here at the bottom, and  
6 of course, as we all know, tragically the bullet was  
7 deflected -- because you remember the computer  
8 animation. The bullet was deflected and came down  
9 here and severed or ruptured or punctured, whatever  
10 word you want to use -- I think he said the iliac  
11 artery, femoral.

12           And that's what caused Officer Gibson to  
13 tragically bleed to death while being tended to by,  
14 among others, Trooper Jarrod Williams who's a trained  
15 EMT person.

16           You heard the doctor testify. When they got  
17 him to the hospital, they went the wrong way. They  
18 could tell there was a tremendous amount of blood.  
19 They thought maybe the heart had been hit. Yet, it's  
20 an abdominal injury.

21           Well, ladies and gentlemen, what the  
22 government wants you to believe is that somehow or  
23 another the person who fired the shot was an expert  
24 shot. They say that's Terence Richardson.

25           Do you think that of all these tens of

1 people that came in and testified before the grand  
2 jury, do you think if a single one of them had told  
3 the United States that Terence Richardson was  
4 constantly going down in the woods or going down to --  
5 there used to be a place called Southern Gun World. I  
6 don't think it's there anymore. Or pick the name of  
7 any place you want. If Terence Richardson had been  
8 constantly doing down there and practicing his  
9 marksmanship, do you think the government could have  
10 produced that person? You know they could.

11 Mr. Novak has prepared this case,  
12 unbelievably so. And the reason is because there's no  
13 evidence of that. I suggest to you that if you accept  
14 all the government's evidence, what happened was there  
15 was a struggle for the gun. It happened very quickly.

16 And I'm not making this up. Remember what  
17 Officer Gibson told Officer Aldridge and Trooper  
18 Williams? We were struggling for my gun. It just  
19 went off.

20 Now, yes, later I think Jarrid Williams said  
21 he got my gun, and it went off. Later he says some  
22 things along the lines of they shot me with my own  
23 gun. Well, technically that's true. We were  
24 struggling for the gun, and it just went off.

25 Ann Davis testified that that round was

1 fired from the distance of somewhere between 6 and  
2 18 inches. She thought most likely 12. Remember she  
3 talked about trying to replicate the result? She  
4 thought it was about 12 inches.

5 Ladies and gentlemen, that is not very far.  
6 My stomach protrudes probably farther than Officer  
7 Gibson's did. He's a lot younger than I am, but I  
8 suggest to you 12 inches is about here. And I will  
9 tell you. I'm 6'3". I've got 35-inch sleeves. My  
10 arms aren't fully extended if a gun is shot from here.

11 The evidence is not that someone took that  
12 gun, stepped back and fired. The evidence is there  
13 was a struggle. I suggest to you, ladies and  
14 gentlemen, that there was no intent to murder,  
15 certainly not on behalf of Ferrone Claiborne.  
16 Consider that, please.

17 Of course as the Judge instructs you, if you  
18 don't find that, we don't even get to the most  
19 important question, which is was Ferrone Claiborne  
20 there. Well, the United States would have you believe  
21 that is a foregone conclusion.

22 Mr. Claiborne has given multiple statements  
23 about where he was. As Mr. Boatwright said, if you  
24 misstate something, it's obviously a lie, and if you  
25 lie, you must be guilty.

1 I suppose there's a little bit of a ring of  
2 truth to that, but your sworn duty is to look beyond  
3 the simple, to look at all the evidence, all the  
4 facts.

5 What evidence puts Ferrone Claiborne at the  
6 scene of this homicide? Well, the United States would  
7 say, I suspect first, the fact that he entered a plea  
8 of guilty in the circuit court -- the state court.

9 Quite frankly, Mr. Novak did about as good a  
10 job as I can do of discounting the credibility or the  
11 weight you should attach to that. He said it best.  
12 You've already served your time. You plead to a  
13 misdemeanor, and you go home.

14 When I was a young man, my dad told me, son,  
15 don't gamble unless you can afford to lose. I never  
16 had a whole lot of money. I don't gamble to this day  
17 because I couldn't afford to lose it.

18 I'm not saying Ferrone Claiborne's dad told  
19 him that. I'm not saying his lawyer, Mr. Morchower,  
20 told him that. But common sense tells you let me  
21 think here now. On one hand, I can plead to a  
22 misdemeanor and go home today.

23 Or on the other hand, I can go to trial, and  
24 yeah, in a perfect world, I'd be found not guilty.  
25 But we don't live in a perfect world as we all

1 painfully know every day.

2           And there's a chance, no matter how small, I  
3 might be convicted. And if I'm convicted, there's two  
4 choices, life without parole or death. The United  
5 States Attorney touched on it. He grouped them  
6 together, Mr. Richardson and Mr. Claiborne.

7           They had two, able, experienced, some of the  
8 best criminal lawyers in this city. Mike Morchower  
9 represented Ferrone Claiborne. Do you honestly think  
10 he didn't benefit from Mr. Morchower's counsel?  
11 Wasn't it really a no-brainer for Ferrone Claiborne?

12           So what else puts Ferrone Claiborne at the  
13 scene? Well, Evette Newby, we touched on her. Evette  
14 Newby was the 13th witness called by the United States  
15 in this case. What do we know about Evette?

16           Well, if you believe her, she's a reluctant  
17 witness. If you believe her, she bought drugs from  
18 Ferrone Claiborne on more than ten occasions, and yet  
19 and yet, when she sees this -- and again, look at the  
20 two photographs which you joined together.

21           You hold them up. You determine if she  
22 could really see what she says she saw. It's nice for  
23 Investigator Cheek to get up there and show you a  
24 picture from inside the woods looking out. Do you see  
25 that white building? That's the holes. That's how

**Comm. Exh. D, page 1137 of 1254**



1 you can see.

2 Well, I'll tell you what. Tonight when you  
3 go home, turn out all the lights in your outside yard  
4 and -- pardon me. Turn out the lights outside. Turn  
5 on the lights inside. You can't see. You can't see  
6 in. That's the problem. It was dark in the woods.  
7 It was light where she was, and you can't see.

8 Obviously, if you're outside, it's nighttime  
9 and you're looking into your house and the lights are  
10 on, you can see plain as day, and that's what going on  
11 here.

12 But most importantly, I think, look at the  
13 photograph which Mr. Boatwright mentioned to you. You  
14 overlap it the approximately 2 inches that Mr. Novak  
15 and Mr. Cheek talked about. You look where Mr. Cheek  
16 drew the circle where Allen Gibson was ultimately  
17 found.

18 That's not a defense exhibit. We didn't  
19 trot somebody out there to take that picture. The  
20 United States had that picture taken -- or actually to  
21 be honest, not the United States but someone at the  
22 behest of the Commonwealth Attorney's Office and the  
23 police down there way back when it was a state case  
24 took that picture the next morning at approximately  
25 the time it happened.

1           An effort was made to as best possible  
2 reproduce the situation of April 25th. I suggest to  
3 you she couldn't see it, but let's just say she could.  
4 Let's just assume for the sake of argument she could.  
5 Is it possible? Sure, it's possible.

6           She knows Ferrone Claiborne. She's bought  
7 drugs from him more than ten times. When she  
8 identifies the assailants, does she say it's Ferrone  
9 Claiborne? Absolutely not.

10           Let me get this straight. This is one of my  
11 drug dealers, but I don't even recognize him. What  
12 did she tell you? She had to depend on the  
13 recollection of her 8-year-old son to identify him.

14           She identified a man named Coop Faltz.  
15 Well, we know Coop Faltz couldn't have done it because  
16 we -- "we," the attorneys in this case entered into a  
17 stipulation that said Coop Faltz was in the  
18 penitentiary.

19           So I'm not the sharpest pencil in the box,  
20 but I'm not stupid enough to make you think Coop Faltz  
21 did it. I don't know who did it. But she said it was  
22 Coop Faltz. For whatever reason, we don't know. What  
23 did she say?

24           Remember, we entered into a stipulation  
25 late, and I hope some of you wrote these things down

1 because you wrote about everything else down, I know.  
2 She gave a description of three people.

3 One she said was Terence Richardson. I'm  
4 not going belabor his description at this point. Two,  
5 Coop Faltz, mother Brenda Turner, black male, early  
6 twenties, blue jeans, blue shirt, small dreadlocks,  
7 tall and muscular.

8 All right. It's not Coop Faltz. Take away  
9 the name. What are you left with? Black male, early  
10 twenties, blue jeans, blue shirt, small dreadlocks,  
11 tall and muscular.

12 Well, you saw the picture of Ferrone  
13 Claiborne. You can look at him right now. He's  
14 pretty much the same guy he was then. He's six feet  
15 tall. He weighs 175 pounds, at least he did when he  
16 was arrested.

17 You remember Melanie Duncan, the State  
18 Police Agent who testified. At that time he didn't  
19 have small dreadlocks, doesn't have them today.

20 So I suggest to you, ladies and gentlemen of  
21 the jury, it's not as simple as just saying, Oh, I  
22 mistook Coop Faltz for Ferrone Claiborne. To this  
23 moment, I don't know what the heck Coop Faltz looked  
24 like back then. I suggest to you you don't, either.

25 We don't have a picture of him. We have a

1 picture of everybody else, but we don't have a picture  
2 of Coop Faltz. Maybe it's his twin brother. I do not  
3 know. But if Coop Faltz fits this description, small  
4 dreadlocks, then I defy anybody to tell me how you get  
5 the two of them confused.

6 All right, Mr. Everhart, that sounds really  
7 neat. What about No. 3? Number 3, unknown black  
8 male, early twenties, light skinned, poppy eyes and  
9 knots (small dreads starting), skinny and taller than  
10 T but shorter than Coop.

11 Well, again, you see the picture the United  
12 States produced for you, and you heard lots of people  
13 asked did Ferrone Claiborne -- what was his hairstyle?  
14 Bald, pretty close shaved.

15 So ladies and gentlemen of the jury, I  
16 suggest to you that Evette Newby's initial description  
17 does not fit Ferrone Claiborne. If you believe she  
18 saw it, it can't be Ferrone Claiborne. Later, she  
19 says it is.

20 Well, I hit the lottery last night. Does  
21 that make it so? No. If I say it a hundred times,  
22 does it make it so? No. If I testify under oath I  
23 won it last night, does that make it so? No.

24 Some of you wrote this down I know because I  
25 was reading it up there at the podium in the other

1 courtroom. Look at that. That is a witness called by  
2 the United States. That's her description of the  
3 people who were there.

4 So if you believe that, you have to believe  
5 it wasn't Ferrone Claiborne. All right. Who else  
6 puts Ferrone Claiborne there? Oh, one other thing.  
7 As I said, she says he was wearing a dark shirt. I'll  
8 get back to that in a couple minutes.

9 Who else puts Ferrone Claiborne there?  
10 Shawn Wooden does. Well, Shawn Wooden is an admitted  
11 perjurer. He's been convicted of obstruction. As the  
12 United States says, he's not the best guy in the  
13 world, but you know, you lie down with dogs you get  
14 fleas.

15 Well, that's all nice and true. Bottom line  
16 is what does Shawn say. Let's look at Shawn's  
17 statement. Shawn says he, Terence and Ferrone met up.  
18 They rode over to the Waverly Village Apartments.

19 They cut in through here, and this is -- I  
20 don't remember the exhibit number, but you can have  
21 this back there. It's the aerial view of Waverly  
22 Village. We saw it 50 times.

23 Terence says that the three of them walked  
24 in through here. There was nobody in the playground  
25 area, that Ferrone Claiborne went in front of this

1 building right here.

2           And I'm indicating the first building that  
3 faces into what I would call the courtyard area, that  
4 he Shawn Wooden and Terence Richardson went behind  
5 these two buildings, which also face into the  
6 courtyard.

7           And they went back into the woods, and they  
8 rendezvoused at some point with Ferrone Claiborne.  
9 Certainly possible. Could have happened. Well, there  
10 are a lot of things that suggest that's not what  
11 happened, and a lot of the things that suggest it came  
12 from the mouths of the government's witnesses.

13           Remember what Shawn Wooden said. He said  
14 there was no one at the playground. Well, compare or  
15 contrast, if you will, that with what Evette Newby  
16 says. Evette Newby says she was up at her window, and  
17 she could see. And she gave a list of the names.

18           I'm not going to go back and dig through all  
19 that stuff. I've got volumes of information. But you  
20 remember what she said. She named Coop Faltz, again.  
21 That was in 2000, I think, she named Coop Faltz,  
22 again.

23           Although if you believe her, the next day  
24 she knew it wasn't Coop, but when she was questioned,  
25 she said Coop Faltz, again, Terence Richardson, a

1 couple other three guys hanging around.

2 Remember, she talked about the utility box.  
3 She said they were all hanging around the utility box.  
4 Well, that's not what Shawn Wooden says. Remember,  
5 Evette Newby says she couldn't identify the third guy.  
6 She knows Shawn. She's not sure if it was him or not.

7 But there's a difference there. There's a  
8 pretty significant difference. Shawn Wooden has a  
9 great recollection for what Terence Richardson was  
10 wearing. The man doesn't even remember what he was  
11 wearing. He sure as heck doesn't remember what  
12 Ferrone Claiborne was wearing.

13 But you remember on cross I stood up and  
14 asked him a couple questions. "What were you wearing,  
15 Mr. Wooden?"

16 "I don't remember."

17 "Well, come on. Think about it. Were you  
18 wearing jeans?"

19 "Yes, I was wearing jeans."

20 "Were you wearing like a football jersey or  
21 a T-shirt?"

22 "Probably a T-shirt."

23 "What color was it?"

24 "I don't remember."

25 "Well, was it a white T-shirt? You own some

1 white T-shirts, don't you?"

2 "Yes, sir, Mr. Everhart, I own a lot of  
3 white T-shirts."

4 "Were you wearing a white T-shirt?"

5 "Oh, no, no, no. No, sir, I wasn't wearing  
6 a white T-shirt."

7 Why do you think that's significant?  
8 Remember, we're not trying this case fresh out of the  
9 box. This thing has been brewing down in Waverly for  
10 three years now. I'm going to come back to that  
11 because I agree with at least one thing that the  
12 United States Attorney said, and I'm going to get to  
13 that towards the end.

14 But just remember that Shawn Wooden doesn't  
15 remember what he was wearing. Does that make sense to  
16 you? If you're involved in this as he has sworn to  
17 you he is, do you not remember what you were wearing?

18 Who else places Ferrone Claiborne there?  
19 Well, Tony Tyler, Mr. Tyler. I guess it's a good life  
20 to be a big-time drug dealer, where you know people  
21 that can fork out close to \$700,000 in cash. He knows  
22 the way this works.

23 He's got ten years right now. He wants to  
24 work it off. Remember, he started out much higher, if  
25 you recall, and he got a significant cut in his

**Comm. Exh. D, page 1145 of 1254**



1 sentence because of the cooperation he had provided.  
2 He knows that the coin of this realm is cooperation  
3 because cooperation means time. Less time spent is  
4 more time on the street.

5 So think about Tony Tyler. How does he  
6 place Ferrone there? He says Ron told him he was  
7 there. Feshona Claiborne says that's not the case.  
8 Feshona Claiborne, I guess what we're expected to  
9 believe is when she's called by the United States,  
10 either at the grand jury or here, she's believable.  
11 When she's called by the defense, she's not  
12 believable.

13 Mr. Novak used that question, remember? As  
14 he himself said, one of my favorite questions.  
15 Remember, he prefaced it before he asked  
16 Ms. Claiborne? "One of my favorite questions is you  
17 didn't even have to get up to go to the bathroom?"

18 And she said, "Yeah, I use the bathroom  
19 sometimes, sure." But remember what she said on  
20 direct? "How long was this meeting?"

21 "Twenty to 25 minutes."

22 I'll grant you over seven hours somebody is  
23 going to go to the bathroom. I won't grant you over  
24 20 or 25 minutes you've got to go to the bathroom.

25 When Ms. Claiborne was called by the United

1 States, the United States Attorney asked her, "Have  
2 there ever been occasions when Tony Tyler has visited  
3 your home?"

4 She said, "Yes, once, twice in October of  
5 2000." That was in response to a question posed by  
6 the United States. That was their evidence.

7 Now, when I called her as a witnesses, I  
8 asked her, "Has Tony Tyler visited your home on  
9 occasion?"

10 "Yes."

11 "Has there ever been a time when you, he and  
12 Ferrone Claiborne were in the home together?"

13 "Yes."

14 "How many times?"

15 "Once."

16 Now, I guess, you know, sure, it's possible  
17 she's up there lying herself to death, lying her way  
18 to the penitentiary, I guess. But it rings true  
19 because it comports with the evidence that came in  
20 when the United States was asking the question.

21 She says it was one time. She says Eric. I  
22 think it was Johnson. Felisha Claiborne's boyfriend  
23 was there. He left. That's consistent with what Tony  
24 Tyler said.

25 The difference is she says, "I never left."

1 When it was just the three of us, we were all there."  
2 Tony Tyler said, "I've been shown some photographs of  
3 you and Terence Richardson. What's going on?"

4 Feshona said Ferrone said -- gave her an  
5 explanation about their looking at things still or  
6 whatever. I don't even remember what he said. I  
7 remember what she said he didn't say.

8 He didn't say, yeah, I was there. I just  
9 ran and jumped on the officer, and we struggled. And  
10 I ran away. He didn't say that. So you have an  
11 admitted perjurer, a man convicted of perjury. His  
12 word against Feshona Claiborne.

13 Is Feshona Claiborne bias? Sure she is.  
14 She's Ron's sister. You make the decision.

15 Derrick Marshall, well, I tell you, if  
16 there's ever a guy who knows the system, it's Derrick  
17 Marshall. Remember what Derrick Marshall said? He  
18 said he's sitting back there on the day of the  
19 detention hearing for Ferrone Claiborne and Ferrone  
20 was upset because he didn't make bond.

21 And according to him, Ferrone says, "They  
22 say I killed a police officer. I didn't kill him. I  
23 just cleaned up." Mr. Novak's explanation for that is  
24 less is more. If there are not a lot of details, you  
25 have got to believe they're telling the truth.

1           Of course, the United States does this on a  
2 regular base, as do I and Mr. Boatwright and  
3 Mr. HuYoung and Mr. Gavin. The beauty of being a  
4 prosecutor is this: If a guy tells a detailed story,  
5 he must be telling the truth because where else would  
6 he get the details except from the defendant?

7           If he tells a story that's not detailed, our  
8 answer for that is less is more. Obviously, he's  
9 telling the truth. If he really wanted to lie, he'd  
10 make up more stuff.

11           Well, the problem with Derrick Marshall is  
12 he's talking to him back in the holding -- talking to  
13 Ferrone Claiborne back in the holding cell where there  
14 are video cameras. You remember that was asked on  
15 cross-examination.

16           Do those video cameras have audio? Quite  
17 frankly, I don't know. I suggest to you you don't  
18 know because there's no evidence that they do or they  
19 don't. But ask yourself this question. If you're  
20 Ferrone Claiborne and you're charged -- or suspected,  
21 I should say, because remember at that time he was  
22 just charged with a drug offense. Remember,  
23 Mr. Marshall said that.

24           If the point of it all is murder, are you  
25 going to sit back there in front of a video camera --

1 I suggest you don't know if it has audio or not -- and  
2 talk to some guy you just met about being involved in  
3 the killing of a police officer? No. It defies  
4 logic.

5 So I suggest to you, ladies and gentlemen,  
6 the people and the things I just mentioned, those are  
7 the things that suggest to you and that the United  
8 States wants you to believe beyond a reasonable doubt  
9 put Ferrone Claiborne there.

10 What suggests to you that he was not there?  
11 First of all, we put on an alibi defense. Now,  
12 Mr. Gavin told you in his opening statement it's not  
13 the strongest alibi. Is it possible it was 11:30?  
14 Yes. Is it possible it's 11:35. Yes. Is it possible  
15 it was 11:15? Yes.

16 I don't know, is what Marilyn and Michelle  
17 Claiborne said. We know it was after eleven because a  
18 little girl wanted to get a sausage biscuit. We have  
19 a stipulation they serve sausage biscuits. Breakfast  
20 stopped at eleven. Does that have a ring of truth to  
21 it? Sure it does.

22 What United States Attorney says is, well,  
23 they are not dead solid certain. Okay. I'll turn the  
24 gun. Bad choice of words. I'll put the shoe on the  
25 other foot. I guess less is more, ergo, they must be

**Comm. Exh. D, page 1150 of 1254**

1 telling the truth.

2           If, in fact, you're coming in here to lie,  
3 doesn't it make sense you're specific? Yes, I  
4 remember. It was 11:15 a.m. I know because I looked  
5 at my watch. I looked at the digital clock in my car.  
6 I heard a song on the radio. They said it's the 11:15  
7 weather hour. Any number of things, take your pick.

8           Well, I think the truth, ladies and  
9 gentlemen, is they told you the truth. They are not  
10 dead solid on about what time it was. Remember, we  
11 don't have the burden of proving to you Ferrone  
12 Claiborne wasn't there. The United States has the  
13 burden of proving he was.

14           So you can consider the alibi. Like  
15 Mr. Novak, I pray for the day I have a defendant  
16 charged with a crime and he's in a confessional  
17 speaking to a priest.

18           Unfortunately, bias though they may be, our  
19 life experience is that most of us spend most of our  
20 time with our friends and our relatives. That's just  
21 a simple fact.

22           These people were his relatives. He wasn't  
23 spending time with them, per se, but they saw him, and  
24 this notion that somehow he's walking the wrong way  
25 and all this, look at the pictures.

1           You're taught your whole life walk so  
2 traffic is coming at you. I would rather walk on the  
3 sidewalk than the dirt, but remember what they said.  
4 They said that Ferrone was heading back towards town.  
5 So I don't get this hullabaloo about why would you  
6 walk on one side.

7           I guess the United States' theory is that he  
8 had returned home. He was returning home to change.  
9 For some unknown reason, he decided what the heck, I'm  
10 not going to change. I just killed a police officer.  
11 I'll just go back, and he turned around and started  
12 walking back.

13           That's what you're expected to believe if  
14 you buy all that. I think that's a smoke screen. I  
15 think really what the United States wants you to do is  
16 say you can't believe these girls. Therefore, you  
17 have to believe Ferrone was there.

18           Again, the burden is not on us to prove it,  
19 that he wasn't there. The burden is on the United  
20 States to prove he was. What else suggests to you he  
21 wasn't? Look at Witness No. 11, Hope Wilkins, the  
22 11th witness called by the United States.

23           Hope Wilkins lived in one of these  
24 apartments here on the end of this building, and  
25 again, this is the building which is on the side that

1 faces into the court. I don't remember. You may have  
2 written down which apartment.

3 She said she lives in one of those  
4 buildings -- pardon me, one of those apartments in  
5 that building. She says she was out there that  
6 morning. She saw Officer Gibson come in and do his  
7 loop through the courtyard.

8 If my memory serves, she was the lady who  
9 said he often did that. If my memory serves, she said  
10 she waved at Officer Gibson. Officer Gibson left.  
11 Just a couple moments later, he came back, and she saw  
12 him again.

13 Well, the United States put that evidence  
14 on. I have nothing to suggest to me she is lying or  
15 was lying then, which begs the question, why then when  
16 asked did you see Ferrone Claiborne out there that  
17 morning is her answer, no, I did not?

18 Because part of the government's case is --  
19 and we've heard all this conjecture about going to a  
20 stash house and got to get drugs and all this, but  
21 Hope Wilkins is standing right out here.

22 Ferrone Claiborne would have had to have  
23 walked as close to her as I am to you, but she says,  
24 for whatever reason, no, I did not see him. Again,  
25 compare that with Evette Newby and Shawn Wooden.



1 Evette Newby is way over here. Yet she can see what's  
2 going on. Hope Wilkins is over here.

3 Who's the better witness? I suggest to you  
4 for obvious reasons, Hope Wilkins is. She has no ax  
5 to grind either way. What did she tell you? She said  
6 she had Ferrone Claiborne out there every blue moon.  
7 She didn't see Ferrone there that day. She was in  
8 front of her building when Officer Gibson came in.

9 Witness No. 40, Chenette Gray, I'm going to  
10 back up. This is the second thing I agree with  
11 Mr. Novak on, but I'm going to put it first. What  
12 does Chenette Gray say? She was the 40th witness  
13 called.

14 She said she was in a vehicle, in a car, and  
15 I don't remember all these streets. Mr. Novak has got  
16 all that stuff memorized. He's a heck of a lot  
17 smarter guy than I am. He'll tell you. I think it  
18 was Franklin and Butler. He'll correct me if I'm  
19 wrong.

20 She was in a car heading out, and here comes  
21 Ferrone Claiborne pedaling on a bicycle. And they  
22 stop, and remember now, United States Attorney asked  
23 her, "When was this in relation to the shooting?"

24 She said, "I heard the sirens."

25 And remember Mr. Novak asked, "Isn't there a

**Comm. Exh. D, page 1154 of 1254**

1 difference down there in Waverly between the police  
2 sirens and the rescue sirens?"

3 "Yes, this is the rescue siren." So what  
4 does she say? The Assistant United States Attorney  
5 wants you to focus on the fact it puts him in the  
6 area.

7 I want you to focus on this fact. He's  
8 pedaling a bicycle. Was he frantically pedaling away?  
9 No. Heck, he stops and holds a five- to ten-minute  
10 conversation with this young lady, Chenette Gray.

11 I ask you use your common sense. If you  
12 were just back here in these woods and you knew that  
13 Officer Gibson had been shot, would you stop and --  
14 and remember now, part of the theory of the United  
15 States is he had to hustle back to Uncle Roosevelt to  
16 change clothes.

17 Would you stop and have a five- or  
18 ten-minute conversation with a young lady in the  
19 immediate area? Because remember, that's what the  
20 United States Attorney wants you to focus on. We've  
21 got Chenette Gray placing him in the immediate area,  
22 and it's back over here out of the picture.

23 Does common sense tell you he'd stop and  
24 have a five- or ten-minute conversation? I suggest to  
25 you the answer is just as plain as the nose on your

**Comm. Exh. D, page 1155 of 1254**

1 face. No.

2 And then the ultimate thing that I agree  
3 with Mr. Novak on -- well, one thing before I get to  
4 that, one thing before I get to that, kind of a  
5 combination of things.

6 We heard some mention about DNA. It doesn't  
7 tie Ferrone Claiborne to the scene. We heard about  
8 the retrieval of the firearm. Obviously -- for  
9 obvious reasons, Chief Warren Sturup, there are no  
10 usable fingerprints.

11 Mr. Novak went to great pains to separate  
12 himself from Chief Sturup, and understandably so.  
13 But remember this, ladies and gentlemen. Chief  
14 Sturup was a law enforcement officer. He was the  
15 chief law enforcement officer in the City of Waverly  
16 then.

17 Any mistakes he made in tarnishing or  
18 blemishing or just plain messing up this investigation  
19 do not inure to the benefit of the government. They  
20 inure, if they inure at all, to the benefit of Ferrone  
21 Claiborne.

22 So nice to sit there and knock the guy, but  
23 he's not our guy. The United States doesn't want him  
24 to be their guy either, but he's law enforcement.  
25 He's on the side of the government. So perhaps

**Comm. Exh. D, page 1156 of 1254**

1 Ferrone Claiborne could have been exonerated by that  
2 gun. We'll never know.

3 But most importantly, I agree with David  
4 Novak in this: The most believable and tragically  
5 absent witness in this case is Officer Allen Gibson  
6 himself. Mr. Boatwright talked about the physical  
7 disparity, if you will.

8 Ladies and gentlemen, I don't for a minute  
9 buy that a trained police officer who's six feet tall  
10 is going to refer to Terence Richardson as being the  
11 taller between Terence Richardson and Ferrone  
12 Claiborne. Ferrone Claiborne is six feet tall. He's  
13 right at the same height as Officer Gibson.

14 And having said that, I don't believe that  
15 Officer Allen Gibson, a trained police officer, is  
16 going to describe Ferrone Claiborne as the short one.  
17 He's the best witness.

18 He made what is called a dying declaration.  
19 A dying declaration is let in over hearsay objection  
20 because the theory is that someone who is dying has  
21 every reason to tell the truth and no reason to lie.

22 And I agree with what Mr. Novak said.  
23 There's no reason for Officer Gibson to have lied.  
24 You heard Jarrid Williams. Officer Gibson knew he was  
25 dying. God forbid any of us have to go through that

**Comm. Exh. D, page 1157 of 1254**

1 under those type of circumstances.

2 He knew it. He knew, as the United States  
3 Attorney told you, that some day somebody is going to  
4 be prosecuted for that. He wanted to give the best  
5 possible description, and he gave it, two black males,  
6 both wearing white T-shirts, both wearing blue jeans,  
7 one with dreadlocks pulled in a ponytail, ball cap,  
8 the other short, medium build, balding.

9 How does that comport, how is that  
10 consistent with Ferrone Claiborne? It's not. It's  
11 not consistent. Both had on white T-shirts.

12 All these witnesses that the United States  
13 has called, all these witnesses, Jontay Shaw, Eon  
14 Shaw, Michelle Claiborne, Marilyn Claiborne -- we  
15 called them -- Chenette Gray, Officer Giles, all of  
16 them, nobody to this moment has put a white T-shirt on  
17 the back of Ferrone Claiborne back on April the 25th,  
18 1998.

19 The two guys were wearing white T-shirts.  
20 Quite frankly, my hearing is not the best. I don't  
21 know if Rick Aldridge said black or white. I do know  
22 at some point I heard him say white. I do know that's  
23 what Trooper Jarrid Williams said Officer Gibson said,  
24 and I believe it.

25 Evette Newby says dark T-shirt. Shawn

**Comm. Exh. D, page 1158 of 1254**

1 Wooden, he can't remember. They're not worthy of your  
2 belief. Officer Gibson deserves it. There's an  
3 obvious desire, I think just a guttural reaction. You  
4 know, we have a tragedy here. Let's punish.

5           You have to resist that. You've sworn under  
6 oath to do it. In a couple of minutes, the United  
7 States Attorney is going to stand up and tell you why  
8 everything I said is wrong or most of what I said is  
9 wrong.

10           But you look at the descriptions, ladies and  
11 gentlemen of the jury. You look at them and ask  
12 yourself between these two parties, how in this world  
13 is he the short, stocky one -- pardon me, the short,  
14 medium build one? Look back at your notes you took  
15 about what Trooper Jarrid Williams said.

16           And let's think about this a minute, too,  
17 just to get off the point a second. The Assistant  
18 United States Attorney wants you to believe or he  
19 posits to you that Rick Aldridge somehow misheard.

20           Well, I grant you Rick Aldridge may not have  
21 the best hearing between me and the front row, but  
22 think back. Rick Aldridge was kneeling at the ear and  
23 the mouth literally of a fellow police officer. Do  
24 you really think he couldn't hear what the man was  
25 saying?

1           Of course he heard it. He heard the  
2 description he testified to you about, and that  
3 description is not consistent with Ferrone Claiborne.  
4 So Officer Allen Gibson is the ultimate purveyor of  
5 the truth. He's the fourth witness who places Ferrone  
6 Claiborne somewhere other than at the scene.

7           And I suggest to you, ladies and gentlemen  
8 of the jury, that Officer Allen Gibson has more  
9 credibility than any of the other witnesses called by  
10 the United States. As Mr. Novak said, he's the best  
11 witness. He was there.

12           So please, when you go back, consider my  
13 comments. Read the jury instructions. As  
14 Mr. Boatwright said, you don't start out with the  
15 conclusion and make the facts fit the conclusion. You  
16 take the facts, and you reach a conclusion.

17           And I'm comfortable and I believe that when  
18 you consider all the facts, apply the law to the  
19 facts, apply the facts to the law, whichever way you  
20 want to go, I suggest to you, ladies and gentlemen of  
21 the jury, and I ask you, I believe you will find  
22 Ferrone Claiborne not guilty of the murder of Officer  
23 Allen Gibson and therefore find him also not guilty of  
24 using a firearm in the commission of that murder.

25           I thank you for your time and your

**Comm. Exh. D, page 1160 of 1254**

1 attention.

2 MR. NOVAK: I'm the last lawyer. I know  
3 you're glad. I hope you really listened to what  
4 Mr. Everhart just told you. It's frightening what he  
5 just said. Because if you listened closely, this is  
6 what he started off by saying. "My guy was there. It  
7 was an accident. There was no murder. The gun just  
8 went off." That's the way we started. That's what  
9 this whole beginning was when there was no murder.

10 What's the second part? Well, my guy wasn't  
11 there. All right. Maybe there was a murder, but my  
12 guy wasn't there. He's got an alibi. Two completely  
13 mutually inconsistent defenses.

14 You heard the whole beginning of his  
15 argument talking about how all Ferrone did was wrestle  
16 with the guy. That's not aiding and abetting. All he  
17 did was run off. He quoted Shawn Wooden. Of course  
18 then he's saying Shawn Wooden is telling the truth.  
19 Of course, later on he says Shawn Wooden is telling a  
20 lie.

21 Why do you think all of a sudden after a  
22 week of evidence, all of a sudden Mr. Everhart is up  
23 there telling you that this is an accident, that there  
24 is no murder, that the gun just went off?

25 Remember, his colleague, Mr. Gavin, got up

**Comm. Exh. D, page 1161 of 1254**



1 in the beginning of this case and told you a  
2 completely different thing. He told you from the  
3 beginning this is an alibi case. My guy was not  
4 there. My guy doesn't know anything about it.

5 Do you think it's the fact that they have  
6 heard the evidence that they sat there after a week of  
7 evidence and they have seen that the evidence  
8 conclusively puts Ferrone Claiborne and Terence  
9 Richardson at the scene? You can't have your cake and  
10 eat it both. He is either there or he's not there.

11 Let's just talk real quickly just to make  
12 sure there's no question about this accident thing.  
13 Even though later on he said it was an alibi. There  
14 is absolutely no evidence whatsoever that there was an  
15 accident. As I told you before, there are three  
16 things to look at. You don't jump a police officer  
17 and take his gun unless you intend to use it.

18 Mr. Everhart went through great pains to  
19 talk to you about the aiding and abetting instruction,  
20 and I beg you to read that instruction. But when  
21 you're sitting there wrestling with an officer and you  
22 are holding him so your buddy can get the gun off of  
23 him, that's aiding and abetting a murder.

24 When you take the gun off and you shoot, and  
25 you know he's got a bulletproof vest on, and you shoot

1 below it so you can hit him, that is evidence of  
2 intent as well.

3 And when you have to apply 7 1/2 pounds of  
4 pressure directly on the trigger such that the  
5 firearm's examiner told you that those weapons are not  
6 made to go off accidentally, otherwise you'd have  
7 officers shooting themselves in the foot all the time.

8 That is an intent. Intent can be formed  
9 immediately. It can be formed in a matter of seconds.  
10 Did they go in the woods that day with the intention  
11 of killing the officer? Of course not. They went  
12 into the woods with the idea of doing a drug deal.  
13 Then they got caught. And they panicked. But when  
14 they panicked, they formed the intent of what to do.

15 They jumped that police officer. They were  
16 wrestling with him. And Mr. Richardson pulled that  
17 gun out, and he pulled the trigger, and he shot him to  
18 death.

19 And Mr. Claiborne aided and abetted him  
20 throughout that by holding the officer the whole time.  
21 There's no accident. So that one doesn't work.

22 Of course Mr. Everhart doesn't have a lot of  
23 confidence in that argument, so he goes to plan B. He  
24 tried door No. 1 and door No. 2 both. Door No. 2 is  
25 the oh-well-I-wasn't-there.

1 Well, I'm not going through all of my  
2 argument that I had before about the alibi. You know  
3 how that alibi doesn't work. You know how that alibi  
4 fits completely with him going back to his Uncle  
5 Roosevelt's apartment to change his clothes, and we've  
6 gone through that.

7 I want to talk to you for a second about  
8 Officer Gibson. We are in complete agreement. He is  
9 the best witness in this case. And he did give a  
10 dying declaration.

11 Is Mr. Richardson shorter than  
12 Mr. Claiborne? Absolutely. But let's remember the  
13 context from which he's gathering this information.  
14 This is an officer who walks into the woods, comes  
15 upon two guys. Mr. Claiborne grabs him from the back.  
16 He's struggling with him from the back. Mr.  
17 Richardson is struggling from the front. He's in a  
18 fight for his life. He gets shot. He starts going  
19 down.

20 Mr. Claiborne runs off right away. Then he  
21 sees Mr. Richardson. Mr. Richardson goes to the front  
22 and then goes back. Right, he's not there with a tape  
23 measure. But it's a question of perspective. When  
24 he's laying on the ground, he had a greater  
25 opportunity to look at Mr. Richardson, but he's

1 looking at him from the ground. Of course he's  
2 looking to look taller.

3 Every other aspect of those descriptions  
4 completely fit the defendants. Let's remember one  
5 thing. Somebody killed this officer. This is not a  
6 dream. It's not a fantasy. Somebody killed that  
7 officer. And it's not just somebody. It's two drug  
8 dealers. It's two drug dealers familiar with the  
9 Waverly Village Apartments.

10 All the evidence, only the evidence in this  
11 case points to those two defendants and nobody else.  
12 There is absolutely no evidence that anybody else  
13 could have committed that crime but those two men  
14 right over there.

15 In fact, all the evidence points completely  
16 to only those two men. So when they get to the great  
17 alibi defense and it wasn't them, what is their  
18 theory? Well, their theory is it's a great  
19 conspiracy. It's a great conspiracy where everybody  
20 is out to get these poor two men over here. The poor  
21 two drug dealers from Waverly.

22 Shawn Wooden is lying. Evette Newby is  
23 lying. William Ellsworth is lying. Joe Jones is  
24 lying. Keith Jackson is lying. Tony Tyler is lying.  
25 Derrick Marshal is lying. Officer Martell is lying.

**Comm. Exh. D, page 1165 of 1254**

1 Deputy Aldridge is mistaken or something. One of the  
2 two. Either Aldridge or Williams is lying because  
3 they are inconsistent about the second guy. And the  
4 reason is because Mr. Aldridge can't hear.

5 Agent Richie is part of the conspiracy. I'm  
6 part of the conspiracy. We're all trying to put all  
7 this together to get these two poor guys. And the  
8 reason they have to take that path is because they  
9 know if you believe only Shawn Wooden, and you think  
10 everybody else is lying, they are guilty. If you  
11 believe just Evette Newby and everybody else is lying,  
12 they are still guilty. And we go on and on and on.

13 The great conspiracy. Everybody is out to  
14 get these two men. Or is it simply the fact that all  
15 the evidence that you have available simply points to  
16 the fact that these two men did it?

17 And that is the short end of this story.  
18 They did it. What a coincidence. What a coincidence  
19 that we get to Mr. Richardson and Mr. Claiborne when  
20 they are running the old alibi defense when they're  
21 not running the accident defense. When we get to  
22 their alibis, their alibis, well, they are not rock  
23 solid, as Mr. Everhart and Mr. Gavin like to say.

24 They are not solid at all. They have more  
25 gaps in it than a net does. And the one thing, even

**Comm. Exh. D, page 1166 of 1254**

1 though Mr. Boatwright spent an hour and a half arguing  
2 and Mr. Everhart spent an hour, they have yet to  
3 explain to you or at least to me why it is Shawn  
4 Wooden wouldn't come forward. They have yet to  
5 explain that to you.

6 He has no charges on him. Mr. Richardson is  
7 his alibi. And by coming forward all he did was put  
8 himself in the middle of it such that he was worried  
9 that he was going to get charged. If he is sitting at  
10 the trailer watching cartoons with Mr. Richardson, why  
11 come forward? They have yet to explain that to you.

12 And when he did come forward, what happened  
13 to him? Yes, he lied. He lied. He minimized his  
14 role in this. But because of that, he's serving 10  
15 years in the federal penitentiary.

16 Yes, he hopes to get a sentence reduction,  
17 but the only way he can get a sentence reduction is  
18 No. 1, I file a motion to reduce his sentence, and  
19 it's up to Judge Payne to agree to such a reduction  
20 and grant it.

21 But what can happen? At any time the  
22 government can ask him to take that polygraph. The  
23 one thing that Mr. Boatwright and Mr. Everhart kept  
24 pounding in, is this polygraph examination. The fact  
25 that they can take a polygraph at any time. Don't you

1 think that's going to bother him? Don't you think  
2 that's going to worry him that if he comes in here and  
3 lies and flunks a polygraph and he loses everything  
4 and he spends the 10 years in jail? Doesn't that give  
5 him the reason, the incentive to come in here and tell  
6 you the truth?

7           What motive does this man have in the  
8 beginning to come forward at all? They have yet to  
9 answer that. And the reason they can't answer it is  
10 because all three of them were in the woods that day.  
11 All three were back there, and he has described both  
12 Mr. Richardson's and Mr. Claiborne's role in the  
13 murder.

14           Mr. Everhart just talked about Ms. Newby and  
15 he said to use the example when you go home tonight,  
16 turn all the lights on and go outside and try to look  
17 inside your house and you won't be able to see  
18 anything. Maybe that's what he said or maybe  
19 backwards.

20           The problem with that is that analogy  
21 completely doesn't apply here because as you heard, it  
22 was a bright sunny day. The sun was shining into the  
23 woods giving her completely an opportunity to see what  
24 occurred.

25           And again, they have yet to say what her

1 motivation was to come forward. Why would she get  
2 herself in this entire predicament?

3 He talked about Mr. Tyler. Mr. Tyler really  
4 took it on the chin here during Mr. Everhart's  
5 argument about how he got this great big time  
6 reduction already. He got a reduction from I think it  
7 was 19 years down to ten years.

8 The reason he got the reduction, as you  
9 heard from the evidence, was that Mr. Tyler provided  
10 information about this big dealer who ultimately plead  
11 guilty. He was right about that. That drug dealer  
12 pled guilty. He admitted that Mr. Tyler was correct  
13 about what he said.

14 And as to Derrick Marshal, this thing about  
15 the video cameras in the back, there's absolutely no  
16 evidence whatsoever that there's any audio ability  
17 that's back there with the Marshal's Service.  
18 Instead, you have two guys that are waiting to go to  
19 court. They are stuck back there, and you have one  
20 guy, Mr. Claiborne, who is crying back there because  
21 he wants to go home, and he's not going to get bond  
22 that day. That gives him an opportunity, a reason to  
23 start sharing some of his problems with his cell mate,  
24 who knows nothing about this case. Absolutely  
25 nothing. How could he make it up?



1           Respond to a couple of the things that  
2 Mr. Boatwright said. Mr. Boatwright kept bringing up  
3 the point throughout this trial that there has to be a  
4 drug link for this to be a federal murder. That is an  
5 element of the offense, but the drug link was there  
6 long before the federal government got involved.

7           The drug link was there based upon the  
8 evidence, what Officer Gibson told Deputy Aldridge and  
9 told Trooper Williams as to what happened. He said he  
10 went into the woods. He broke up a drug transaction.  
11 And that two men, those two men over there, they  
12 jumped him and they killed him. It doesn't matter  
13 what the federal link is, that's what the evidence is.  
14 The evidence existed like that from the beginning.

15           There are other star witnesses. Mr.  
16 Boatwright's other star witnesses. The older  
17 gentleman, Mr. Goodwyn and Mr. Boling, said that they  
18 didn't see these two defendants out there that day.  
19 Well, let me tell you something. I think Mr. Boling  
20 is still probably sitting in that courtroom looking at  
21 this picture trying to figure out where in the world  
22 he is and what that is. You saw him that day. I'm  
23 not trying to be rude towards Mr. Boling. The fact of  
24 the matter is he didn't even know this is a picture of  
25 where he had been living for all these years, and they

**Comm. Exh. D, page 1170 of 1254**

1 want you to rely on him?

2 And Mr. Goodwyn, Mr. Goodwyn has been there  
3 living all those years, and he's only seen these two  
4 defendants there once or twice in like four years,  
5 when all the evidence, all the evidence shows that Mr.  
6 Richardson is there almost on a daily basis.  
7 Mr. Claiborne was there every weekend.

8 Mr. Boatwright pointed to the fact that  
9 during Mr. Richardson's statement to Agent Richie that  
10 the only drugs that he referred to selling were drugs  
11 back in the day, and they never got to crack cocaine  
12 or marijuana. Well, the reason for that is that this  
13 defendant didn't tell them what it was. Agent Richie  
14 can ask questions from now until Doom's Day, but the  
15 short end of the story, what you heard from Agent  
16 Richie was, that the only reference that Mr.  
17 Richardson would make was he keep saying, "I just sold  
18 drugs back in the day." He wouldn't tell him that  
19 they sold crack cocaine. That's the reason that  
20 there's nothing more specific.

21 And lastly, Mr. Boatwright used the term  
22 "the parade of those type of people." You heard him  
23 say that during his closing argument when he was  
24 referring to the government's witnesses, the drug  
25 dealers, the other people that are down in Waverly.

1 "The parade of those type of people." That's a quote  
2 as to what he told you.

3 Those type of people. They are friends.  
4 That's who they were associating with on a daily  
5 basis. That's who they sold drugs with. That's who  
6 they hung out with. Those type of people. Those are  
7 those two defendants right over there. The evidence  
8 only shows that -- the evidence only links these two  
9 defendants to this crime.

10 One thing for certain is this officer died.  
11 There's no ifs, ands, buts about it. We say that not  
12 for pity, not for sympathy. That's not what we're  
13 here for. We don't want you to render a verdict based  
14 upon emotion. And please don't do that.

15 But you absolutely know he died. You know  
16 he did it while trying to break up a drug deal, trying  
17 to break up a drug deal in the Waverly Village  
18 Apartments, their turf where they sold drugs, and they  
19 fit the description, and we haven't even talked about  
20 all the other evidence.

21 Officer Gibson gave his life because he  
22 believed in the system of criminal justice that we  
23 have. Ladies and gentlemen, today you are that  
24 system. You represent what he died for. This is your  
25 opportunity. This is your responsibility to make the

**Comm. Exh. D, page 1172 of 1254**

1 system work. Come back into this room and tell those  
2 two men over there that you know they did it and  
3 you're not going to let them get away with murder.

4 Come back into this room and show by your  
5 verdict that Officer Gibson did not waste his last  
6 gasp of breath by describing the people that attacked  
7 him.

8 But most importantly, come back into this  
9 room and show us, and show Officer Gibson and his  
10 family, that the system does work, that there is  
11 justice because the evidence, and that's what we're  
12 talking about, the evidence in this case, and nothing  
13 else, the evidence shows conclusively and points to  
14 only two people, that those two men over there, they  
15 killed Officer Gibson that day in those woods.

16 You know it and they know it. Come back  
17 into this room and render the only appropriate  
18 verdict. And that is that both of these men are  
19 guilty of all the offenses in the indictment. Thank  
20 you again.

21 THE COURT: First, a couple of the lawyers  
22 said words to the effect "I don't believe this" and "I  
23 don't believe that." What they believe is not what's  
24 at issue here. It's what you believe.

25 Those statements were basically made to tell

**Comm. Exh. D, page 1173 of 1254**

1 you they think you should not believe. When they  
2 said, "I don't believe," they were mistaken.

3 And secondly, Mr. Novak made the statement  
4 about the information given by Mr. Tyler led to a  
5 guilty plea in another case. That is relevant only to  
6 explain why he got the reduction of sentence.

7 It is not to be considered for any other  
8 reason at all. What happened in that other case that  
9 Mr. Tyler gave his testimony in and why that person  
10 pled guilty is something that's not a matter of  
11 evidence at all.

12 So the fact that he got some benefit from  
13 previous participation as a witness and cooperating is  
14 something you can consider, but what happened in that  
15 case is not. You judge his credibility on the basis  
16 of the facts I tell you later.

17 Now, it will take us probably an hour or so,  
18 maybe a little bit less for the instructions, and I  
19 think your lunch is there. I think the thing we'll do  
20 is let you-all have a lunch break, and then we'll have  
21 the instructions.

22 But I think because I've brought lunch for  
23 you, we can do that in 45 minutes, and we'll take  
24 45 minutes and return. So go ahead and have your  
25 lunch and stretch, and then we'll be able to proceed.

**Comm. Exh. D, page 1174 of 1254**

1 Thank you. You'll be able to take your  
2 notebooks with you.

3  
4 (Jury exited the courtroom at 1:10 p.m.)

5  
6 THE COURT: All right. We'll take a  
7 45-minute luncheon recess.

8 MR. NOVAK: Judge, may I ask you a question  
9 before we recess? We had a hearing scheduled at 2:30  
10 for Mr. Sturrup's case. Are you going to delay that,  
11 I guess?

12 THE COURT: Yes, until after the  
13 instructions.

14 MR. NOVAK: Until after the instructions?

15 THE COURT: Yes.

16  
17 (Recess taken.)

18 (Jury entered the courtroom at 2:00 p.m.)

19  
20 THE COURT: Ladies and gentlemen, now that  
21 you have heard the evidence and the arguments, it's my  
22 responsibility to give you the law as applies in this  
23 case.

24 And it's your duty as jurors to follow the  
25 law as stated by the instructions of the Court and to

Comm. Exh. D, page 1175 of 1254

1 apply the Rules of Law as given to you to the facts of  
2 the case as find them from the evidence.

3 The lawyers have quite properly referred to  
4 the Rules of Law in their arguments. Of course, if  
5 there's any difference between what they say the law  
6 was and what you hear in these instructions, then  
7 you're obviously to be bound by these instructions.

8 And you're not to single out any one  
9 instruction as stating the law because they are  
10 intended to work together and to fit together, and you  
11 consider the instructions as a whole, therefore.

12 Neither are you to be concerned about the  
13 wisdom of any Rule of Law stated by the Court because  
14 it would be a violation of your sworn duty to base  
15 your verdict on any view of the law other than that  
16 which you are instructed. Just as it would be a  
17 violation of your sworn duty to base the verdict on  
18 anything other than the facts in the case as you find  
19 them from the evidence.

20 And remember that justice through trial by  
21 jury always depends on the willingness of each  
22 individual juror to seek the truth from the same  
23 evidence presented to the jury and to arrive at a  
24 verdict by applying the same Rules of Law.

25 The instructions are in three basic parts.

1 The first and longest part are sort of the ground  
2 rules that you follow in making your decision. It  
3 will help you go through the decisional process.

4 Then in the middle, there are instructions  
5 about each of the offenses and what the elements are,  
6 and the elements are what the government must prove in  
7 order to sustain its burden of proof beyond a  
8 reasonable doubt.

9 And then the last instruction has to do with  
10 sort of what you do when you leave here. You'll get  
11 these instructions in writing, but nonetheless, I  
12 think it's helpful for us to go over them here in  
13 court.

14 As you know, you have been chosen and sworn  
15 to be the jurors, to try the issues of fact that are  
16 presented by the allegations in the superseding  
17 indictment and the denial of the not guilty plea made  
18 by the defendants.

19 And you are to perform that duty without  
20 bias, prejudice or sympathy as to any party. The law  
21 does not permit jurors to be governed by sympathy or  
22 prejudice or public opinion.

23 Indeed, the parties and the public expect  
24 that you will carefully and impartially consider all  
25 the evidence in the case, follow the laws stated by

**Comm. Exh. D, page 1177 of 1254**



1 the Court and reach a just verdict regardless of the  
2 circumstances.

3           There's really nothing particularly  
4 different in the way that a juror can consider the  
5 evidence in a trial from that in which any reasonable  
6 and careful person would treat any very important  
7 question that has to be resolved by examining facts  
8 and opinions in evidence.

9           And therefore, you are expected to use your  
10 good sense in considering and evaluating the evidence  
11 for the purpose for which it's been received, and  
12 you're expected to give that evidence a reasonable and  
13 fair construction in light of your common knowledge of  
14 the natural tendencies and inclinations of human  
15 beings.

16           In other words, your common sense is a tool  
17 that you have available to you in making these  
18 decisions, and you should use it.

19           If a defendant be proved guilty beyond a  
20 reasonable doubt, say so. If a defendant is not  
21 proved guilty beyond a reasonable doubt, say so. But  
22 keep in mind that it would be a violation of your duty  
23 to base a verdict on anything other than the evidence  
24 and the instructions of the Court.

25           And remember as well that in a criminal

**Comm. Exh. D, page 1178 of 1254**

1 case, the law never imposes the burden on a defendant  
2 of putting on evidence of any kind or calling  
3 witnesses of any kind because the burden of proving  
4 guilt beyond a reasonable doubt begins and remains  
5 with the prosecution.

6 That's the sworn duty of lawyers on each  
7 side of the case to object if they feel as if the  
8 other side is offering evidence or doing something  
9 that's not in keeping with the Rules of Evidence or  
10 the Rules of Procedure.

11 Don't be upset with a lawyer or his client  
12 because that objection was made because that's how in  
13 our system the lawyers get rulings, and don't, please,  
14 interpret my rulings as somehow suggesting to you what  
15 the outcome of the case should be because that's not  
16 what I have intended to do.

17 It's the duty of the Court to admonish an  
18 attorney who, out of zeal for his or her cause, does  
19 something which the Court feels is not in keeping with  
20 the Rules of Evidence or Procedure, and you're to draw  
21 no inference at all against the side to whom an  
22 admonition of the Court may have been addressed during  
23 the trial.

24 During the trial, I have occasionally asked  
25 questions of the witnesses. Please don't assume that

**Comm. Exh. D, page 1179 of 1254**

1 I hold any opinion as to the issues on which I asked  
2 the questions because a court may ask questions simply  
3 to clarify a matter. He is never to help one side or  
4 hurt another.

5 Remember I told you earlier there are two  
6 types of evidence, direct evidence and circumstantial  
7 evidence? Direct evidence being the testimony of  
8 someone who asserts actual knowledge of a fact, such  
9 as an eyewitness, and circumstantial evidence is proof  
10 of a chain of facts and circumstances indicating the  
11 innocence or guilt by the defendant.

12 The law makes no distinction, I tell you  
13 now, between the weight that you give to direct  
14 evidence or circumstantial evidence. Nor is there any  
15 greater degree of certainty required of circumstantial  
16 evidence.

17 And so after weighing all the evidence, the  
18 direct and the circumstantial, if you're not convinced  
19 of the guilt of the defendant beyond a reasonable  
20 doubt as to a charge, you must find him not guilty of  
21 that charge.

22 Now, the evidence in the case consists of  
23 the sworn testimony of the witnesses regardless of who  
24 called the witnesses, the documents that have been  
25 admitted into evidence and the other exhibits that

1 have been admitted into evidence regardless of who  
2 admitted them into evidence and all the facts that  
3 have been admitted or stipulated.

4 I told you before when the attorneys on both  
5 sides stipulate or agree as to the existence of a  
6 fact, you may consider that fact as proof. Although,  
7 you do not have to because you're the jury.

8 You're free to disregard anything in the  
9 evidence if you choose to do so -- anything in the  
10 stipulated evidence, excuse me, if you choose to do so  
11 because you are the judges of the facts.

12 And if you find that the stipulated evidence  
13 is inconsistent with the rest of the evidence, for  
14 example, you're not bound by the stipulations. It's  
15 up to you.

16 Now, the statements, the opening statements,  
17 the arguments, the questions and the objections of  
18 counsel are not evidence, remember, and any evidence  
19 which an objection was sustained or which I have  
20 ordered stricken is not to be considered by you.

21 And it must be entirely disregarded. And we  
22 had a couple of those instances, and I gave you those  
23 instructions. And so we expect that you will follow  
24 those instructions.

25 Anything you have seen or heard outside the  
**Comm. Exh. D, page 1181 of 1254**

1 courtroom is not evidence, and it has to be  
2 disregarded. You're to consider only the evidence in  
3 the case, therefore, but remember this: In your  
4 consideration of the evidence, you're not just limited  
5 to the bald statements of the witnesses.

6 You're not limited, in other words, just to  
7 what you see and hear as the witnesses testify, and  
8 that's because you're permitted to draw from the facts  
9 which you find have been proved such reasonable  
10 inferences as you feel are justified in the light of  
11 your experience.

12 And an inference is just a deduction or a  
13 conclusion which reason and common sense lead you to  
14 draw from the evidence that's been received.

15 Now, if any reference by myself or by the  
16 lawyers to the evidence in the case does not coincide  
17 with your own recollection, please remember it's your  
18 recollection that controls, not what I may have said  
19 or what the lawyers said.

20 I told you earlier that you're going to have  
21 to make judgments about the credibility of witnesses;  
22 that is, who to believe, who not to believe, how much  
23 of a witness's testimony to accept and how much to  
24 reject.

25 And that's because you are the sole judges

1 of the credibility of the witnesses and the weight  
2 that their testimony may deserve. When you're doing  
3 that, please carefully scrutinize all the testimony  
4 that's been given. Consider the circumstances under  
5 which each witness has testified.

6 Consider every matter in evidence which  
7 tends to show whether a witness is worthy of belief or  
8 not. Consider each witness's intelligence and motive  
9 and state of mind and demeanor while testifying on the  
10 witness stand.

11 Consider the witness's ability to have  
12 observed that to which he or she testified. Consider  
13 whether the witness impresses you as having an  
14 accurate recollection on the matters which he or she  
15 claimed to have observed.

16 Consider, also, any relation which each  
17 witness might bear to either side of the case.  
18 Consider the manner which each witness might be  
19 affected by the verdict, and consider the extent to  
20 which, if at all, each witness is either supported by  
21 or contradicted by the other evidence in the case  
22 because remember, you have to consider all the  
23 evidence in making your decision.

24 Now, remember that inconsistencies or  
25 discrepancies of a witness or between the testimony of

**Comm. Exh. D, page 1183 of 1254**

1 different witnesses may or may not cause you to  
2 discredit the testimony. Two or more persons, please  
3 remember, however, witnessing an incident or a  
4 transaction may see it or hear it differently.

5 An innocent misrecollection, like failure of  
6 recollection, is not an uncommon experience, and so  
7 when you're weighing the effect of a discrepancy,  
8 always consider whether the discrepancy pertains to a  
9 matter of importance or to some unimportant detail.  
10 And always consider does the discrepancy result from  
11 deliberate falsehood or from innocent error.

12 And after making your own judgments, you  
13 give the testimony of each witness such credibility,  
14 if any, as you think it may deserve. Now, in making  
15 credibility determinations, there are several points  
16 you ought to know.

17 First, the testimony of a witness may be  
18 impeached or discredited by evidence that shows that  
19 that witness has been convicted of a felony, which is  
20 a crime punishable by more than a year in prison, or  
21 that the witness has been convicted of a crime that  
22 involves dishonesty or false statement.

23 In a prior conviction of a crime of that  
24 sort may be considered by you in determining the  
25 credibility of the witness. It is the sole and

1 exclusive province of you, the jury, to determine the  
2 weight that's to be given to the prior conviction as  
3 impeachment in deciding how much you want to believe  
4 the witness, if any.

5 And it's also up to you to decide what  
6 weight you want to give to the testimony of one who's  
7 been convicted of a felony or a crime involving a  
8 misdemeanor involving honesty or false statement.

9 Now, there have been testimony that  
10 witnesses said one thing and then another at different  
11 points in time and that whatever was said before the  
12 trial is different than what was said at the trial.

13 The testimony of a witness that's been given  
14 at the trial can be discredited or impeached by  
15 showing that the witness made some statement or  
16 statements different than or inconsistent with the  
17 testimony that the witness gave here in court.

18 Now, there are two different kinds of  
19 statements or two different kinds of categories of  
20 inconsistent statements.

21 And so the first is if the early  
22 inconsistent or contradictory statement is not made  
23 under oath and subject to the penalty of perjury, then  
24 they're admissible only to discredit or impeach the  
25 credibility of the witness and not to establish the



1 truth of these earlier statements made somewhere other  
2 than during this trial; that is, you look at whether a  
3 statement was made under oath or otherwise subject to  
4 the penalty of perjury.

5 If that's the kind of earlier statement  
6 you're dealing with, then you can use the fact of that  
7 statement only in deciding the credibility of the  
8 witness who made an earlier statement.

9 Now, if the earlier or contradictory  
10 statement was given under oath subject to the penalty  
11 of perjury at trial or a hearing or other proceeding  
12 such as a grand jury, then you may consider the  
13 earlier statement for two purposes.

14 First, you can consider it in judging the  
15 credibility of the witness, and if that earlier  
16 statement was made under oath subject to the penalty  
17 of perjury in a hearing or trial or whatever and you  
18 find it's inconsistent, then you can also consider the  
19 earlier statement in deciding whether what was said in  
20 it was true or not; that is, you can consider the  
21 earlier statement in deciding the truth or falsity of  
22 the topics that were addressed in the earlier  
23 statement, as well as for the purpose of deciding on  
24 the credibility who made it, of the witness who made  
25 it.

1           And you must keep in mind, however, the  
2 other instructions that I've given you on the  
3 credibility of witnesses in deciding what effect, if  
4 any, you give the testimony of witnesses who have made  
5 earlier inconsistent statements.

6           So when you're considering inconsistent  
7 statements, remember the inconsistency was something  
8 that was said before the trial, and it has to be  
9 inconsistent with what was said here.

10           If it is an unsworn; that is, it's not under  
11 oath, then you can consider it just for deciding  
12 whether you want to believe this person or not because  
13 the person made an earlier inconsistent statement and  
14 said one thing one time and one thing another.

15           Then you can decide whether you're going to  
16 use it to believe the person or not, but if it is made  
17 under oath previously, the previous statement, subject  
18 to the penalty of perjury, then you can consider the  
19 statement not only for deciding whether you're going  
20 to believe the person or not but for the truth of what  
21 the person said earlier; that is, is whatever the  
22 person said earlier true or not true or is what was  
23 said in court true or not true.

24           All right. Now, there's been evidence that  
25 a witness who testified at this trial lied under

1 oath -- maybe there's two witnesses, and I'll leave  
2 that to your recollection -- and that the lie was in  
3 some earlier proceeding. I warn you that the  
4 testimony of this witness must be viewed cautiously  
5 and weighed with great care.

6 But you can consider the evidence given by  
7 the persons who committed perjury. It is, however,  
8 for you to decide how much of that testimony, if any,  
9 you wish to believe.

10 I believe there was one witness who said  
11 that he had committed perjury but hadn't been tried  
12 for it, and there was one witness who'd been convicted  
13 of perjury. And they are both subject to that  
14 instruction.

15 Now, you have heard the testimony of  
16 witnesses who have been promised that in exchange for  
17 testifying truthfully, completely and fully, they'll  
18 not be prosecuted for any crimes which they may have  
19 admitted, either here in court or in interviews with  
20 the prosecutors.

21 This promise was not a formal order of  
22 immunity given by the government but was arranged  
23 directly between the witness and the government. It  
24 is, however, a form of informal immunity, and the  
25 government is permitted by law to make these kinds of

1 promises and is entitled to call as witnesses people  
2 to whom these promises have been given.

3 And you're instructed that you may convict  
4 the defendant on the basis of such a witness's  
5 testimony alone if you find that that person's  
6 testimony proves the defendant guilty beyond a  
7 reasonable doubt.

8 However, I tell you that the testimony of a  
9 witness who's been promised that he or she will not be  
10 prosecuted should be examined by you with greater care  
11 than the testimony of an ordinary witness.

12 You should scrutinize that testimony closely  
13 to determine whether or not the testimony is colored  
14 in such a way as to place guilt upon the defendant in  
15 order to further the witness's own interests.

16 Such a witness confronted with the  
17 realization that he or she can win his or her freedom  
18 by helping to convict another may have a motive to  
19 falsify his or her testimony. So that testimony  
20 should be given such weight, if any, as you think it  
21 deserves.

22 Now, the testimony of a drug or alcohol  
23 abuser also has to be examined and weighed by you with  
24 greater care than the testimony of a witness who does  
25 not abuse drugs or alcohol.

1           The jury must determine, therefore, whether  
2 the testimony of a drug or alcohol abuser has been  
3 affected by the drug or alcohol use or by the need for  
4 drugs and alcohol or alcohol.

5           Now, you've heard testimony from some  
6 government witnesses who pled guilty to charges  
7 arising out of the same facts as are involved in this  
8 case.

9           I instruct you that you are to draw no  
10 conclusions or inferences of any kind about the guilt  
11 of either defendant on trial from the fact that a  
12 prosecution witness pled guilty to charges arising out  
13 of the facts involved here because that witness's  
14 decision to plead guilty to those charges was a  
15 personal decision about his or her own guilt.

16           And it may not be used by you in any way as  
17 evidence against or unfavorable to any defendant on  
18 trial here. It was -- that evidence was admitted so  
19 that you would know or could consider it in deciding  
20 the credibility of witnesses.

21           And that's because of the next instruction.  
22 In the case there has been testimony from government  
23 witnesses who entered into those plea agreements with  
24 the government and pled guilty to charges arising out  
25 of the same facts as is in this case, as I said.

1 Those witnesses have been sentenced to terms of  
2 imprisonment or they're waiting sentencing, and  
3 pursuant to their plea agreements, these witnesses  
4 have agreed with the government to testify.

5           If the government in its discretion  
6 determines that such a witness has provided what is  
7 called substantial assistance in the investigation or  
8 prosecution of another person, then the government is  
9 permitted to file a motion with the Court stating that  
10 that person has provided substantial assistance in  
11 that way.

12           And on receipt of a motion like that, the  
13 Court then may in its discretion reduce that witness's  
14 sentence. The government is permitted to enter into  
15 this kind of plea agreement.

16           And you in turn may accept the testimony of  
17 a witness and convict the defendant on the basis of  
18 this testimony alone if it convinces you of a  
19 defendant's guilt beyond a reasonable doubt.

20           However, you should bear in mind that a  
21 witness who has entered into such an agreement has an  
22 interest in this case different from ordinary  
23 witnesses because the witness may be able to obtain  
24 his own or her own freedom or receive a lighter  
25 sentence by giving testimony favorable to the

**Comm. Exh. D, page 1191 of 1254**

1 prosecution.

2           And therefore, you must examine the  
3 witness's testimony with caution and weigh it with  
4 great care. If after scrutinizing that testimony  
5 pursuant to these instructions you decide to accept  
6 it, then you can give it whatever weight, if any, that  
7 you think it deserves.

8           Now, evidence relating to any statements or  
9 admissions or acts or omissions that are alleged to  
10 have been made or done by a defendant outside of court  
11 and after a crime has been committed should always be  
12 considered by you with caution and weighed with great  
13 care.

14           I believe you heard evidence of statements  
15 or admissions or acts and omissions that were either  
16 made or omitted by the defendants. Please remember  
17 that all such alleged statements or admissions must be  
18 disregarded entirely unless the other evidence in the  
19 case convinces you beyond a reasonable doubt that the  
20 statement or the act or the omission was made or done  
21 knowingly and voluntarily.

22           In determining whether any statement or act  
23 or omission alleged to have been made outside of the  
24 court and after a crime has been committed was made  
25 knowingly or voluntarily or done knowingly and

**Comm. Exh. D, page 1192 of 1254**

1 voluntarily, then you should consider the age of the  
2 defendant, the training of the defendant, the  
3 occupation of the defendant, the education of the  
4 defendant, the physical and mental condition of the  
5 defendant and his treatment while in custody, if he  
6 was in custody, or while under interrogation, if under  
7 interrogation as shown by the evidence in the case.

8           As well, you should consider all the other  
9 circumstances in evidence that surrounds the making of  
10 the statement or admission. And then if after  
11 considering the evidence you determine that the  
12 statement or an admission or an act or an omission was  
13 made or done voluntarily and knowingly, then you can  
14 consider for whatever purposes you wish to consider  
15 it, unless I have limited it for you, and you may give  
16 it such consideration as you feel like it deserves  
17 under all the circumstances.

18           Now, there have been evidence that each  
19 defendant made statement or statements to law  
20 enforcement authorities. You may consider any such  
21 statement of a defendant, however, in deciding the  
22 charges against that defendant, and you may give it  
23 such weight as you think it deserves.

24           But you may not consider or even discuss  
25 that statement in any way when you're deciding if the

**Comm. Exh. D, page 1193 of 1254**



1 government has proven its case against the other  
2 defendant; that is, if one defendant said something to  
3 a law enforcement officer, you can consider it in  
4 deciding whether that defendant who made the statement  
5 was guilty or not, but you can't consider it to decide  
6 whether the defendant who didn't make the statement  
7 was guilty or not.

8           Now, the testimony of an alleged accomplice,  
9 someone who said that he participated in the  
10 commission of a crime must be examined and weighed by  
11 the jury with greater care than the testimony of a  
12 witness who did not participate in the commission of a  
13 crime.

14           And the jury must determine whether the  
15 testimony of the accomplice has been affected by  
16 self-interest or by an agreement he made with the  
17 government or by his own interest in the outcome of  
18 the case or by prejudice against the defendant.

19           Now, in any criminal case, the government  
20 must prove not only the essential elements of the  
21 offense, which is what I'm going to tell you about in  
22 a few minutes, but the government must also prove  
23 beyond a reasonable doubt the identity of the  
24 defendant as perpetrator of the alleged offenses or  
25 offense.

1           In evaluating the identification testimony  
2 of a witness, you should consider all of the factors  
3 already mentioned concerning your assessment of the  
4 credibility of witnesses in general, and as well, you  
5 should consider in particular whether the witness had  
6 an adequate opportunity to observe the person in  
7 question at the time or times about which the witness  
8 testified.

9           And in that regard, you may consider such  
10 factors as the length of time the witness had to  
11 observe the person in question, the prevailing  
12 conditions at the time in terms of visibility or  
13 distance and the like and whether the witness had  
14 known or observed the person at some earlier time or  
15 times.

16           You may also consider the circumstances  
17 surrounding the identification itself, including the  
18 manner in which the defendant was presented to the  
19 witness for identification and the length of time that  
20 elapsed between the incident in the question and the  
21 next opportunity the witness had to observe the  
22 defendant.

23           If after examining all the testimony and  
24 evidence in the case you have a reasonable doubt as to  
25 the identity of the defendant as the perpetrator of

**Comm. Exh. D, page 1195 of 1254**

1 the offense charged, then you must find the defendant  
2 not guilty of that offense.

3 Now, as I said, there's been some eyewitness  
4 testimony in the case, and it's up to you to determine  
5 whether the testimony is credible and reliable.

6 Eyewitness testimony is an expression of belief on the  
7 part of the witness, and it's value depends on the  
8 opportunity the witness had to observe the person  
9 initially and later to make a reliable identification.

10 A reliable identification would be one based  
11 upon the initial observation at the time and place  
12 which the witness testified about. A reliable  
13 identification would not be one unfairly suggested by  
14 events that have occurred since the initial  
15 observation.

16 Now, you have had some opinion testimony  
17 offered to you by witnesses and by stipulations, and  
18 they have been by experts. People they generally  
19 stipulated to who the experts were. Ordinarily,  
20 witnesses are not allowed to give opinions.

21 But in the case of an expert witness, you  
22 can receive opinions. An expert witness is simply  
23 somebody who by education or experience or training  
24 has become knowledgeable in some technical or  
25 scientific or very specialized area.

1           And if that knowledge or experience can help  
2 you decide the facts or help you understand the  
3 evidence, then you can consider the opinion. You  
4 should consider an expert opinion received in evidence  
5 and give it such weight as you think it should  
6 deserve.

7           You should consider the testimony of an  
8 expert witness such as you consider other evidence in  
9 the case. If you should decide that the opinion of an  
10 expert witness is not based on sufficient education or  
11 experience or if you should conclude that the reasons  
12 given in support of the opinion are not sound or if  
13 you should conclude that the opinion is outweighed by  
14 the other evidence, you may disregard the opinion in  
15 part or in its entirety.

16           Now, a non-expert; that is, someone who  
17 isn't an expert, may give an opinion if it's based on  
18 his or her knowledge and it's rationally based on his  
19 or her perception.

20           So if you find that an opinion of a  
21 non-expert witness is based on personal knowledge and  
22 is rationally based on that witness's perception, then  
23 you can give it such weight as you think it deserves.

24           Your decision on the facts of this case  
25 should not be determined by the number of witnesses

1     testifying for or against a party. You should  
2     consider all the facts and circumstances in evidence  
3     to determine which of the witnesses you choose to  
4     believe.

5             You may find that the testimony of a smaller  
6     number of witnesses on one side is more credible than  
7     the testimony of a greater number of witnesses on the  
8     other. Of course, you may find vice versa.

9             Now, you've heard testimony that a defendant  
10    made statements outside the courtroom to law  
11    enforcement officials to which the defendant claimed  
12    he wasn't present at the scene of a crime when it was  
13    committed.

14            The government claims that these alibi  
15    statements were false. If you find that the defendant  
16    intentionally gave a false statement in order to  
17    mislead the investigating authorities that he was not  
18    present at the scene of the crime, you may but you  
19    need not infer that the defendant believed that he was  
20    guilty.

21            You may not, however, infer on the basis of  
22    this alone that the defendant is in fact guilty of the  
23    crime for which he is charged. Whether or not the  
24    evidence as to a defendants' fabrication of an alibi  
25    shows that the defendant believed that he was guilty

1 and the significance, if any, to be attached to any  
2 such evidence are matters for you to decide.

3           You've heard evidence in the case that  
4 Officer Gibson was attempting to arrest the defendants  
5 for narcotic offenses at the time he was killed.  
6 You're instructed that a person has no right to resist  
7 arrest even if it turns out that the arrest was  
8 unlawful, if the person is aware of the official's  
9 identity and the purpose of the arresting officer.

10           Ladies and gentlemen, I told you at the  
11 beginning and I want to remind you now that the  
12 defendant in a criminal case has an absolute right  
13 under our Constitution not to testify.

14           Therefore, the fact that a defendant did not  
15 testify must not be considered by you or must not be  
16 discussed by you in any way when deliberating and in  
17 arriving at your verdict. No inference may be drawn  
18 from the fact that a defendant decided to exercise his  
19 privilege under the Constitution and did not testify.

20           And that's because under our Constitution  
21 the law never imposes upon a defendant in a criminal  
22 case the burden or duty of calling any witnesses or of  
23 producing any evidence at all.

24           You heard evidence of the transcripts from  
25 the state court proceedings, and those transcripts are

**Comm. Exh. D, page 1199 of 1254**

1 in evidence. The transcripts of the pleas of guilty  
2 made by the defendants to certain charges in state  
3 court are evidence, and you can consider them.

4 Please remember that the charges in state  
5 court were different than those that you have to  
6 decide, of course. Now, there are two parts of a  
7 transcript, and you consider each part differently.

8 The first -- and there's two parts of each  
9 of the transcripts because there's a transcript  
10 relating to Mr. Claiborne and a transcript relating to  
11 Mr. Richardson.

12 But in each one of the transcripts, the  
13 parts are functionally the same kind of thing. The  
14 first part, which is the reading of the charge by the  
15 Clerk, entry of the plea, questions by the Judge and  
16 answers by the defendant is an admission of the  
17 defendant who entered the plea and may be considered  
18 by you as evidence in the case.

19 However, because the charge the defendant  
20 pleaded guilty to in state court is -- and it's true  
21 for each defendant, as well -- different than the  
22 charges you must decide here, you may not decide that  
23 a defendant is guilty of any charge in this case  
24 merely because he entered a plea of guilty to the  
25 different charge in the state court.

1           A second part of the transcript is a  
2 recitation by the state prosecution about what  
3 evidence the state would have offered if the case had  
4 gone to trial, in other words, if the defendant had  
5 not entered a plea of guilty.

6           And then it's followed by an acknowledgment  
7 by the defendant's lawyer that such evidence would  
8 have been offered by the state. You may consider that  
9 part of the transcript in deciding a defendant's state  
10 of mind at the time he entered the guilty plea.

11           However, you may consider that part of the  
12 transcript for no other purpose, and in particular,  
13 you may not consider that any part of the evidence  
14 that was recited by the state prosecutor was actually  
15 tried in fact or was actually true.

16           In other words, what the state prosecutor  
17 said he was going to prove may or may not have been  
18 proved. You can consider that just in deciding the  
19 defendant's state of mind at the time he entered the  
20 plea.

21           Now we're going, ladies and gentlemen --  
22 excuse me, we're going to turn to the charges in the  
23 indictment. Please remember I told you that the  
24 indictment is just a formal method of accusing the  
25 defendant of crime.



1           It isn't evidence of any kind against the  
2 defendant. The defendants each have pled not guilty  
3 to the indictment, and each denies that he's guilty of  
4 all the charges in it. And the law presumes a  
5 defendant to be innocent of crime.

6           Thus, the defendant, although accused,  
7 begins the trial with a clean slate with no evidence  
8 against him at all, and the law permits nothing but  
9 legal evidence presented before the jury can even  
10 consider in support of any charge against an accused.

11           And so the presumption of innocence alone is  
12 sufficient to acquit a defendant unless the jurors are  
13 satisfied beyond a reasonable doubt of the defendant's  
14 guilt after careful and impartial consideration of all  
15 the evidence in the case.

16           It's not required that the government prove  
17 guilt beyond all possible doubt. The test is one of  
18 reasonable doubt. The jury will remember, of course,  
19 that a defendant is never to be convicted on mere  
20 suspicion or conjecture.

21           And the jury must remember the burden of  
22 proof is on the prosecution to prove guilt beyond a  
23 reasonable doubt and that that burden never shifts to  
24 the defendant. So if the jury, after careful and  
25 impartial consideration of all the evidence in the

**Comm. Exh. D, page 1202 of 1254**

1 case, has a reasonable doubt that a defendant is  
2 guilty of a charge, it must acquit the defendant of  
3 that charge.

4 Now, I told you that we're going through in  
5 a minute the elements of an offense. I tell you now  
6 unless the government proves beyond a reasonable doubt  
7 that a defendant has committed every element of an  
8 offense with which he is charged, you must find him  
9 not guilty of that offense.

10 I mentioned that there has been evidence  
11 presented about alibis. The government is required  
12 beyond a reasonable doubt to prove that the  
13 defendants, Richardson and Claiborne, were present at  
14 the time and place that each offense charged in the  
15 superseding indictment was allegedly committed.

16 If after consideration of all the evidence  
17 in the case you have a reasonable doubt as to whether  
18 a defendant was present at the time and place that the  
19 alleged offenses were committed, then you must find  
20 the defendant not guilty of that offense.

21 The indictment contains a charge that the  
22 offense was committed on or about a certain date. The  
23 proof does not need to establish with certainty the  
24 exact date of the alleged offense. It is sufficient  
25 if the evidence in the case establishes beyond a

**Comm. Exh. D, page 1203 of 1254**

1 reasonable doubt that the offense was committed on a  
2 date reasonably near the date alleged.

3 Now, please recall that a separate crime is  
4 alleged against each of the defendants in each count  
5 of the superseding indictment. Each alleged offense  
6 and any evidence pertained by it should be considered  
7 separately by you.

8 The fact that you find one defendant guilty  
9 or not guilty of the offenses charged should not  
10 control your verdict against any other offense charged  
11 against that defendant or the other defendant. In  
12 other words, you must give separate and individual  
13 consideration to each charge against each defendant.

14 You should analyze what the evidence in the  
15 case shows with respect to each individual defendant,  
16 leaving out of consideration entirely any evidence  
17 that was admitted solely against some other defendant.

18 Each defendant is entitled, therefore, to  
19 have his case determine from the evidence as to his  
20 own acts, statements and conduct and any other  
21 evidence in the case which may be applicable to him.

22 Again, the fact that you return a verdict of  
23 guilty or not guilty as to one defendant as to one  
24 particular charge should not in any way affect your  
25 verdict regarding the other defendant as to that

**Comm. Exh. D, page 1204 of 1254**

1 charge or all charges, for that matter.

2 Now, both the defendants are charged in  
3 Count One with the conspiracy to violate the narcotics  
4 laws of the United States. Count One of the  
5 indictment charges that from on or about an unknown  
6 date in 1991 until April 28th, 1998, in Waverly, in  
7 the Eastern District of Virginia and elsewhere, the  
8 defendants unlawfully, knowingly and intentionally  
9 combined, conspired, confederated and agreed with each  
10 other and others unknown to the grand jury to  
11 distribute crack cocaine in the amount of 50 grams or  
12 more, which contains a detectable amount; that is,  
13 it's a controlled substance, and then that controlled  
14 substance contains crack cocaine.

15 The law says that any person who attempts or  
16 conspires to commit any offense described in the  
17 appropriate chapter, specifically distribution of a  
18 controlled substance, shall be guilty of an offense  
19 against the laws of the United States.

20 Now, let's talk for a minute about  
21 conspiracy. A conspiracy is a combination or  
22 agreement of two or more people who join together to  
23 attempt to accomplish some unlawful purpose. It's a  
24 kind of partnership in criminal purposes in which each  
25 member becomes the agent of every other member.

**Comm. Exh. D, page 1205 of 1254**

1           And the gist or essence of the offense is  
2 the combination or the mutual agreement by two or more  
3 people to disobey or disregard the law. Now, the  
4 evidence in the case need not show that the alleged  
5 members of the conspiracy entered into any expressed  
6 or formal agreement.

7           Nor does it need to show that they directly  
8 stated between themselves the details of the scheme or  
9 the object or the purpose of it or the precise means  
10 by which the object or purpose was to be carried out  
11 or accomplished.

12           Similarly, the evidence in the case need not  
13 establish that all the means and methods set forth in  
14 the indictment were in fact agreed upon to carry out  
15 the alleged conspiracy or that all the means or  
16 methods which were agreed upon were actually used when  
17 put into operation.

18           Neither must it be proved that all of the  
19 persons charged that have been members of the  
20 conspiracy were members. Nor that the alleged  
21 conspirators actually succeeded in accomplishing their  
22 unlawful objectives.

23           What the evidence must show beyond a  
24 reasonable doubt is this: That two or more people in  
25 some way or manner positively or tacitly came to a

**Comm. Exh. D, page 1206 of 1254**

1 mutual understanding to try to accomplish a common,  
2 unlawful plan as charged in the superseding  
3 indictment; that is, to distribute -- the object was  
4 allegedly to distribute crack cocaine.

5 And two, that the defendant -- and remember,  
6 you have to consider each defendant differently. So  
7 when I say that, I mean considering each defendant  
8 separately. That the defendant knowingly and  
9 deliberately became a member of that conspiracy.

10 One may become a member of a conspiracy  
11 without full knowledge of all the details of the  
12 unlawful scheme or the names and identities of all the  
13 other alleged conspirators.

14 So if a defendant with the understanding of  
15 the unlawful character of the plan knowingly and  
16 deliberately joins in an unlawful scheme on one  
17 occasion, that is sufficient to convict him or her of  
18 conspiracy, even though he or she hasn't participated  
19 in earlier stages in the scheme and even though he or  
20 she played only a minor part in the conspiracy.

21 Of course, mere presence at the scene of an  
22 alleged transaction or event or mere similarity of  
23 conduct among persons and the fact they may have  
24 associated with each other and may have assembled  
25 together to discuss common aims and interests does not

**Comm. Exh. D, page 1207 of 1254**

1 necessarily establish proof of the existence of a  
2 conspiracy.

3           And a person who has no knowledge of a  
4 conspiracy but who acts in a way which advances some  
5 object or purpose of the conspiracy does not become a  
6 conspirator.

7           Now, in your consideration of this  
8 conspiracy offense in Count One, you should first  
9 determine from all of the testimony in evidence  
10 whether or not the conspiracy existed as charged.

11           If you conclude that a conspiracy did exist  
12 as alleged, then you should next determine whether or  
13 not a defendant knowingly and deliberately became a  
14 member of that conspiracy.

15           If and when it does appear beyond a  
16 reasonable doubt from the evidence in the case that a  
17 conspiracy did exist as charged and that a defendant  
18 was one of its members, then the statements and the  
19 facts that are knowingly made and done during such  
20 conspiracy and in furtherance of the objects of the  
21 conspiracy by someone else who was proven to be a  
22 member of the conspiracy may be considered by the jury  
23 as evidence against the defendant, even if he was not  
24 present to hear the statement made or see the act  
25 done.

1           And that's because, as I told you earlier, a  
2 conspiracy is a kind of partnership. So under the  
3 law, each member is an agent or a partner of every  
4 other member, and each member is bound by or  
5 responsible for the acts and the statements of every  
6 other member made in pursuance of their unlawful  
7 scheme.

8           So to recapitulate and remind you, the  
9 essential elements that the government has to prove  
10 beyond a reasonable doubt as to Count One is, first,  
11 that there existed an agreement between two or more  
12 people to distribute in excess of 50 grams of crack  
13 cocaine and that a defendant knowingly and  
14 deliberately joined that agreement.

15           Now, I'll tell you now that as a matter of  
16 law, cocaine base or crack is a controlled substance.  
17 It's solely for you to determine whether or not the  
18 government has proven beyond a reasonable doubt that  
19 the substance which is charged as involved in the  
20 alleged conspiracy in Count One was in fact crack  
21 cocaine.

22           The term "to distribute" as it is used in  
23 these instructions simply means to deliver or to  
24 transfer possession or control of something from one  
25 person to another. The term "to distribute" includes



1 the sale of something by one person to another.

2 The term "knowingly" as used anywhere in  
3 these instructions describe the alleged state of mind  
4 of the defendant to mean he was conscious and aware of  
5 his actions, that he realized what he was doing or  
6 what was happening around him and did not act because  
7 of ignorance or mistake or accident.

8 To act intentionally within the meaning of  
9 these instructions means to act deliberately and  
10 purposefully; that is, the defendant's acts must have  
11 been the product of the defendant's conscious  
12 objective rather than the product of mistake or  
13 accident.

14 Now we'll turn to Count Two. That charges  
15 that on or about April 25th, 1998, in Waverly,  
16 Virginia, in the Eastern District of Virginia, that  
17 Mr. Richardson and Mr. Claiborne knowingly used a  
18 firearm during and in relation to a drug trafficking  
19 crime for which those defendants could be prosecuted  
20 according to the United States in particular the  
21 distribution of crack cocaine. And in the course of  
22 that offense caused the death of another person  
23 through the use of the firearm, which killing was a  
24 murder in the second degree as defined in Title 18 of  
25 the United States Code Section 1111, in that the

1 defendants with malice aforethought did unlawfully  
2 kill Officer Gibson by shooting him with a firearm and  
3 did aid and abet and assist one another in the  
4 commission of that offense.

5 Now, the United States Code Section  
6 924(C)(1) says whoever during and in relation to any  
7 drug trafficking offense for which he may be  
8 prosecuted in a court of the United States uses a  
9 firearm shall be guilty of a crime against the United  
10 States.

11 Section 924(J)(1) provides a person who  
12 commits murder as defined in the U.S. Code 18  
13 Section 1111 during and in relation to a drug  
14 trafficking crime for which he may be prosecuted in a  
15 court of the United States knowingly, unlawfully and  
16 willfully uses or carries a firearm shall be guilty of  
17 a crime against United States.

18 Now, to prove a violation of 18 U.S.C.  
19 Section 924(C) and 924(J) as charged in Count Two, the  
20 United States has to establish beyond a reasonable  
21 doubt the following elements: First -- and remember,  
22 you need to look at each defendant individually --  
23 that the defendant murdered Waverly Police Officer  
24 Allen Gibson as defined in the U.S. Code 189 U.S.C.  
25 Section 1111 or aided and abetted in his murder.

**Comm. Exh. D, page 1211 of 1254**

1           And two, that the death of Officer Gibson  
2 occurred while the defendant knowingly, unlawfully and  
3 willfully used the firearm during or in relation to a  
4 drug trafficking crime prosecutable in a court of the  
5 United States.

6           And third, the death of Waverly Police  
7 Officer Allen Gibson occurred through the use of a  
8 firearm.

9           As used in the statute, the drug trafficking  
10 crime means any felony that is punishable under the  
11 Controlled Substances Act. So I tell you now that  
12 distribution of any amount of cocaine falls within the  
13 statutory definition of a drug trafficking crime.

14           Now, the Code defines a firearm as including  
15 any weapon which will or is designed to or may readily  
16 be converted to expel a projectile by the action of an  
17 explosive and the frame or receiver of any such  
18 weapon.

19           The offense requires the government to prove  
20 use of a firearm. The term "uses a firearm" means  
21 brandishing or display, bartering, striking with,  
22 firing or attempting to fire a firearm to assist or to  
23 aid in the commission of the drug trafficking crime.

24           A firearm is considered used if it's  
25 displayed or mentioned by the defendant. In order to

**Comm. Exh. D, page 1212 of 1254**

1 satisfy this part of the element, the United States  
2 must prove beyond a reasonable doubt that the  
3 defendant actively employed a firearm during and in  
4 relation to a drug trafficking crime.

5 Now, I said that the government has to prove  
6 beyond a reasonable doubt that there was a second  
7 degree murder as defined in 18 U.S.C. Section 1111,  
8 and that section defines murder in the second degree  
9 to be the unlawful killing of a human being with  
10 malice aforethought.

11 To sustain its burden of proof for the crime  
12 of murder in the second degree, the government must  
13 prove the following elements beyond a reasonable  
14 doubt: One, that a defendant killed or aided and  
15 abetted in the killing of Waverly Police Officer Allen  
16 Gibson, a human being.

17 Two, that the defendant killed Waverly  
18 Police Officer Allen Gibson or aided and abetted in  
19 his killing with malice aforethought.

20 The term "malice aforethought" means to kill  
21 another person deliberately and intentionally or to  
22 act with callous disregard for human life. Killing is  
23 done with malice aforethought if it's deliberate,  
24 intentional or done with such wanton disregard for  
25 human life.

1           Now we go into Count Three. Count Three of  
2 the superseding indictment charges that on or about  
3 April 25th, 1998 -- I believe I mentioned the term  
4 "willfully" in Count Two, and so the term "willfully"  
5 means that the defendant knowingly performed an act.  
6 And deliberately and intentionally is contrasted with  
7 accidentally or carelessly and unintentional.

8           Now we go to Count Three, the last count.  
9 Count Three of the superseding indictment charges that  
10 on or about April 25th, 1998, in Waverly, in the  
11 Eastern District of Virginia, the defendants,  
12 Mr. Richardson and Mr. Claiborne, during and in  
13 commission of and in furtherance of and while  
14 attempting to avoid apprehension and prosecution of  
15 the felony offense of distribution of crack cocaine  
16 did intentionally kill and did counsel, aid, induce,  
17 procure and cause the intentional killing of a local  
18 law enforcement officer, namely, Officer Gibson,  
19 engaged in and on account of the performance of his  
20 official duties and such killing resulted therefrom  
21 and that they did aid, abet and assist one another in  
22 the commission of that offense.

23           The U.S. Code says any person during the  
24 commission of and in furtherance of or while  
25 attempting to avoid apprehension or prosecution for a

**Comm. Exh. D, page 1214 of 1254**

1 felony offense of distribution of crack cocaine who  
2 intentionally kills or counsels, commands, induces,  
3 procures or causes the intentional killing of any  
4 federal, state or local law enforcement officer  
5 engaged in or on account of the officer's performance  
6 of official duties and such killing in fact results  
7 shall then be guilty of a crime against the United  
8 States.

9 In order to prove a defendant guilty under  
10 Count Three, the government has to prove the following  
11 four elements beyond a reasonable doubt: One, during  
12 the commission of, in furtherance of or while  
13 attempting to avoid apprehension and prosecution of  
14 the felony offense of distribution of crack cocaine.

15 Two, the defendant intentionally killed or  
16 counseled, commanded, induced, procured or caused the  
17 intentional killing of a local law enforcement  
18 officer, in particular, Waverly Police Officer Allen  
19 Gibson, Jr., or did aid, abet or assist in the  
20 commission of that offense.

21 Three, that Allen Gibson was killed while  
22 engaged in or on account of the performance of his  
23 official duties.

24 And four, that the death of Officer Gibson  
25 resulted from the activity on the part of the

1 defendant.

2           The term "law enforcement officer" means a  
3 public servant authorized by law to engage in the  
4 prevention, investigation, prosecution or adjudication  
5 of an offense.

6           And you're instructed that the term "law  
7 enforcement officer" includes members of local law  
8 police departments such as the Waverly Police  
9 Department.

10           We've talked about intent and knowledge.  
11 The intent of a person or the knowledge that a person  
12 possesses at any given time ordinarily cannot be  
13 proved directly because there's no direct way of  
14 scrutinizing the workings of the human mind.

15           So in determining the issue of what a person  
16 knew or what a person intended at a particular time,  
17 you may consider any statements or acts or inaction of  
18 that person and all other facts or circumstances  
19 received into evidence which may aid in your  
20 determination of that person's knowledge or intent.

21           You may infer but you're certainly not  
22 required to infer that the person intends the natural  
23 and probable consequences of acts that are knowingly  
24 done or knowingly not done. It is entirely up to you,  
25 however, to decide from the facts what facts to find

**Comm. Exh. D, page 1216 of 1254**

1 from the evidence received.

2 Now, both the defendants, Mr. Richardson and  
3 Mr. Claiborne, are charged with aiding and abetting  
4 the commission of the crimes alleged in Counts Two and  
5 Three of the superseding indictment.

6 In that regard, I tell you that a person --  
7 they violate the law even though he or she does not  
8 personally do every and each act constituting the  
9 offense if that person aided and abetted the  
10 commission of the offense.

11 Section 2(A) of Title 18 of the Code says,  
12 whoever commits an offense against the United States  
13 or aids, abets, counsels, commands, induces or  
14 procures in the commission is punishable as a  
15 principal.

16 Before the defendant may be held responsible  
17 for aiding and abetting others in the commission of a  
18 crime, it is necessary that the government prove  
19 beyond a reasonable doubt that a defendant knowingly  
20 and deliberately associated himself in some way with  
21 the crime charged and participated in it with the  
22 intent to commit the crime.

23 In order to be found guilty of aiding and  
24 abetting the commission of the crimes charged in the  
25 superseding indictment in Counts Two and Three, the  
**Comm. Exh. D, page 1217 of 1254**



1 government must prove beyond a reasonable doubt that a  
2 defendant, one, knew that the crime charged was to be  
3 committed or was being committed.

4 Two, knowingly did some act for the purpose  
5 of aiding, commanding or encouraging the commission of  
6 that crime; and three, acted with the intention of  
7 causing the crime charged to be committed.

8 Before a defendant can be found guilty as an  
9 aider and abettor to the crime, the government must  
10 also prove beyond a reasonable doubt that someone  
11 committed each of the elements of the offense charged  
12 as detailed for you in these instructions.

13 Merely being present at the scene of the  
14 crime or merely knowing a crime is being committed or  
15 is about to be committed is, however, not sufficient  
16 conduct for the jury to find that a defendant aided  
17 and abetted in the commission of the crime.

18 The government must prove that a defendant  
19 knowingly associated himself with a crime in some way  
20 as a participant, someone who wanted the crime to be  
21 committed, not as a mere spectator.

22 Now, that brings us to what you do when you  
23 leave here and how you proceed. You will have -- when  
24 you leave, you'll go to the jury room, and please  
25 elect one of your members to act as the foreperson.

1 And that foreperson will preside over your  
2 deliberations and will be your spokesperson here in  
3 court.

4 Your verdict has to represent the collective  
5 judgment of the jury. In order to return a verdict,  
6 it is necessary that each juror agree to it. So your  
7 verdict, in other words, has to be unanimous.

8 It is your duty as jurors to consult with  
9 one another and to deliberate with one another with a  
10 view towards reaching an agreement if you can do so  
11 without violence to individual judgment.

12 Each of you must decide this case for  
13 himself or herself, but do that only after impartial  
14 consideration of the evidence with the other jurors.  
15 In the course of your deliberations, don't hesitate to  
16 reexamine your own views and to change your opinion if  
17 convinced it's erroneous.

18 Don't, however, surrender your honest  
19 conviction solely because of the opinion of a fellow  
20 juror for the mere purpose of returning a verdict.  
21 Please remember at all times you're not partisans.  
22 You're the judges, the judges of the facts of the  
23 case, and your sole interest is to seek the truth from  
24 the evidence that's been received during the trial.

25 Your verdict has to be based on the evidence

**Comm. Exh. D, page 1219 of 1254**

1 received and nothing you've seen or heard outside the  
2 court may be considered. Nothing I've said during the  
3 trial is intended to suggest what the outcome ought to  
4 be.

5 Nothing in these instructions is in any way  
6 intended to suggest to you what your verdict ought to  
7 be because that is your responsibility. Nothing in  
8 the form of the verdict which we have given you is  
9 intended to suggest what your verdict ought to be.

10 There's a separate form for each defendant.  
11 I just happened to pick up the one here, and I will  
12 use it, Mr. Claiborne. We, the jury, unanimously find  
13 the defendant Ferrone Claiborne, and then you write in  
14 what you unanimously found under Count One when you do  
15 unanimously find him guilty or not guilty as charged  
16 in Count One.

17 Now, as to Count One, and you only do this  
18 in Count One, if you find the defendant guilty of  
19 Count One, then you go down and answer this yes or no.  
20 Again, this must be beyond a reasonable doubt as well.  
21 Did the offense involve 50 grams or more of cocaine  
22 base? Yes or no.

23 If your answer is yes, then you don't have  
24 to answer any further. If the answer is no, then you  
25 go down to the next one; that is, did it involve 5 to

**Comm. Exh. D, page 1220 of 1254**

1 49 grams of crack cocaine. If your answer is yes,  
2 stop there. If not, you go down to the next one; and  
3 that is, did the offense involve less than five grams  
4 of crack cocaine, yes or no.

5 Again, when you answer yes or no, you have  
6 to vote and be satisfied beyond a reasonable doubt and  
7 be unanimous that it is the particular amount. So you  
8 have to be unanimous and unanimously convinced beyond  
9 a reasonable doubt as to the quantity as well as to  
10 the fact.

11 Count Two, we, the jury, found the defendant  
12 guilty or not guilty as charged in Count Two. Count  
13 Three, guilty or not guilty as charged in Count Three.

14 So whatever you unanimously reach as to  
15 Count Two, guilty or not guilty, count Three, guilty  
16 or not guilty, your foreperson will write that in.  
17 The same form exists for Mr. Richardson, the  
18 difference being his name.

19 And nothing in there is trying to suggest to  
20 you how you ought to come out on this matter. Please  
21 remember that the punishment provided by law for the  
22 offenses charged in the indictment is a matter  
23 exclusively within the province of the Court and  
24 should never be considered by the jury in any way in  
25 arriving at an impartial verdict as to the offenses

1 charged in the indictment.

2 Now, when you have a unanimous verdict on  
3 all the counts, the foreperson signs and dates the  
4 form and brings it back to the jury room, one for each  
5 of the defendants -- I mean brings it back from the  
6 jury room to the courtroom.

7 Now, if it's necessary during your  
8 deliberations to communicate with the Court, we do  
9 that the following way: You send a note signed by the  
10 foreperson, or one of or more of you if the foreperson  
11 doesn't want to sign it, through the marshal back to  
12 the Court. I review the question with the counsel.

13 And I'll send you a note back answering your  
14 question, or I'll call you back in here and ask you if  
15 you would please and give it to you verbally.

16 Please remember that when we communicate,  
17 whether it be in writing or orally, that we never need  
18 to know how you stand on the matter until you have  
19 reached a unanimous verdict. So don't tell us, for  
20 example, we're ten to two on this or six to six on  
21 this. We don't ever need to know that.

22 Now, just logistically, it's three o'clock.  
23 You can deliberate at your pleasure for as long as you  
24 want to. If you want -- if you think you're going to  
25 go into the evening and would like to stay and

**Comm. Exh. D, page 1222 of 1254**

1 deliberate, you're welcome to do that.

2 We can let you move your cars after about  
3 five and put them under the Annex over here and we'll  
4 have to recess and stop the deliberations and let  
5 everybody go move their car and then come back.

6 It takes us about an hour to get your  
7 dinner. The best we can do generally is pizza, but if  
8 somebody has some special requirements, we generally  
9 always -- dietetic requirements, we always will  
10 generally try to find a way to solve that problem.

11 And you can stay for a reasonable period of  
12 time this evening. If, however, you want to  
13 deliberate for a while and don't reach your verdict  
14 and want to go home, then you can come back tomorrow.  
15 You're welcome to do that. That's all going to be up  
16 to you.

17 Are there any additional instructions or  
18 objections to the instructions as given?

19 MR. NOVAK: None from the government.

20 MR. HUYOUNG: Not for Mr. Richardson.

21 MR. EVERHART: No, Your Honor, for  
22 Mr. Claiborne.

23 THE COURT: All right. Ms. Pigninelli and  
24 Ms. Treanor, you-all were alternate jurors, and we  
25 thank you very much for your service. Alternate

**Comm. Exh. D, page 1223 of 1254**

1 jurors do not deliberate unless one of the other  
2 jurors is unable to do that.

3 And so we're grateful for the important role  
4 you have played in the administration of justice and  
5 the sacrifices that you've made being here with us so  
6 far. I need to impose on you further. You will be  
7 excused now.

8 You need to leave Mr. Neal your telephone  
9 number where you can be reached at in the evening and  
10 during the day. And as soon as we know anything,  
11 we'll call you and let you know so you will be free.  
12 But it's possible -- and I've had this happen  
13 before -- that during deliberations a juror gets sick  
14 or is called away on family emergencies.

15 So I ask you to continue to keep yourself  
16 media free and not get exposed to anything on  
17 television or radio or whatever and don't discuss the  
18 matter with anyone because it's entirely possible --  
19 and as I said, I had it happen before -- we have to  
20 call you back. Somebody gets sick, and we call one of  
21 you, and you have to come back. We're very  
22 appreciative of what you've done so far and are  
23 grateful for your service. Just get that from Mr.  
24 Neal.

25 THE CLERK: I'll just take it now, if Your

**Comm. Exh. D, page 1224 of 1254**

1 Honor, please.

2 THE COURT: Right. Give Mr. Neal your  
3 notepads. He'll keep those.

4 Anything else we need to do? You're going  
5 to have the instructions, verdict forms, and all the  
6 exhibits will be sent back to you.

7 All right. You may retire to deliberate  
8 your verdict. Thank you very much.

9  
10 (Jury exited the courtroom at 3:07 p.m.)

11  
12 THE COURT: I gave an instruction on  
13 willfully, the standard instruction on willfully  
14 because it is embedded in one of the instructions in  
15 Count Two, one of the elements in Count Two, and I  
16 hadn't previously given it. So I used the standard  
17 instruction there. It's renumbered, and it's numbered  
18 53A now.

19 All right. Is there anything else that  
20 needs to be done? Have you-all agreed on exhibits  
21 that are going back?

22 MR. NOVAK: Yes, Judge, and I gave an  
23 exhibit list, a redacted exhibit list, a copy also to  
24 Mr. Neal, as well as each of the counsel.

25 THE COURT: All right. Are you in agreement

**Comm. Exh. D, page 1225 of 1254**



1 that these exhibits on this exhibit list of the United  
2 States is going back?

3 MR. BOATWRIGHT: Yes, sir.

4 MR. EVERHART: Yes, sir.

5 THE COURT: What did you do with the  
6 defendants' exhibits?

7 THE CLERK: I have one, Your Honor. They  
8 only had one, Your Honor. I have it right here. The  
9 defendant wants it to go back. It was a diagram  
10 submitted by Defendant Claiborne.

11 Does it go back?

12 MR. EVERHART: Yes, please.

13 MR. NOVAK: That's nine. That needs to be  
14 added to the list.

15 THE COURT: It needs to be added to the list  
16 by hand at the bottom of page 5.

17 MR. NOVAK: Do you want us to do it?

18 THE COURT: Yes, you-all do it so you're in  
19 agreement.

20 THE CLERK: Did you give me an original of  
21 this, Mr. Novak?

22 MR. NOVAK: I don't know what you have.

23 THE CLERK: Oh, I don't think they gave  
24 signature pages, just make the list.

25 THE COURT: No, there are no signature

Comm. Exh. D, page 1226 of 1254

1 pages, I don't think, at least not on my copy.

2 MR. NOVAK: The exhibit list?

3 THE COURT: Yes.

4 MR. NOVAK: Right. There's no signature  
5 page. We filed the original.

6 THE COURT: He was just trying to find out  
7 whether there was --

8 THE CLERK: It's not like a pleading. It's  
9 just a guide for the jury, correct?

10 MR. NOVAK: Yes, that's what I was doing.

11 THE CLERK: That's fine if it's fine with  
12 the Judge.

13 THE COURT: That's what I said. Just write  
14 it on there.

15 MR. NOVAK: Defense Exhibit No. 1.

16 MR. EVERHART: Did you say you wanted us to  
17 sign it?

18 THE COURT: No. We don't need a signature  
19 on it. Mr. Neal was simply wondering whether he had a  
20 complete docket.

21 THE CLERK: And Your Honor, according to  
22 Mr. Novak, I made copies of all the stipulations with  
23 the exception of Stipulation No. 15, which Mr. Novak  
24 said does not go back with the jury, and I guess  
25 counsel concurred.

1 THE COURT: What's up with 15?

2 MR. NOVAK: We didn't use it, Judge, because  
3 the witness that that related to we struck, and it was  
4 not read to the jury. So it's irrelevant, and I would  
5 ask that it not go to the jury.

6 THE COURT: Do you agree?

7 MR. BOATWRIGHT: Yes, sir.

8 THE COURT: Do you agree?

9 MR. EVERHART: Yes, Your Honor.

10 THE COURT: All right. Now, one  
11 authorized -- I don't know. I guess both of you have  
12 to be here, don't you, to answer questions?

13 MR. BOATWRIGHT: I wasn't going anywhere.

14 THE COURT: I know, but except for this  
15 statute that we're dealing with, I wouldn't think both  
16 of you would have to be here. But I think under the  
17 statute, you probably do. So please stay around.

18 MR. HUYOUNG: Yes, sir.

19 THE COURT: And we're in recess until  
20 further call.

21 THE CLERK: Excuse me, Your Honor. Do you  
22 want to ask counsel perhaps to move some of that stuff  
23 off the table? We have some other matters.

24 THE COURT: Oh, yes, we do have other things  
25 coming. You can just push them forward, if you'd like

Comm. Exh. D, page 1228 of 1254

1 it. Quite frankly, it sounds like they're going  
2 through the -- I think you just stick with where we  
3 are.

4 THE COURT: All right. Okay.

5 MR. EVERHART: I should say I would ask to  
6 stay where we are.

7 THE COURT: Ask the jury to come back. I'm  
8 going to instruct the jury directly.

9 And Mr. Mack, I think they wanted two copies  
10 or three copies of something. Bring all the  
11 instructions back here when you come. Whatever they  
12 are, just bring them back. I'm going to instruct them  
13 correctly. It's original and two copies. So it's  
14 three.

15 MR. EVERHART: What is "correctly," Your  
16 Honor?

17 THE COURT: I'm going to leave the word  
18 "willfully" out and say I erroneously instructed you.  
19 And it occurred while the defendant knowingly and  
20 unlawfully used a firearm during and in relation to a  
21 drug trafficking crime prosecutable in a court of the  
22 United States and disregard Instruction 53A, just  
23 leaving willfully out of the second paragraph of  
24 the -- out of the Instruction 49.

25 MR. BOATWRIGHT: Judge, one other question.

1 If they -- suppose the situation re-arises; that is,  
2 they find another word that they don't believe is  
3 adequately defined.

4           Would the Court be amenable to telling them  
5 they simply have to agree among themselves as to the  
6 ordinary meaning of a word is if it's not otherwise  
7 defined in the instruction? They may ask for a  
8 dictionary again, is what I'm saying. I think they  
9 have to understand they can't do that.

10           THE COURT: I'll handle that.

11

12           (Jury entered the courtroom at 4:55 p.m.)

13

14           THE COURT: Ladies and gentlemen, you asked  
15 for a dictionary, and we should not have sent one back  
16 for you. I think I understand what the source of your  
17 confusion was and why you wanted a dictionary.

18           I gave you an instruction on the meaning of  
19 "willfully," which did not match the instruction that  
20 you actually were given. I realized that after your  
21 request for the dictionary brought that to my  
22 attention. In the process, I have also determined  
23 that I made an error differently with respect to  
24 willfully.

25           Willfully was used, and I defined it only

**Comm. Exh. D, page 1230 of 1254**

1 with respect to Count Two. And it appears in this  
2 part of the instruction on Count Two. Second, the  
3 death of Waverly Police Officer Allen Gibson, Jr.,  
4 occurred while the defendant knowingly, unlawfully and  
5 willfully used a firearm during and in relation to a  
6 drug trafficking crime prosecutable in a court of the  
7 United States.

8 That was a wrong instruction. The word  
9 "willfully" should not have appeared in that  
10 instruction at all. It was my error. So what I'm  
11 going to do is give you back your instructions, and  
12 I'm marking that paragraph to read as follows:

13 Second, the death of Waverly Police Officer  
14 Allen Gibson, Jr., occurred while the defendant  
15 knowingly and unlawfully used a firearm during or in  
16 relation to a drug trafficking crime prosecutable in a  
17 court of the United States.

18 And then I am taking out of your set the  
19 Instruction 53A dealing with willfully, and you will  
20 have no definition of willfully at all because  
21 willfully will not be a part of the instructions.

22 And there's no point in me going back and  
23 reviewing all of the instructions again with you. In  
24 focusing on this, I want to remind you, however, that  
25 the term "knowingly" is defined. The term "knowingly"

**Comm. Exh. D, page 1231 of 1254**

1 as used in No. 49 is also defined exactly the same as  
2 it appears in No. 44.

3 And that knowingly was defined in respect of  
4 Count One. It has the same meaning in Count Two. So  
5 "knowingly," wherever it's used in these instructions,  
6 means as used to describe the alleged state of mind of  
7 the defendant, means that he was conscious and aware  
8 of his action, realized what he was doing or what was  
9 happening around him and did not act because of  
10 ignorance, mistake or accident.

11 All right. Any questions about what I've  
12 done now? Willfully is not to be considered. I made  
13 a mistake. I am editing your instructions to reflect  
14 that, and then I'm taking willfully out.

15 And the other thing is when I draw your  
16 attention to knowingly, I'm not trying to tell you  
17 anything. I'm just saying that since those words came  
18 up and one of them wasn't defined, I wanted you to  
19 know there was a definition elsewhere.

20 If in the future you have any questions  
21 about what words mean, you're to use your own common  
22 understanding and definition of what the words mean in  
23 the instructions. But at any time, you can call --  
24 you can send a note back out and ask me for a  
25 definition of it.

1           And sometimes I get the definition out of  
2 law, and sometimes I will actually go to a dictionary  
3 and use the dictionary. But in order to do that, I  
4 need to make sure that the lawyers for all of the  
5 parties understand what the definition is that I am  
6 giving you.

7           And thank you for bringing to our attention  
8 that problem, and I hope that it straightens it out.  
9 Does anybody have any questions? I'll be glad to  
10 answer them.

11           Anything else that needs to be said, ladies  
12 and gentlemen?

13           MR. BOATWRIGHT: No, sir.

14           MR. EVERHART: No, sir.

15           THE COURT: Thank you very much for your  
16 conscientious approach to this matter and just give  
17 their instructions back to them.

18

19           (Jury exited the courtroom at 5:05 p.m.)

20

21           THE COURT: Anything else that needs to be  
22 accomplished or done?

23           MR. NOVAK: No, sir.

24           THE COURT: Thank you very much.

25



1 (Recess taken.)

2 (Jury entered the courtroom at 7:45 p.m.)

3

4 THE COURT: It's my understanding you-all  
5 want to go home for the evening and come back in the  
6 morning?

7 THE JURY: Yes, sir.

8 THE COURT: Well, the only thing I have to  
9 say is to make sure that you keep yourself free from  
10 media exposure and to also not discuss the matter with  
11 anyone, as you have in the past. Do you want to start  
12 at nine in the morning?

13 THE JURY: Yes, sir.

14 THE COURT: We'll see you at nine in the  
15 morning. Thank you very much.

16 Mr. Neal, you've got their pads?

17 THE CLERK: I will, Your Honor.

18 THE COURT: Have a nice evening.

19 THE JURY: You too.

20

21 (Jury exited the courtroom at 7:46 p.m.)

22

23 THE COURT: Okay. We'll see you at nine in  
24 the morning. We'll be in adjournment.

25

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(The proceedings in this matter adjourned at  
7:46 p.m.)

I, Diane J. Daffron, certify that the  
foregoing transcript is a correct record of the  
proceedings taken and transcribed by me to the best of  
my ability.

ORIGINAL SIGNED

\_\_\_\_\_  
DIANE J. DAFFRON, RPR

\_\_\_\_\_  
DATE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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UNITED STATES OF AMERICA,  
  
v.  
  
TERENCE JEROME RICHARDSON AND  
FERRONE CLAIBORNE,  
  
Defendants.

Criminal No.  
3:00CR00383

June 12, 2001

VOLUME VIII

COMPLETE TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

DIANE J. DAFFRON, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

**COPY**  
**1244**

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14 Richmond, Virginia  
15 BY: CHARLES A. GAVIN, ESQ.

16 Counsel on behalf of Defendant Claiborne

17 RICE, EVERHART & BABER  
18 Richmond, Virginia  
19 BY: JEFFREY L. EVERHART, ESQ.

20 Counsel on behalf of Defendant Claiborne

21

22

23

24

25

1 (The proceedings in this matter recommenced  
2 at 9:15 a.m.)

3

4 THE COURT: All right. The jury is all  
5 here. You can call the case.

6 THE CLERK: Thank you, Your Honor. Criminal  
7 No. 3:00CR00383, the United States of America v.  
8 Terence Jerome Richardson and Ferrone Claiborne.

9 Mr. David Novak represents the United  
10 States.

11 Mr. John B. Boatwright, III, and Mr. Michael  
12 Huyoung represent the defendant, Terence Jerome  
13 Richardson. Mr. Jeffrey L. Everhart and Mr. Charles  
14 A. Gavin represent the defendant, Ferrone Claiborne.

15 Are counsel ready to proceed?

16 MR. NOVAK: The United States is present and  
17 ready, Your Honor.

18 MR. BOATWRIGHT: Ready on behalf of  
19 Mr. Richardson.

20 THE COURT: All right. Ladies and  
21 gentlemen, you may retire to deliberate your verdict.  
22 If you decide you want lunch, you should let us know.  
23 It takes about an hour for it to get prepared. So  
24 Mr. Neal will give you menus, and you can circle them  
25 if you decide to. But get it out to us about an hour

1 before you want to eat.

2 All right. Thank you very much.

3

4 (Jury exited the courtroom at 9:16 a.m.)

5

6 THE COURT: All right. Believing that the  
7 jury would be returning its verdict last night or it  
8 would be a reasonable prospect, I gave Mr. Novak an  
9 assignment in another case.

10 Mr. Novak, you may go to your office so you  
11 can do that assignment and let us know how to reach  
12 you immediately.

13 MR. NOVAK: Judge, thank you, but I already  
14 worked on it significantly last night recognizing, of  
15 course, that you were right and I was wrong on that  
16 issue.

17 And we have a young intern in our office  
18 that's going to follow-up on some other things, and  
19 I'll finish it up with it tonight. Judge, I actually  
20 brought my work with me. I'll be downstairs. I  
21 appreciate the courtesy.

22 THE COURT: It was really in my  
23 self-interest. It wasn't actually all courtesy.

24 MR. NOVAK: I should have known better. I'm  
25 sorry.

1 THE COURT: All right. We'll be in recess  
2 subject to further call.

3

4 (Recess taken.)

5 (Jury entered the courtroom at 5:50 p.m.)

6

7 THE COURT: It's my understanding that  
8 you-all want to go home for today and come back and  
9 resume your deliberations tomorrow?

10 THE JURY: Yes, sir.

11 THE COURT: Thank you very much for your  
12 assiduous attention to duty, and we appreciate the  
13 sacrifice that you're making and the contribution that  
14 you're making. And know that it's comforting to us to  
15 know that you're doing your duty, and we're grateful  
16 for that.

17 We'll see you tomorrow, and drive carefully.  
18 And please keep yourself free from media exposure.

19 They'll come to the same jury room?

20 THE CLERK: Yes, sir, if it's all right with  
21 the Court.

22 THE COURT: Which jury room?

23 THE CLERK: Judge Spencer's.

24 THE COURT: You-all will continue to use  
25 that jury room.

1 THE JURY: Yes, sir.

2 THE COURT: Do you want to come back at  
3 nine?

4 THE JURY: Yes, sir.

5 THE COURT: All right. We'll start at nine.  
6 You're excused with our thanks.

7

8 (Jury exited the courtroom at 5:52 p.m.)

9

10 THE COURT: All right. I don't know what  
11 this is doing to your schedule.

12 MR. BOATWRIGHT: Havoc.

13 THE COURT: I'm wondering if tomorrow what  
14 I'll do is tell them that as soon as they return, that  
15 you can be released if you can get back here on a  
16 half-hour call. Can you do that if you're given a  
17 half-hour's notice?

18 MR. EVERHART: Yes, sir.

19 THE COURT: Can you get more done at your  
20 office than you can here? Is that right?

21 MR. EVERHART: Judge, I have a couple not  
22 lengthy court things in the morning. I can certainly  
23 be back within a half an hour if called.

24 THE COURT: Do we have a way to get a hold  
25 of you?



1 MR. EVERHART: Yes, sir.

2 THE COURT: The problem, I think, is if  
3 we're going to get questions, we're probably going to  
4 get them in the morning. So I want you available, but  
5 I'm a little concerned about what it's doing to the  
6 rest of your professional life.

7 MR. EVERHART: Yes, sir. I can be reached  
8 easily.

9 THE COURT: Make sure you give us numbers  
10 where you can be reached and have all that ready for  
11 us, if you would write it down.

12 MR. EVERHART: You do want us to come here  
13 first, correct?

14 THE COURT: Yes, I guess, because I don't  
15 know what's going to go happen first off with that. I  
16 learned that the hard way one time.

17 MR. GAVIN: Judge, what are we going to do  
18 with my jury tomorrow? Are we going to put that in  
19 this courtroom?

20 THE COURT: Yes, we'll be in here, and  
21 they'll use my jury room. And this jury is using  
22 Judge Spencer's jury room, and if we have to  
23 interrupt, we'll interrupt and switch juries.

24 MR. GAVIN: Okay.

25 THE COURT: All right. I think that takes

1 care of it. Does anybody else need anything else this  
2 evening?

3 Thank you very much. We'll be in  
4 adjournment.

5  
6 (The proceedings in this matter adjourned at  
7 5:55 p.m.)

8  
9  
10 I, Diane J. Daffron, certify that the  
11 foregoing transcript is a correct record of the  
12 proceedings taken and transcribed by me to the best of  
13 my ability.

14 ORIGINAL SIGNED

15 \_\_\_\_\_  
16 DIANE J. DAFFRON, RPR

\_\_\_\_\_  
DATE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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UNITED STATES OF AMERICA,  
  
v.  
  
TERENCE JEROME RICHARDSON AND  
FERRONE CLAIBORNE,  
  
Defendants.

Criminal No.  
3:00CR00383

June 13, 2001

VOLUME IX

COMPLETE TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

DIANE J. DAFFRON, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

**COPY**

1 APPEARANCES:

2 DAVID NOVAK, Assistant United States Attorney  
3 Richmond, Virginia

4 Counsel on behalf of the United States

5 BOATWRIGHT & LINKA  
6 Richmond, Virginia  
7 BY: JOHN B. BOATWRIGHT, III, ESQ.

8 Counsel on behalf of Defendant Richardson

9 BARNES & BATZLI, P.C.  
10 Chesterfield, Virginia  
11 BY: MICHAEL HUYOUNG, ESQ.

12 Counsel on behalf of Defendant Richardson

13 WHITE, BLACKBURN & CONTE, P.C.  
14 Richmond, Virginia  
15 BY: CHARLES A. GAVIN, ESQ.

16 Counsel on behalf of Defendant Claiborne

17 RICE, EVERHART & BABER  
18 Richmond, Virginia  
19 BY: JEFFREY L. EVERHART, ESQ.

20 Counsel on behalf of Defendant Claiborne

21

22

23

24

25

1 (The proceedings in this matter recommenced  
2 at 9:00 a.m.)  
3

4 THE CLERK: Criminal No. 3:00CR00383, the  
5 United States of America v. Terence Jerome Richardson  
6 and Ferrone Claiborne.

7 Mr. David Novak represents the United  
8 States.

9 Mr. John B. Boatwright, III, and Mr. Michael  
10 Huyoung represent the defendant, Terence Jerome  
11 Richardson, and Mr. Jeffrey L. Everhart and  
12 Mr. Charles A. Gavin represent the defendant, Ferrone  
13 Claiborne.

14 Are counsel ready to proceed?

15 MR. NOVAK: The United States is ready.

16 MR. BOATWRIGHT: Ready on behalf of  
17 Mr. Richardson.

18 MR. EVERHART: Mr. Claiborne is prepared.

19 THE COURT: Ladies and gentlemen, yesterday  
20 afternoon or this morning -- I'm not sure which, it  
21 doesn't make any difference -- one of the jurors was  
22 talking with the court security officer and indicated  
23 that the jury was having some difficulty with the  
24 problem with what happened to the T-shirt and the  
25 pictures.

1 juror herself?

2 MR. BOATWRIGHT: No, I don't.

3 THE COURT: You don't, either?

4 MR. BOATWRIGHT: No.

5 MR. EVERHART: No, sir.

6 THE COURT: You don't want me to talk to the  
7 jury generally.

8 MR. NOVAK: No.

9 MR. BOATWRIGHT: I don't, either.

10 MR. EVERHART: No, sir.

11 THE COURT: All right. Looks to me like we  
12 just call the jury back. Thank you very much.

13 I guess I have to -- I better tell you-all I  
14 am buying pastries for the jury in the morning because  
15 they got tired of bagels. They didn't say it, but I  
16 knew they would.

17 MR. BOATWRIGHT: Is there any left over?

18 THE COURT: I do it all the time, but I  
19 don't do it for lawyers.

20

21 (Jury entered the courtroom at 9:25 a.m.)

22

23 THE COURT: All right. Ladies and  
24 gentlemen, I'm sorry. There was something I needed to  
25 take up with the lawyers, and I kept you from your

1 task. And the only thing I can say is I hope you did  
2 enjoy some of the treats that were in there for you  
3 today.

4 You're going to be able to return to your  
5 deliberations now, hearing that all of the jury is  
6 present and accounted for. We will send you lunch  
7 menus, if you feel as if you need them. Remember that  
8 it takes about an hour to get it here. So we need it  
9 an hour before you want to have lunch.

10 Thank you very much, and you may return to  
11 the jury room and continue your deliberations.

12

13 (Jury exited the courtroom at 9:28 a.m.)

14

15 THE COURT: I'm going to give those three  
16 gentlemen there the Sir Walter Scott Award.

17

18 All right. You may be in recess. I mean,  
19 we're going to be in -- I have another hearing I need  
20 to attend to, and you-all can go back to your offices  
21 if you want to.

22

23 We'll tell the jury -- Mr. Mack, will you  
24 tell the jury that if they have a question, I'm  
25 letting the lawyers go back to their offices, and it  
will take 30 minutes or so for them to get back here  
and explain so that's what the delay will be if there



1 operate it in case they want to.

2 MR. NOVAK: That's fine.

3 THE COURT: Is that all right with the  
4 defense?

5 MR. BOATWRIGHT: Yes, sir.

6 MR. GAVIN: Yes, sir.

7 THE COURT: Mr. Everhart?

8 MR. EVERHART: Yes, sir, that's fine.

9 THE COURT: All right. Thank you. We'll be  
10 in recess, and take the defendants. Bring Mr. Clark  
11 back, and then get the other jury here.

12 MR. NOVAK: Judge, may I just ask one  
13 question? When I get her down here with the computer,  
14 who do you want me to communicate with, Mr. Neal?

15 THE COURT: Talk with Ms. Hooper, and  
16 they'll take care of it.

17 MR. NOVAK: Yes, Judge.

18 THE COURT: All right. Here's Mr. Neal.

19 THE CLERK: Court Exhibit 1.

20 THE COURT: Court Exhibit 1.

21 Thank you very much. We'll be in recess.  
22

23 (Recess taken.)  
24

25 THE COURT: The court reporter, Ms. Noble



1 from the U.S. Attorney's Office and myself are in here  
2 with the jury. The jury has requested to look at  
3 Exhibit AP-12, I believe, and Ms. Noble is on a  
4 computer.

5 She's going to show them how to operate it,  
6 and then we're going to leave the exhibit and the  
7 computer in here. The only thing on computer is the  
8 exhibit, right?

9 MS. NOBLE: Correct.

10 THE COURT: Go ahead and show them how, and  
11 we'll record it.

12 MS. NOBLE: It's very easy to use. The F5  
13 key will display the program. It starts with a blank  
14 screen. The over arrow goes to the next screen. If  
15 you want to go back --

16 THE COURT: Wait a minute. We don't want  
17 that. All I want is the moving picture, AP-12.

18 MS. NOBLE: Okay. This is part of it.

19 THE COURT: Turn it this way so in case you  
20 have another slip, it won't be played to everybody. I  
21 want you to erase everything on there but that little  
22 one show.

23 It needs to be up higher.

24 A JUROR: Perry Mason didn't have all this  
25 stuff. All he had was --

1 THE COURT: But you better check.

2 THE CLERK: Can you hear us, Mr. Everhart?

3 MR. EVERHART: Yes, sir.

4 THE COURT: I just know with the cell phone,  
5 he might have gotten cut off. So I assume nobody has  
6 anything else to say.

7 You-all take 45 minutes for lunch. If they  
8 have questions during that period of time, I'll just  
9 tell them that you-all have gone to lunch.

10 MR. NOVAK: Judge, may I still go back to my  
11 office and keep working on that brief?

12 THE COURT: Yes.

13 MR. NOVAK: I'm trying to get it done.

14 THE COURT: All right. Anything else?

15 MR. BOATWRIGHT: No, sir.

16 THE COURT: All right.

17

18 (Recess taken.)

19 (Jury entered the courtroom at 3:20 p.m.)

20

21 THE CLERK: Mr. Foreman, has the jury  
22 reached a unanimous verdict in this matter?

23 MR. FOREMAN: Yes, we have.

24 THE CLERK: Would you hand it to the  
25 marshal, please, sir?

1 MR. FOREMAN: (The foreperson complied.)

2 THE COURT: All right. Publish the verdict,  
3 please.

4 THE CLERK: Thank you, Your Honor.

5 Would the defendant, Terence Jerome  
6 Richardson, please stand?

7 Criminal No. 3:00CR383-01, the United States  
8 of America v. Terence Jerome Richardson. We, the  
9 jury, unanimously find the defendant Terence Jerome  
10 Richardson as to Count One guilty as charged in Count  
11 One of the superseding indictment.

12 Answer to the question, 1, if you found the  
13 defendant guilty, answer the following with respect to  
14 Count One: Did the offense involve 50 grams or more  
15 of cocaine base? Answer, yes.

16 Count Two, we, the jury, find the defendant  
17 Terence Jerome Richardson not guilty as charged in  
18 Count Two of the superseding indictment.

19 Count Three, not guilty as charged in Count  
20 Three of the superseding indictment.

21 So say we all this 13th day of June, 2001,  
22 signed Kenneth Mitchell, Foreperson.

23 You may be seated, sir.

24 Would the defendant Ferrone Claiborne please  
25 stand.

1 Criminal No. 3:00CR383-02, the United States  
2 of America v. Ferrone Claiborne. Verdict, we, the  
3 jury, unanimously find the defendant Ferrone Claiborne  
4 guilty as charged in Count One of the superseding  
5 indictment.

6 Answer to the question, 1, if you found the  
7 defendant guilty, answer the following with respect to  
8 Count One: Did the offense involve 50 grams or more  
9 of cocaine base? Answer, yes.

10 We, the jury, on Count Two find the  
11 defendant Ferrone Claiborne not guilty as charged in  
12 Count Two of the superseding indictment, and not  
13 guilty as charged in Count Three of the superseding  
14 indictment.

15 So say we all this 13th day of June, 2001,  
16 signed Kenneth Mitchell, Foreperson.

17 You may be seated, sir.

18 Ladies and gentlemen of the jury panel, are  
19 these your unanimous verdicts in this case?

20 THE JURY: Yes.

21 THE COURT: Is there any reason we can't  
22 excuse the jury?

23 MR. NOVAK: Not from the government.

24 MR. BOATWRIGHT: No, sir.

25 MR. EVERHART: No, sir.

1           THE COURT: Ladies and gentlemen, on behalf  
2 of the Court and the parties and the lawyers, I want  
3 to thank you for the discharge of one of the most  
4 important civic duties a citizen can have.

5           We know that it is a great imposition upon  
6 you and your time, upon your families, upon the time  
7 of your employers, and we know that it is never, never  
8 easy to sit in judgment on a fellow citizen. We know  
9 the toll that that takes on you when you have to do  
10 it.

11           And nonetheless, it is critically important  
12 if our system of justice is to work that we have  
13 citizens such as yourself who are willing to discharge  
14 this critically important responsibility, and we're  
15 truly grateful for what have you done.

16           And you're excused to go about your duties.  
17 The only real other thanks that I can give you is to  
18 tell the jury clerk you're excused from any further  
19 jury service during your term, considering the  
20 contributions that you've made to the process so far.

21           Thank you very much. You're excused with  
22 our gratitude.

23  
24           (Jury was discharged and exited the  
25 courtroom at 3:25 p.m.)



## VIRGINIA STATE POLICE

Date of Transcription May 13, 1998

SHANNEQUIA GAY, DOB: [REDACTED]/88, was advised of the official identity of Special Agent Accountant (SAA) TERRY ANN STEVENS and the purpose of the interview, to obtain information regarding the murder of Waverly police officer, ALLEN GIBSON. GAY was interviewed at the Virginia State Police Waverly Area Office. GAY provided the following information:

On April 25, 1998, in the morning, Recess was on TV and the second part of the show was coming on TV. I was at my aunt's house. My cousin, JACQUES 'QUAY', came to the door to play. My aunt told me to go outside and play, because she did not want a lot of kids in the house. QUAY's brother, BRINDISI, who is five (5) or six (6) years old was outside playing, too. There was another little girl with light skin playing with BRINDISI. She was around his age. BRINDISI would know her name. There were also two (2) other kids playing with BRINDISI and QUAY. They were around QUAY's age. QUAY is three (3) years old.

The other kids were playing in front of my aunt's house. QUAY and I were going up and down the sidewalk on our bicycles. The other kids were just running around and there was one (1) other kid on a big wheel. He was around QUAY's age. A police officer pulled up as ERIC was going around the side of EVETTE'S building toward the woods. ERIC had crossed the parking lot from the playground. ERIC is a tall black male with dark skin, bald, and he was wearing a dark blue silk shirt with long sleeves and blue jeans with grass stains.

The police officer went around the building following ERIC. The police officer was talking into a microphone (radio). QUAY and I went toward the hill, between EVETTE's and my aunt's building. The other kids left, because their mom called them in cause me and QUAY were going toward the woods. Then, QUAY and I went back toward my aunt's house. I was in front of my aunt's house and QUAY was in front of ARTHUR's house. That is when I heard the gunshot. I went to grab QUAY, but he took off to the hill. I followed him and we were both on bikes on the hill. QUAY wanted to go down the hill toward the woods to where the gunshot sound came from. When I looked down, I heard someone call for help. I saw a policeman laying on the ground. I heard someone coming from deep in the woods running toward the police officer. He kept turning his head and looking behind him as he ran. He was a black male, with dark skin, his hair was black with long corn rows that were flat on his head with like braids going down the back. He had some plats too. He was wearing black pants like long shorts and a white tee shirt. The shirt was dirty and dingy with brown dirt on parts of it and the shirt was torn.

Investigation on May 13, 1998 at Waverly, VA File # 98-85-00-0510  
 By SAA Terry Ann Stevens / sgl.doc Date Dictated May 13, 1998

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Page Number 2

File Number 98-85-00-051

by the shorts. The shirt had red on it, kinda in the middle toward the bottom of the shirt. The guy was medium height and I am not sure if he had hair on his face. He was wearing black boots, like hiking boots that come above the ankle. He was breathing hard and was very bad looking. He was running with a bottle or a gun in his hand. It was a black, metal looking object I thought it may have been a bottle, because it looked like something was coming out of it. I'm not sure what though. He was holding it in one (1) hand as he was running, but I am not sure which hand. He was wearing a necklace around his neck with something shiny hanging from it like a ring.

QUAY saw the police officer on the ground and got scared and went down the hill. QUAY got to EVETTE's building and dropped his bike and started running. I went behind him and followed him. I parked my bike at my aunt's and was going back for QUAY's bike. That is when I saw the guy with corn rows (like dreds) who was running again. He was standing on top of the hill and was looking all around. When he was on the hill, I saw his hands. I do not think there was anything in them. He was standing with his hands balled together into fists against each other. I thought I saw something red on his hands that may have been blood. His hands were right above his waist and the red from his shirt was behind his hands. When he was on top of the hill, I got a good look at his braids on top of his head, thick and pulled back. I am not sure if he ever had a hat on, but I saw his braids. He stopped looking around. He turned to go back in the woods and it looked like there was black writing on the back of his shirt. Then, he ran back into the woods toward where the police officer was laying.

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
REPORT OF INVESTIGATION

Page 1 of 2

ADDRESSED TO:  
Special Agent in Charge  
Washington Field Division

MONITORED INVESTIGATION INFORMATION:  
Washington Field Division  
FY-00  
Report 092

TITLE OF INVESTIGATION:  
RICHARDSON, TERRANCE JEROME

CASE NUMBER:  
768030-00-0034

REPORT NUMBER:  
92

TYPE OF REPORT: (Check Applicable Boxes)

<input checked="" type="checkbox"/>	REPORT OF INVESTIGATION	<input type="checkbox"/>	COLLATERAL REPLY
<input type="checkbox"/>	REPORT OF INTELLIGENCE	<input type="checkbox"/>	

SUBMITTED BY (Name) Michael B. Talbert	SUBMITTED BY (Title and Office) Special Agent, Richmond I Field Office	SUBMITTED BY (Date) 10/30/2000
REVIEWED BY (Name) William W. Dunham	REVIEWED BY (Title and Office) Resident Agent in Charge, Richmond I Field Office	REVIEWED BY (Date) 10-30-00
APPROVED BY (Name) Jeffrey R. Roehm	APPROVED BY (Title and Office) Division Director / Special Agent in Charge, Washington Field Division	APPROVED BY (Date)

DESCRIPTION OF ACTIVITY:

Interview of SHANNEQUA GAY.

SYNOPSIS:

On October 29, 2000, SHANNEQUA LATOYA GAY, DOB [REDACTED]/1988, NO SOCIAL SECURITY NUMBER, [REDACTED] was interviewed at the United States Attorney's Office, Richmond, Virginia, regarding the murder of Waverly Police Officer Allen Gibson. Shannequa GAY's parents, Mr. and Mrs. Turner, were present during the interview.

NARRATIVE:

- On October 29, 2000, SHANNEQUA LATOYA GAY, was interviewed at the United States Attorney's Office, Richmond, Virginia, regarding the murder of Waverly Police Officer Allen Gibson. Shannequa GAY's parents, Mr. and Mrs. Turner, were present during the interview.
- Shannequa GAY is twelve years old and attends the Sussex Central Middle School as a seventh grade student. In April of 1998 Shannequa GAY was nine years old and living with her mother in the Wakefield Apartment Complex. On April 24, 2000, Shannequa GAY slept over her Aunt Carolyn Gay's apartment with her cousin Sheana Gay. Carolyn Gay was living in apartment number 631 in the Waverly Village at that time.
- On Saturday morning April 25, 1998, Shannequa GAY got out of bed, took a bath, ate some breakfast, and went out to ride her bike with a friend named Juquay Theweatt. At the time Juquay was 4 or 5 years old. Juquay is Mrs. Turner's nephew and he lives in the front apartment building with his mother Shari Theweatt.
- Shannequa GAY and Juquay were riding their bikes in front of her Aunt's apartment building. Shannequa GAY saw Taneka and Hope sitting on the steps and Shannequa GAY remembered seeing Eric Garrett just before the police officer arrived in the apartment complex. Hope and Taneka were still outside when the police officer



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
REPORT OF INVESTIGATION

Page 2 of 2

ADDRESSED TO: Special Agent in Charge Washington Field Division	MONITORED INVESTIGATION INFORMATION: Washington Field Division FY-01 Report 092
TITLE OF INVESTIGATION: RICHARDSON, TERRANCE JEROME	
CASE NUMBER: 768030-00-0034	REPORT NUMBER: 92

arrived but Eric Garrett had left through the woods. Shannequa GAY also remembered a group of young black males standing around outside next to Arthur Coleman's apartment but in the rear of the complex. They were gone when the police officer arrived.

5. Shannequa GAY watched the police officer pull his car up over by the dumpster. He exited his vehicle and went into the woods in the same place that Eric Garrett had gone earlier. Shannequa GAY and Juquay were on the other side of the apartment building. They watched the officer disappear down the hill into the woods. Moments later Shannequa GAY heard a gunshot. She ran into her Aunt's apartment and told her what she had heard. Shannequa GAY then left her Aunt's apartment and went back behind the apartment building. She looked into the woods and she saw the police officer laying on the ground and another black guy standing about twelve feet away from him. (Shannequa GAY was shown an approximate distance between two objects and that distance was lengthened until it equaled what Shannequa GAY remembered, which was approximately twelve feet.) Shannequa GAY had never seen the black man before but she described him as follows: A thin dark skinned black male, with a scruffy beard, wearing black shorts and a white T-shirt. The black man wore his hair in corn rows and they were long, about collar length. Shannequa GAY remembered that there appeared to be blood on his shirt and he was holding an object in his hand. The man looked around for a few minutes and then ran away. Shannequa GAY then went back to her Aunt's apartment, after she heard the police officer yell for help, and told her Aunt that a police man had been shot. Her Aunt called the police and then they arrived a few minutes later.
6. Shannequa GAY was shown pictures of police mug shots on two different occasions. On both occasions Shannequa GAY was at Sussex Deputy Valerie Patterson's house when she was shown the pictures. Patterson is related to Shannequa GAY's family. On the first occasion Shannequa GAY was shown individual pictures and asked if any of them resembled the man she saw. Shannequa GAY saw one picture that looked like the man in his facial features but his hair was different. Detective Greg Russell and another female officer showed her those pictures.
7. On the second occasion Shannequa GAY was shown a photo line up by Detective Tommy Cheek. Shannequa GAY told Patterson that the person depicted in picture number eight might have been the person she saw behind the apartments.
8. Shannequa GAY told the investigators that she was never asked to change her story or add facts to what she saw that day. The statements in this report are as she remembers that day. The police officers just asked her what she saw and showed her some pictures.
9. Because Shannequa GAY was experiencing some emotional difficulties while responding to investigative questions a member of the music industry was contacted and told of Shannequa GAY's situation. Investigators felt compelled to help make Shannequa GAY feel better so he sent a promotional package of autographed material to her from rap music artist Wyclif Jean. Shannequa GAY and her parents were advised that this was not a gift from the ATF, FBI or the U.S. Attorney's office and that it was in no way compensation for her statements. These items were from the music industry in an attempt to help her feel better. Shannequa GAY was advised that the only thing that mattered was the truth. Shannequa GAY said that she knew the difference between a lie and the truth and that she told investigators the truth.

**MEMORANDUM**

**TO:**           Richardson Team  
**FROM:**       Kyle Richards  
**RE:**            Witness Interview  
**DATE:**        08/19/2021

---

**Sharon Gay Turner**  
██████████  
**Wakefield, Virginia 23888**  
██████████

On the above referenced date, I had a conversation with Sharon Gay Turner over the phone. On August 17, 2021 I had left a card at ██████████ in Wakefield but received no call. On August 19, 2021, I discovered a possible number for Ms. Turner and called but there was no answer, and I was not able to leave a voicemail. Within minutes, I had a missed call and voicemail from Ms. Turner and I called her back.

After introducing myself and explaining the role of the CIU, Ms. Turner stated that she was tired of being contacted about this case. She stated that she and her daughter, Shannequia Gay, would no longer be “terrorized.” I again explained that the CIU was new to the case and asked her if she had been contacted by other people or groups in the past. Turner stated that two people from Virginia Beach contacted her and a man had contacted her. She stated that the man was rude, aggressive, and used curse words while on the phone with her. I asked Turner if the man’s name was Jarrett Adams and she stated that it was.

Turner went on to say that for years people have brought up the events of that day in 1998 and wanted to know what her daughter witnessed. She said that her daughter observed “a man on top of the hill with blood on his shirt and hands” and it was traumatic for her and for Ms. Turner. She added that at no point was she or her daughter offered any sort of counseling for the event. Turner added that any time the matter is brought up, it brings back trauma for Shannequia.

Turner told me that her daughter was interviewed on three separate occasions by several different law enforcement agencies. She stated that at least one interview was conducted by a local law enforcement agency and believes that at least one more was by a federal agency, but she could not recall what agency. I was unable to determine how many of these interviews, if not all of them, Turner was present for.

Turner stated that she would let her daughter know that I would like to speak with her. She advised that she could not be sure that Shannequia would call as it is a difficult subject for her.

**MEMORANDUM**

**TO:**           **Richardson Team**

**FROM:**       **Kyle Richards**

**RE:**           **Witness Interview**

**DATE:**       **08/20/2021**

---

**Detective Greg Russell  
City of Richmond Police Department  
Major Crimes Division  
██████████  
Gregory.Russell@richmondgov.com**

On the above referenced date, the CIU (Al Simon, Emilee Hasbrouck, Seth Shelley and Kyle Richards) conducted a telephonic interview with Detective Greg Russell of the City of Richmond Police Department who, in 1998, was a sheriff's deputy with the Sussex County Sheriff's Office.

Russell indicated that he had been a deputy with SCSO since 1994 and he had some recent experience at that time in investigations. He added that due to the small number of deputies within the SCSO, everyone was involved in the case of Gibson's death.

He recalled that on the day of the shooting, he was with Moe Williams fishing in Nags Head. He stated that they received a call mid-morning telling them about Gibson's shooting and they left Nags Head arriving at the Waverly Police Department between 4-6pm. Because the Waverly PD did not have investigators, SCSO took over the investigation and Tommy Cheek was the lead investigator. As SCSO did not have the resources available to them, they requested the Virginia State Police assist with processing the crime scene. Russell recalled that several VSP agents from the Chesapeake area came to assist as well.

By the time that Williams and Russell arrived in Waverly, no suspects had been identified. He quickly learned that Chief Sturup had retrieved Gibson's gun and went into the parking lot of the apartment complex and was "waving the gun around." He also heard that Sturup "beat the shit out of Eric" (Eric Garrett) and "broke his arm." He added that "Sturup lost his mind...just went off on him." He stated that it was quickly determined that Garrett was not a suspect in the shooting.

Russell stated that Moe Williams began reaching out to his informants and was receiving unsolicited calls from them as well. It was through these connections that Richardson and Claiborne were initially identified as possible suspects. Russell added that these informants who were contacted by or contacting Williams were not necessarily eyewitnesses to the shooting. He stated that background investigations immediately began on Richardson and Claiborne in

attempts to determine where they had been over the prior several days and who they had been with.

When asked about a photo lineup having been shown to Shannequia Gay, Russell stated, "I messed that up guys. I'm going to tell you that right now." Russell went on to add that the interview of Shannequia Gay occurred at Deputy Valerie Patterson Ricks' house on the evening of April 25, 1998 and Ricks is related to Shannequia Gay. Russell stated, "I screwed this up guys. This was an improper identification." He stated that while he was speaking with Shannequia, she was describing the hair of the person she saw. After writing the "Gay Handwritten Statement" which was dictated to him by Shannequia, Russell showed her a picture of Terence Richardson with the intent of determining whether his hair style resembled that of the person Shannequia saw at the apartment complex. Russell said that Shannequia "gaspd" when she saw the photo of Richardson and told him that he was the man she saw. Russell added that he got in trouble for the "improper identification" and the federal agencies would eventually become aware off this gaff. Russell added that Jarrett Adams has a copy of the photo that he showed to Shannequia and the photo has been used on various news casts as well. Russell stated that Shannequia specifically said that the person she saw in the woods had dreads, but he added that you can debate dreads as compared to cornrows. According to Russell, those present for this interview and "improper identification" were Shannequia Gay, Sharon Gay Turner, Deputy Valerie Patterson Ricks, Tommy Cheek, and VSP Terry Ann Stevens.

Russell said that a photo lineup was created later that night in hopes to resurrect the identification. He believes Tommy Cheek created the lineup. Russell was not present, but he says it was relayed to him that Shannequia selected photo #2 out of the lineup.

Russell identified Roy LeNeave as the manager of the Sussex Trace Apartments. LeNeave had apparently requested Gibson conduct foot patrols at Sussex Trace as he was having issues with some people in the complex. This fact led investigators to question why Gibson was at the Waverly Village Apartments. Russell stated that Gibson was a known "go getter" but no one is certain why he left his vehicle.

Russell says that he spoke with Shawn Wooden on several occasions. He recalls that at first, Wooden claimed that he was just riding his bike at the Waverly Village Apartment complex when he heard gunshots, but he eventually confessed to being the third person in the woods. Wooden said that Richardson and Claiborne wanted to smoke marijuana in the woods when Gibson must have seen them. Russell stated that from where Gibson's vehicle was parked, anyone in the woods would not have been able to see him coming. Russell believes that Gibson surprised Richardson, Wooden, and Claiborne and the fight ensued.

During our meeting, Russell was looking at the files that the CIU provided to him. Russell spent a significant amount of time clarifying some details for us such as unit identifying numbers, who people were, etc. Russell stated that Evette Newby was a "nasty, nasty woman" and she and her boyfriend, Tony White had been arrested many times for fighting one another. He added that Tony White was known to be a small-time drug dealer. Russell stated that Hope Pierce was a nice woman who hung around with a man that used to beat her up frequently. Russell stated that per the documents, it appeared as though Elaine Dobie of Dobie's Store worked until 4pm and

did not see Joe Jones or Evette Newby on the evening of the shooting. He added that it appears as though he met with Sharon Smith and she told him that she had worked at Dobie's from 4p to close and had seen Evette at the store sometime between 8 and 9pm. Smith did not see Terrance that afternoon or night at Dobie's. Russell verified that pages 105-125 of Sussex #1 are his handwritten notes.

Russell said that all documents related to this case that had been in his possession would have been turned over to Tommy Cheek. He said that Tommy Cheek would have likely made copies of everything and handed the copies over to J. David Chappell. Russell said that he was never a part of any meeting with defense counsel and never even had a conversation with them.

Following the plea deal, Russell says he was approached by Talbert from the Virginia State Police (NOTE: Talbert is and was with the ATF, not VSP). Talbert allegedly told Russell that they were going to see if they could open the case back up because "this wasn't right." Russell says that the federal agencies conducted a complete re-investigation and received files from local and state authorities. They went through the SCSO's files and reinterviewed every single person that the SCSO did. Furthermore, the "unprecedented" narcotics operation conducted by the federal agencies required special permission. The SCSO's role in the narcotics operation was to provide the federal agencies with informants and information on known drug dealers.

Russell informed us that there had been a confession in this case and that the federal agencies were aware of it. He stated that several years after the case concluded in federal court, Michael Talbert received a call from a federal inmate named Michael Artis. Artis informed Talbert that the day after Gibson was shot, he and Claiborne were at the McDonald's in Wakefield. Artis says that Claiborne confessed to Artis that he had shot Gibson.

Russell says that he and Talbert met with Gibson's daughter in March 2021. She was upset because she felt as though her words had been manipulated in the news. She was also upset because Jarrett Adams had reached out to her.

Lastly, Russell stated that he was not aware of any BOLO but believed that Tommy Cheek would know information regarding it.

**MEMORANDUM**

**TO:**           Richardson Team  
**FROM:**        Kyle Richards  
**RE:**            Witness Interview Efforts

---

**Shannequia Gay**  
[REDACTED]

The below is a chronological account of my efforts to interview Ms. Shannequia Gay.

**August 17, 2021**

- I went to [REDACTED], Wakefield, Virginia in an attempt to speak with Shannequia Gay. There was no answer at the door, nor was there any vehicle in the driveway. I left my card with a note asking her to call me.
- I went to [REDACTED], Waverly, Virginia in an attempt to speak with Carolyn Gay, a relative of Shannequia Gay. The attempt resulted in me having a bad address.
- I attempted to call Carolyn Gay and it was a bad number.
- I attempted to call Sharon Gay Turner (mother to Shannequia Gay) and it was a bad number.
- I interviewed Walter Wilkins. He informed me that he did not know where Sharon Gay Turner or Shannequia Gay lived but advised that a woman with the last name, Stiff, may know. Wilkins informed me that Stiff was the property manager for Sussex Trace Apartments and the Waverly Village Apartments.
- I called Janet Stiff and was unable to leave a voicemail as the mailbox was full.
- I left a card for Janet Stiff at the Waverly Village Apartments leasing office.
- I returned to [REDACTED], Wakefield, Virginia. The card I had left was still on the front door and there still was no vehicles in the driveway.

**August 18, 2021**

- I met with Janet Stiff at the Waverly Village Apartments leasing office. Stiff stated that she believed that Sharon Gay Turner and Shannequia Gay no longer lived on Williams Lane in Wakefield. She stated that Shannequia was currently living with a boyfriend who had the last

name, "Bailey". She thought that they were living in a newly built neighborhood in Wakefield located behind the old Tastefreeze which was being renovated into a BBQ restaurant.

- I located the old Tastefreeze/BBQ restaurant but was unable to locate any newly built neighborhoods in the area.

- I attempted to identify a person with the last name "Bailey" who may be dating Shannequia but nothing concrete was discovered.

### **August 19, 2021**

- I called two numbers for Shannequia Gay. Both resulted in bad contact information.

- I called a number for Carolyn Gay which resulted in bad contact information.

- I received a voicemail from Sharon Gay Turner.

- I called her back and after introducing myself and explaining the role of the CIU, Ms. Turner stated that she was tired of being contacted about this case. She stated that she and her daughter, Shannequia Gay, would no longer be "terrorized". I again explained that the CIU was new to the case and asked her if she had been contacted by other people or groups in the past. Turner stated that two people from Virginia Beach contacted her and another person, a man had contacted her. She stated that the man was rude, aggressive, and used curse words while on the phone with her. I asked Turner if the man's name was Jarrett Adams and she stated that it was.

Turner went on to say that for years people have brought up the events of that day in 1998 and wanted to know what her daughter witnessed. She said that her daughter observed "a man on top of the hill with blood on his shirt and hands" and it was traumatic for her and for Ms. Turner. She added that at no point was she or her daughter offered any sort of counseling for the event. Turner added that any time the matter is brought up, it brings back trauma for Shannequia.

Turner told me that her daughter was interviewed on three separate occasions by several different law enforcement agencies. She stated that at least one interview was conducted by a local law enforcement agency and believes that at least one more was by a federal agency, but she could not recall what agency. I was unable to determine how many of these interviews, if not all of them, Turner was present for.

Turner stated that she would let her daughter know that I would like to speak with her. She advised that she could not be sure that Shannequia would call as it is a difficult subject for her.

### **August 23, 2021**

- I met with Ms. Valerie Patterson Ricks. Ricks informed me that she is related to Sharon Gay Turner and Shannequia Gay but is not very close with them. She stated that Sharon works at a nursing home in Wakefield, Virginia. She added that she would contact Sharon in an attempt to have her convince Shannequia to speak with me.



**August 27, 2021**

- I called and left a message for Sharon Gay Turner.

**September 10, 2021**

- I called and left a message for Sharon Gay Turner.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA )

v. )

TERENCE JEROME RICHARDSON, )  
FERRONE CLAIBORNE, )  
Defendants )

Criminal No. 3:00CR383

**Notice Regarding Shanneqia Gay**

You are informed that a little girl by the name of Shanneqia Gay (d/o/b: [REDACTED]/88) was riding her bicycle in the Waverly Village Apartments at the time of the murder and, after hearing the gunshot, went to her aunt's apartment and then to the back of the apartments where she saw a black male (who the Government alleges was Terence Richardson) with something in his hands standing near where Officer Gibson was laying. She gave the following description of the black male: tall, skinny, dark skin, corn rows haircut, light beard, wearing a white t-shirt and long dark shorts. She was involved in two photographic identification procedures. At approximately 9:30 p.m. on April 25, 1998, Sussex County Deputy Sheriff Greg Russell showed her a single photograph of Leonard Newby, an early suspect in the case who is a black male and has dread locks. No identification was made but she got afraid when shown the picture. Obviously, Deputy Russell erred when he showed this single photograph to Ms. Gay. Sussex County Deputy Tommie Cheeks compounded this error later that same evening at approximately midnight when he (along with VSP Special Agent Terry Stevens and Sussex County Deputy Valerie Patterson-Ricks) showed a photo spread to Ms. Gay that contained Leonard Newby's photograph in

position 2. Ms. Gay signed her name under the photo in position 2. The officers are unclear whether this indicated any identification or whether it indicated that she recognized the photo from the earlier single photo identification process. We have provided you with a copy of the photo spread shown to Shanneqia Gay.

Respectfully submitted,

HELEN F. LAHEY  
UNITED STATES ATTORNEY

By:

  
David Novak  
Assistant United States Attorney

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
REPORT OF INVESTIGATION

Page 1 of 2

ADDRESSED TO:  
Special Agent in Charge  
Washington Field Division

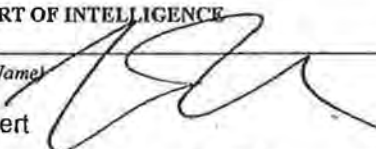

MONITORED INVESTIGATION INFORMATION:  
Washington Field Division  
FY-01  
Report 068

TITLE OF INVESTIGATION:  
RICHARDSON, TERRANCE JEROME

CASE NUMBER:  
768030-00-0034

REPORT NUMBER:  
68

TYPE OF REPORT: (Check Applicable Boxes)

X	REPORT OF INVESTIGATION		COLLATERAL REPLY
	REPORT OF INTELLIGENCE		
SUBMITTED BY (Name) Michael B. Talbert		SUBMITTED BY (Title and Office) Special Agent, Richmond I Field Office	
		SUBMITTED BY (Date) 10/10/2000	
REVIEWED BY (Name) William W. Dunham		REVIEWED BY (Title and Office) Resident Agent in Charge, Richmond I Field Office	
		REVIEWED BY (Date) 10-10-00	
APPROVED BY (Name) Jeffrey R. Roehm		APPROVED BY (Title and Office) Division Director / Special Agent in Charge, Washington Field Division	
		APPROVED BY (Date)	

DESCRIPTION OF ACTIVITY:

Interview of SHANNEQUA GAY.

SYNOPSIS:

On September 19, 2000, SHANNEQUA GAY was shown two photo spreads, which contained six black males each. Each of these lineups was comprised of black males who are not related to this investigation.

NARRATIVE:

- On September 18, 2000, SA Talbert utilizing Richmond Police Department computer system generated two photo spreads. SA Talbert selected black males with varying degrees of hair length and style. The first lineup was titled HAIR I and the second lineup was titled HAIR II. The lineup was used to determine the hairstyle of the subject GAY described seeing on April 25<sup>th</sup>, 2000, moments after Officer Gibson was murdered.
- On September 19, 2000, SHANNEQUA GAY was shown the aforementioned photo spreads. GAY selected subject #5 in HAIR II. This person has a hairstyle commonly known as "corn rows". FBI SA Robert Ritchie took these two photo spreads into custody.

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 09/21/2000

Shannequa Latoya Gay, born [REDACTED] 1988, Social Security Account Number not available, of [REDACTED] Virginia, telephone not available, was interviewed at the United States District Court, Richmond, Virginia. Shannequa's mother, Sharon Turner, born May 21, 1964, Social Security Account Number [REDACTED] of [REDACTED] was present during the interview. After being advised of the identity of the interviewing agent and the nature of the interview, she provided the following information:

Shannequa was shown two photo line ups. Each photo line up consisted of six black males. This first line up was labeled Hair I and the second line up was labeled Hair II. The line ups were created by Special Agent Michael Talbert of the Bureau of Alcohol, Tobacco, and Firearms using the Richmond Police Department photo database. The individuals selected for the line up were chosen because of their varied hair styles. Shannequa was instructed that no one depicted in the line ups was a suspect and she was asked to pick out the individual whose hairstyle most closely resembled that of the individual that she saw come out of the woods the day Alan Gibson was shot.

Gay observed both line ups and picked subject number five from line up Hair II. Subject five was wearing a hairstyle commonly referred to as "corn rows". Shannequa identified this hairstyle as the one that most closely resembled the hairstyle worn by the individual she saw on the day Gibson was shot.

Both photo line ups have been attached to this 302 and made a part thereof.

Investigation on 09/19/2000 at Richmond, Virginia

File # 184A-RH-48252

Date dictated 09/21/2000

by Robert B Ritchie

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

# RICHMOND POLICE DEPARTMENT

## Admonition:

You will be asked to look at a group of photographs. The fact that the photographs are shown to you should not influence your judgement. You should not conclude or guess that the photographs contain the picture of the person who committed the crime. You are not under any obligation to identify anyone. It is just as important to free innocent persons from suspicion as to identify guilty parties. Do not be influenced by the fact that the persons in the photograph may have beards, mustaches, or long hair. Do not be influenced by the fact that some of the pictures may be in color while others are black and white. Please do not discuss the case with other witnesses nor indicate in any way that you have or have not identified someone.

## Consejo:

Nosotros le vamos a pedir que vea un grupo de fotos. La razón por la cual le mostraremos las fotos no debe influenciar su opinión. Usted no debe concluir o adivinar que el grupo de fotos que le mostraremos contiene la persona que cometió el crimen. Usted no tiene la obligación de identificar a nadie. Es muy importante darle la libertad a las personas inocentes que están bajo sospecha, como también es importante identificar a aquellos que son culpables. No se preocupe de que la persona en la foto tenga barba, bigote, o pelo largo. No se preocupe de que algunas de las fotos estén a color, y que otras estén en blanco y negro. Por favor no discuta el caso con otros testigos, ni indique de ninguna manera que usted identificó o no identificó a la persona.

CASE # \_\_\_\_\_ VIEWED BY \_\_\_\_\_ DETECTIVE \_\_\_\_\_  
COMMENTS \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

Lineup Number: \_\_\_\_\_ Lineup Name: HAIRII

[1]

0FYA18K000RPD02R - Q986576



[2]

0FT10ML000RPD02R - Q924419



[3]

0FXTPAW000RPD02R - Q966360



[4]

0FTDWZD000RPD02R - Q924754



[5]

0FVZNH0010RPD02R - Q927017



[6]

0FR221A010RPD02R - Q922492



1279

Comm. Exh. K, page 3 of 4

# RICHMOND POLICE DEPARTMENT

## Admonition:

You will be asked to look at a group of photographs. The fact that the photographs are shown to you should not influence your judgement. You should not conclude or guess that the photographs contain the picture of the person who committed the crime. You are not under any obligation to identify anyone. It is just as important to free innocent persons from suspicion as to identify guilty parties. Do not be influenced by the fact that the persons in the photograph may have beards, mustaches, or long hair. Do not be influenced by the fact that some of the pictures may be in color while others are black and white. Please do not discuss the case with other witnesses nor indicate in any way that you have or have not identified someone.

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CASE # \_\_\_\_\_ VIEWED BY \_\_\_\_\_ DETECTIVE \_\_\_\_\_  
COMMENTS \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

Lineup Number: \_\_\_\_\_ Lineup Name: HAIR

[1]

0FV516Y000RPD02R - Q926324



[2]

0FVBYY0000RPD02R - Q926430



[3]

95AMA125AFH - H304882



[4]

0FPH8XZ000RPD02R - Q921004



[5]

0FQC710000RPD02R - Q962539



[6]

0FQK010000RPD02R - Q921983





60°

LIVE NOW / Watch Good Morning Richmond

WEATHER ALERTS / Coastal Flood Warning: Lancaster, Middlesex, Northumberland, Westmoreland

NEWS

# 8News Investigates: Not guilty? Sentenced to life





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RICHMOND, Va. (WRIC) — Last week, an 8News investigation introduced you to two Virginia inmates who some believe are unfairly serving a life sentence in prison. We've now learned they will get no help from President Barack Obama.

Ferrone Claiborne and Terence Richardson were eligible for life in prison when charged with murdering Waverly police officer Allen Gibson in 1998. But when a jury acquitted them of that crime, the judge used an unusual procedure to cross-reference the murder charge and sentence the men to life for conspiracy to sell crack cocaine. The normal crack sentence would have been much shorter.

- [Not guilty? Sentenced to life in prison](#)

During his final hours in office, President Obama granted clemency to 330 inmates. He commuted the sentences of 11 Virginians. during the final month of his presidency.

ADVERTISING



60°

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RICHMOND, Va. (WRIC) — It was a crime that sent shockwaves through the town of Waverly: Two men acquitted for the murder of a police officer.

Yet in an odd twist, that murder charge was used to [sentence them to life in prison](#).

It is a crime both men claim they didn't commit.

“I have been sitting in here for 18 years for something I didn't even do,” said Terence Richardson, one of the men behind bars.

Now, Richardson and Ferrone Claiborne have filed a Petition for Clemency with President Barack Obama before he leaves office.

- [Terence Richardson Petition for Clemency](#)
- [Ferrone Claiborne Petition for Clemency](#)

On April 25, 1998, Officer Allen Gibson was gunned down in the woods behind the Waverly Village apartment complex. Warren Sturrup, the Waverly police chief at the time, was one of the first to respond. He has never spoken about the incident until now.

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“Allen was completely out, he was laying there, his gun on the ground,” Sturup said, describing the scene.

He then did something unexpected.

“I picked up his gun and took it up the hill to put it in my car and tried to secure it,” Sturup recalled.

8News asked, why? There could be fingerprints on the gun and it contaminated the evidence.

“I didn’t think about that at the time,” Sturup explained.

He says his military training kicked in; he was worried other officers and deputies responding could also be in danger.

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him.



Within a couple days, 27-year-old Richardson and 22-year-old Claiborne emerged as suspects.

“I didn’t know them,” Sturup said. “Never heard their names before.”

To this day, from their prison cells, Richardson and Claiborne maintain their innocence.

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The case against them, which was tried in Sussex County Court, had issues from the beginning.

“No evidence to tie him to it,” suggested Curtis Claiborne, Ferrone’s father.





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he didn't know anything about the murder.

The Commonwealth's Attorney at the time, David Chappell, declined to go on camera, but sent 8News the following statement via email:

"It was frustrating handling the cases because while I believed we had the right two criminal agents, the evidence as a whole was very borderline [for] proving murder."

Chappell offered a controversial plea bargain. The suspects' lawyers urged them to take it.

"He said if you go to trial and you mess around and you lose, you could get the death penalty," Richardson said.



"I really didn't have the funds to go forward with the trial," Claiborne added.

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And so he did. Claiborne walked out that day thinking the case was now behind him.

“I feel blessed,” he told 8News at time outside the courtroom

Gibson’s [grieving and heartbroken family](#), however, did not feel justice was served.



“All you have to do is take a gun, shoot a police officer, say it was an accident and you can walk,” Susie Gibson said.

Soon, Claiborne and Richardson would find themselves in federal court facing the murder charges all over again.

- [READ: Federal indictment](#)

“He got a raw deal,” Claiborne’s father said.

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## PART II: Not guilty? Sentenced to life



### Part II

Waverly Police Officer Allen Gibson was murdered in 1998 with his own gun. The two men charged say they are innocent, but at the time they agreed to a plea deal to a lesser charge.

In a recent interview, Terrence Richardson explained why he chose to take the plea deal.

“[My lawyer] said if you go to trial and you mess around and you lose, you could get the death penalty,” says Terrence Richardson explaining why he took the deal.

Ferrone Claiborne walked out of jail that day. Richardson was given a relatively sh



60°

Yet, Claiborne and Richardson would soon be back behind back bars, charged again with the murder of Officer Gibson. This time, the case would play out in Federal court.

Officer Gibson's grieving family was never satisfied with that plea bargain the men got in the Sussex County courthouse back in 1999.

Outside the court, Gibson's mother Susie spoke to reporters, expressing her anger.

"No, it's not justice. Those men killed my son," Susie Gibson said at the time. Just days later, records show the FBI was asked to investigate.

"I just kept on praying," Susie Gibson said.

In 2000, The Feds announced they had arrested Claiborne and Richardson again, this time [charging-them-with-conspiracy-to-sell-crack-cocaine-and-once-again-with-the-murder](#).

"The justice tripped a little bit in its first journey to bring closure to this incident," said Jeff Roehn, the ATF Supervisor at the time.

Prosecutors in Federal court argued a drug deal gone bad led to Gibson's death in those Waverly woods.

"I never messed with the crack cocaine," Richardson said in a recent interview.

"Never, never. I sold marijuana before but I never sold crack," Claiborne agreed.

8News spoke with Richardson's federal court attorney Michael HuYoung.

"They did not find any crack or cocaine on their persons or even when they did a

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Speaking out for the first time since the murder of his friend and colleague, Sturup says he doesn't buy it.

"We knew who were the drug players, in the drug scene on the street. Those two, they were not players," Sturup added.

Also speaking out for the first time since the Federal trial is juror Dawn White. She recalls the Fed's key witnesses as a parade of prisoners.

"They were testifying in orange jumpsuits," White said.

HuYoung said he believes the prisoners testified in an effort to better their own standing.

"They had records and they had something to gain by coming in to testify," HuYoung said.

As for physical evidence, there was none. 8News has reviewed the [forensic-records](#) and they show there was no blood, no hair and no DNA to link Claiborne or Richardson to the crime scene.

"They weren't there," HuYoung said. Claiborne and Richardson didn't match suspect descriptions.

Claiborne and Richardson didn't even match suspect descriptions.

8News has obtained a transcript of a state police interview with one of the first deputies on the scene. He states Gibson's last words were, "They have dreadlocks and one had a pony-tail." Claiborne had short hair, Richardson cornrows. A handwritten statement from a witness states "saw a man with dreads."

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I always wore collared shirts I never had a beard, I never liked a beard, Richardson said.

The jury found the Fed's case for murder weak and acquitted both men of the murder.

"As I recall, no one ever really thought they were guilty of murder," White said. The jury did convict Claiborne and Richardson of conspiracy to sell crack cocaine.

"I would have assumed that they get something ... at the most ten years," White said. It wasn't until recently that White learned what happened next after the jury was dismissed.

"I was dumbfounded, I couldn't believe it," White said.

In a rare move in the sentencing phase, without the consent of the jury, the judge used that murder charge as a cross reference to lock them up for good.

"But our verdict was not guilty of the murder," a baffled White said.

8News turned once again to legal analyst Bill Shields for explanation.

"Under the sentencing guidelines, they can have what they call enhanced sentencing based on criminal activity for which you have not been convicted," Shields said. However, Shields said the way it happened in this case is odd.

"It's a miscarriage of justice to enhance on something they have actually been acquitted of. I have not seen that before," Shields said.

"I just feel like he was railroaded and they did whatever they could to get a conviction," Felisha Claiborne, Ferrone's sister said about her brother's case.

Richardson went further.

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The men appealed. It was initially denied, but now LaQuetta Ruston, founder Of Providing Light, a group dedicated to helping those she believes have been wrongly accused, has now taken the case.

She filed a petition with President Obama asking him to grant the men clemency before he leaves office.

Those documents can be viewed in their entirety here:

- [claiborne-clemency-document](#)
- [richardson-clemency-document](#)

“There was never any substantive evidence found to even point the finger at them of even being involved in a conspiracy to sell drugs,” Ruston said.

Shields believes they have an argument.



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If clemency isn't granted Ruston has also filed a petition for a reduction in the sentence under the drug laws of today.

"If they were to be sentenced under today's guidelines, they would be out already," Ruston said.

Gibson's widow declined to go on camera with 8News, asking we respect her privacy. She did tell us she was in shock. She says the men killed her husband and robbed them of a life together. On a [memorial web page](#) dedicated to Officer Gibson, there's not a Veteran's day or birthday that goes by where she and his daughter don't remember a life taken too soon.

But was that life taken by Claiborne and Richardson?

Claiborne's family prays for the Gibson's. They understand their pain, but they believe Gibson's killers are still out there.

"My heart goes out to the family, and I pray daily that they will find the right person who did this and committed the crime," Claiborne said.

Richardson said his faith is in the evidence.

"They say the truth will set you free ... I am relying on that," Richardson said.

The Claiborne family is pleading for anyone who knows anything about the murder of Officer Gibson, whatever it is, to come forward.

"So many people knew the truth, but so many people was afraid to come forward," Richardson said.

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discussing old cases.

The U.S. Attorney for the Eastern District of Virginia issued a statement saying in part, “At sentencing, the district court found that clear and convincing evidence established that Richardson and Claiborne were responsible for the murder of Waverly Police Officer Allen Gibson.”

*“In 2001, Terence Richardson and Ferrone Claiborne were convicted by a federal jury of conspiracy to distribute crack cocaine,” said Dana J. Boente, U.S. Attorney for the Eastern District of Virginia. “The jury verdict on the drug-trafficking offense authorized a sentence of up to life in prison. At sentencing the district court found that clear and convincing evidence established that Richardson and Claiborne were responsible for the murder of Waverly Police Officer Allen Gibson. In making that finding, the district court required the evidence satisfy a higher standard of proof than ordinarily applies to other aggravating facts at sentencing and a higher standard than would apply at a sentencing today. The U.S. Court of Appeals for the Fourth Circuit affirmed the convictions and sentences, and courts have rejected multiple challenges to those convictions and sentences over the last decade and a half.” – US Attorney for the Eastern District of Virginia*

Shields explained while a jury has to use a higher standard of proof, “beyond a reasonable doubt,” in criminal cases, the judge at sentencing does not.

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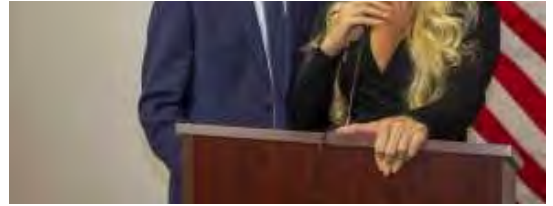


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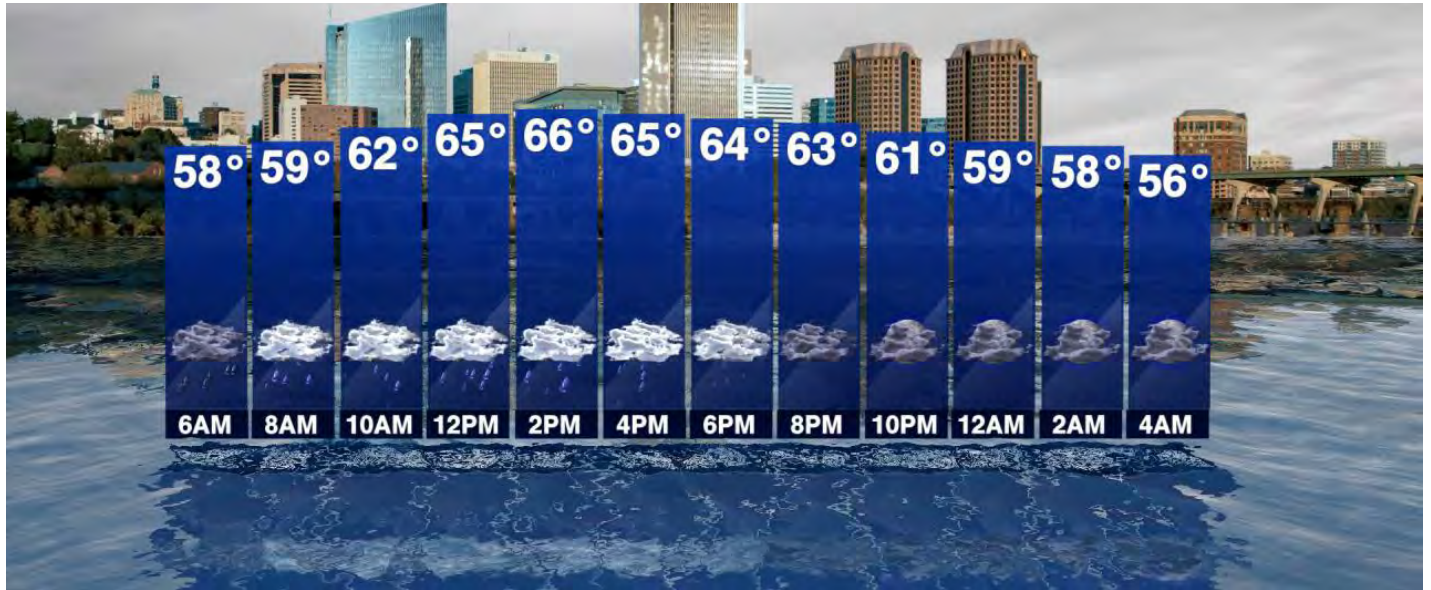
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**MEMORANDUM**

**TO:**           **Richardson Team**

**FROM:**       **Kyle Richards**

**RE:**           **Witness Interview**

**DATE:**       **08/18/2021**

---

**J. David Chappell**  
**Assistant Commonwealth Attorney for Brunswick County**  
**202 N. Main Street**  
**Lawrenceville, VA 23868**  
**434.848.3122**  
**dchappell@ocabrunswickva.org**

On the above referenced date, the CIU (Al Simon, Emilee Hasbrouck, Seth Shelley and Kyle Richards) conducted a telephonic interview with J. David Chappell, the former Commonwealth Attorney for Sussex County, Virginia.

The CIU had sent select documents to Chappell for his review prior to our conversation. Chappell stated that the affidavit contained in the documents was in fact written and signed by him. He confirmed that he received the alleged new pieces of evidence, the “Gay Handwritten Statement,” the “Lineup” (which was presented the same night as the Gay statement), and the “Tip Line Call.” Chappell recalled that Jarrett Adams had given him the “Gay Handwritten Statement” and the “Lineup” but was unable to remember if he was provided the “Tip Line Call” from Adams.

Chappell stated that the name “Gay” was very popular in Sussex County. He stated that he does not specifically recall the name Shannequia Gay but that the information provided to him was familiar. Chappell added that he did not recall having subpoenaed Shannequia Gay for trial until he saw within the documents sent to him that he in fact had done so. Chappell opined that the Gay statement was significant in that it referenced a man with dreads having been seen at the crime scene. That, along with Chief Sturrup’s unconventional behavior at the scene, was well known to the public. Chappell stated that he does not remember interviewing any witnesses in the case although he is certain that he did so. Chappell also does not remember being involved with any lineup having been shown to Shannequia Gay.

Chappell believed that the information regarding the man seen with dreads came from someone other than Shannequia Gay. He also added that he was unaware that Shawn Wooden was getting consideration during the federal trial. In regards to Evette Newby, Chappell stated that he was forced to leave her off of his subpoena list. This was because as the trial got closer, Evette

would hear things on the street and react in ways that was problematic with her credibility . Chappell felt he was unable to vouch for her in court.

Regarding the two “Tip Line Calls,” Chappell does not recall the names Herman Newby or H. Dickerson that were implicated in one of the calls. He was familiar with Tony White who was implicated in a second tip line call.

Chappell recalls having a long and open meeting with Morchower and Boone regarding Discovery. He believes that SCSO members were there to present the evidence in the case and assist in portraying the Commonwealth’s position. Chappell stated that the plea agreement may still have had a few details left to be hashed out in November 1999, but the largest obstruction was his repeated attempts to get Gibson’s family on board. No official agreement had been signed as of November 1999.

Chappell stated that if Richardson and/or Claiborne are innocent then something needs to be done to correct it.

## MEMORANDUM

**TO:**           Richardson Team

**FROM:**       Kyle Richards

**RE:**           Witness Interview

**DATE:**       09/13/2021

---

**David Boone**  
**dboone@boonebeale.com**

On the above referenced day, the CIU (Alphonso Simon, Emilee Hasbrouck, Seth Shelley, and Kyle Richards) held a virtual meeting with Mr. David Boone. Boone was Terence Richardson's attorney for the Sussex County charges. Prior to the meeting, Assistant Attorney General Seth Shelley provided Boone with four documents (Gay Statement, Gay Lineup, 911 Tip, and the Boone Affidavit) relating to the Richardson case for his review.

Boone stated that he did not personally write the "Boone Affidavit" but he did sign it. He believes it was "tweaked" a few times to best represent his recollection. Approximately two years ago, Boone was contacted by a member of the UVAIP who provided him with many documents which have assisted him in remembering details of this case. Boone offered that in 2016, he suffered a heart attack and complications led to some memory issues.

For the Richardson case, Boone hired Jack Davis, a retired FBI agent, as his investigator. Boone no longer has any of the documents produced by him or Davis relating to the Richardson case. Boone recalled the name Shannequia Gay and stated that he was aware of her prior to the plea agreement. He believes CWA David Chappell may have provided him with the name along with a summary of who she was and what she said. Boone recalls that Gay observed a male coming out of the woods and remembers that her cousin had a bicycle near the crime scene. Boone stated that Davis attempted to speak with Gay, but she was never made available. He does not believe that Chappell interfered with his meeting Gay in any way.

Boone stated that he does not believe that he and Chappell had an open file agreement as Davis uncovered information/documents that was not provided in Discovery. Boone was adamant that Chappell would not have withheld information; rather, Chappell may not have known all the information. He added that he had been present for several meetings with Chappell but cannot recall one in which LEO personnel went over the evidence and statements of witnesses. Boone said he did not receive the handwritten statement, lineup, or 911 tip during his representation of Richardson.

Boone added that if the case went to trial, Richardson would have put on an alibi. However, the alibi witness, Shawn Wooden, ended up stating that Richardson was responsible for Gibson's death.

**MEMORANDUM**

**TO:**           Richardson Team

**FROM:**       Kyle Richards

**RE:**           Witness Interview

**DATE:**       10/13/2021

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**David Boone**  
**dboone@boonebeale.com**

On the date referenced above, Assistant Attorney General Seth Shelley and I had a phone conversation with Mr. David Boone.

Boone stated that he recalled an important aspect of Richardson's defense was Gibson's dying declaration identifying one of his assailants as wearing "dread locks." Boone remembers a rumor, among many, that there was an individual who had cut his dread locks off shortly after Gibson's death. Boone is not familiar with the name Leonard Newby, nor does he recall having the name when he was representing Richardson.

**MEMORANDUM**

**TO:**           **Richardson Team**

**FROM:**       **Kyle Richards**

**RE:**           **Witness Interview**

**DATE:**       **08/23/2021**

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**Tommy J. Cheek**  
[REDACTED]  
**Disputanta, VA 23842**  
[REDACTED]

I met Mr. Tommy J. Cheek at the Sussex County Sheriff’s Office (SCSO) located at 20212 Thornton Square, Sussex, Virginia 23884. Most of Cheek’s duties are in the courthouse now but he is often used as a reference when situations arise that need his experience. Following our meeting, Cheek was going to qualify several sheriff deputies with their sidearms. Cheek brought with him to our meeting what appeared to be the contents of the SCSO files that were copied for the CIU a few months prior. He added that he had spent the morning reviewing the files.

In 1998, Cheek was one of two investigators for the SCSO with the other being Moe Williams. On the day that Officer Gibson was shot, Cheek was the investigator on duty as Williams was out of town. Upon reviewing the files, Cheek stated that he had received the dispatch about the shooting at 11:13am while he was at the sheriff’s office and he arrived at the Waverly Village Apartments at 11:28am. Cheek stated that the complex was chaotic and “the crime scene was destroyed.” When asked to elaborate, Cheek stated that when he arrived, he observed Chief Sturup with two guns in his hands, one of which belonged to Officer Gibson. No crime scene perimeter had been established. Cheek recalls that Sturup was making accusations against citizens and other law enforcement officers saying that they knew who had shot Gibson. Cheek added that he does not believe correct protocol was followed in the incident. Not only did Sturup pick up Gibson’s gun, which was evidence, but he says that too many individuals were allowed into the crime scene. Furthermore, Cheek referenced a conversation he had after the fact with a Dr. Ben Rice who attempted to save Gibson’s life at the hospital. Dr. Rice allegedly told Cheek that had Gibson been brought to him twenty minutes earlier, he would have been able to save his life.

Cheek began to speak with people in the apartment complex and came across Evette Newby. He stated that Evette “started out beating around the bush but then she came around,” referencing her providing false statements to law enforcement but eventually telling the truth. Cheek could not recall if it was the day of the shooting or another time, but he took pictures from the second story window looking into the woods that Evette said she observed the struggle and shooting from.



Cheek stated that Evette also informed him that she had run into Terence Richardson at Dobie's Store on the evening following the shooting. Cheek recalls that Evette told him something that Richardson said which made him sound culpable of the shooting. He added that Richardson and Claiborne were known to law enforcement in the town and county as drug dealers. He personally was not aware of either Richardson or Claiborne at the time but later learned that Richardson dealt drugs more than Claiborne did. Cheek stated that he spoke with Evette on at least two separate occasions and believes that she identified Richardson and possibly identified Claiborne. He said that at one of the meetings with Evette, VSP Investigator Daniel Plot took notes while Cheek and Evette spoke.

Cheek said that he was familiar with Leonard Newby and recalled that he kept his hair in dreads at the time of the shooting. Cheek added that a lot of people kept their hair in dreads then. Cheek believes he spoke with Shawn Wooden in reference to this case 2-3 times. He said that Wooden lived with a woman on Robert Wilkins Avenue which was known in the community at "the Y". During his last conversation with Wooden, Cheek took Wooden to the BCI building in Chesapeake for a polygraph examination. He recalled that a BCI agent named Melanie Griffith tried to interview Wooden but he would not provide any information. Wooden requested lunch and it was provided. Wooden threw up his lunch and then asked to speak with Cheek. At this point, according to Cheek, Wooden stated that he was a look out for Richardson and Claiborne and that they were responsible for Gibson's death.

Cheek stated that the name Shannequia Gay did sound familiar to him and he did recall that there was a young girl who may have seen something at the time of the shooting. He denies ever having met with her. Cheek also denied ever having compiled or having seen a photo lineup. I advised Cheek that his name was listed as the individual who showed a lineup to Shannequia Gay and he responded, "that wasn't shown to her by me." He denies having been at Valerie Patterson Rick's house at any time during the investigation.

I asked who would have been the person who interviewed Shannequia Gay and Cheek replied that it must have been Greg Russell. He stated that Greg Russell was beginning to be given more responsibility and was being tutored by Moe Williams. Cheek added that Williams did not like to deal with children so he would not have been the one to conduct the interview. Cheek did recall hearing something about Greg Russell showing a witness a single photo and that Russell got in trouble for doing that.

Cheek stated that he did not recall ever having been present for a Discovery meeting with the Commonwealth's Attorney, Morchower, or Boone. He added that he is not familiar with the name Michael Artis.

I asked Cheek if he recalled anything about a BOLO for a vehicle. He stated that initially, there was a BOLO for a description of a possible suspect(s). Cheek could not recall if the description came from Evette or someone else. The Virginia State Police had set up a roadblock/checkpoint somewhere in the county and one of the troopers manning the checkpoint radioed in that he had observed someone come through the checkpoint who may have matched the description of the suspect(s). From that, a BOLO was put out for the vehicle that the person had been in.

Cheek stated that the day after CWA Chappell finalized the deal with the attorneys for Richardson and Claiborne, he and SCSO Sheriff Kitchens received a call from an Assistant U.S. Attorney who asked to meet with them. At this meeting, Cheek and Kitchen were told that the “feds” would take over and make this right. FBI Agent Bob Ritchie and ATF Agent Shawn Metzler were assigned to investigate the case. Cheek stated that SCSO turned over all their information regarding the investigation to the feds. Shortly after the federal investigation began, Cheek took a job in Abingdon, Virginia. Cheek stated that he did not retain any of his documents from any cases when he left the SCSO.

While going through some of the SCSO file together, I asked Cheek if his handwritten notes were on the Crater Road Training Center documents. Cheek stated that they were as he had taught there prior to the Gibson shooting. He added that he still has some of the notepads from Crater Road. He believes that any documents found in the files that have that letterhead would have come from his investigation.

**MEMORANDUM**

**TO:**           **Richardson Team**

**FROM:**       **Kyle Richards**

**RE:**           **Witness Interview**

**DATE:**       **08/23/2021**

---

**Valerie Patterson Ricks**  
[REDACTED]  
**Waverly, Virginia 23890**  
[REDACTED]

I met with Valerie Patterson Ricks at her home on the above referenced date. Ms. Ricks' name became known to the CIU through documents obtained from the Sussex County Sheriff's Office, among other sources.

Ricks informed me that in 1998 she worked for the Sussex County Sheriff's Office as the D.A.R.E. officer. Ricks is also cousins with Sharon Gay and her daughter, Shannequia Gay. Ricks remembers that in the evening on the day that Officer Gibson was shot, she received a call from either Sharon Gay or her sister, Carolyn Gay (NOTE: Ricks informed me that Carolyn Gay has "mental" issues and has had them her entire life. She reports that Carolyn is in a "home" somewhere in Dinwiddie County). The caller told Ricks that Shannequia had been a witness to the shooting and the family was fearful that whoever the shooter was may have noticed that Shannequia saw them. The family had concerns for Shannequia's safety. Ricks advised the caller that they needed to speak with law enforcement and Ricks believes that she may have picked up Sharon and Shannequia and taken them to the police station in Waverly. Upon arriving at the police station, Ricks observed many different law enforcement agency personnel and decided that it was not a good place for Shannequia to talk so she took Shannequia and Sharon to her home and contacted the police.

Ricks believes that a total of four law enforcement personnel, possibly five, came to her house to speak with Shannequia. She recalls Tommy Cheek, a female VSP trooper/special agent, an unknown male VSP trooper/special agent, and at least one other male officer present who she initially stated was not Greg Russell but later in our conversation said it may have been. Shannequia was questioned by the four law enforcement personnel while Sharon and Ricks waited in the adjacent kitchen. There were no doors separating Sharon and Ricks from the rest of the people in the house but there was a wall between them. Sharon and Ricks need only lean back in their seats to be able to observe what was happening in the other room.

Ricks stated that she was not able to make out exactly what was said during the interview of Shannequia but she believes at some point Shannequia was laying on the floor of the room,

showing the law enforcement personnel how she observed Gibson lying on the ground. This upset both Ricks and Sharon, but they did not interfere with the interview. Ricks denies having ever seen a photo lineup. She also denies that Shannequia ever told her anything about the interview, anything about identifying a particular person, or what she observed at the apartment complex that day. Ricks also denies that there was ever a second interview of Shannequia at her house.

Ricks remembers that the interview with Shannequia lasted no more than 1.5 hours at the most. She believes it may have been less. Ricks added that everyone left her house late that evening but “not like 12am-1am late.”

Ricks stated that she knew of Ferrone Claiborne because he lived across the street from Ricks’ mother’s house in Wakefield at one time. She knew him to be a nice and polite boy and was shocked when she heard that he was arrested for this crime. She added that she knew the name of Terence Richardson but had been unable to put a face to him when she heard that he was arrested too. Ricks was unaware of any drug use by either Claiborne or Richardson but added that they were also not part of her social circle so she couldn’t be sure.

Ricks told me that Sharon and Shannequia live in Wakefield, Virginia. Sharon works in the food facility section of the nursing home in Windsor. She added that the Gibson murder is not a subject that is brought up around Sharon and Shannequia, although she is not very close with either of them. She offered to reach out to them and encourage them to speak with me.

**MEMORANDUM**

**TO:**           **Richardson Team**

**FROM:**       **Kyle Richards**

**RE:**           **Witness Interview**

**DATE:**       **08/31/2021**

---

**Terry Ann Stevens  
Wainwright Real Estate  
4098 Foxwood Drive  
Virginia Beach, Virginia 23462**  
[REDACTED]

I met with Ms. Terry Ann Stevens on the above referenced date at her office in Virginia Beach. Stevens, now an associate broker with Wainwright Real Estate, previously worked for the Virginia State Police as an accountant and she investigated economic crimes. In April 1998, Stevens worked for the Virginia State Police.

Stevens recalls that many troopers from the Chesapeake office were dispatched to Waverly following the shooting of Officer Gibson. She added that many different law enforcement agencies were there as well.

I asked Stevens about her interview(s) of Shannequia Gay and Stevens informed me that she does not recall interviewing anyone in relation to this case, much less a child. Stevens denied being present for any interview which took place at a local officer's home or any officer's home.

I shared with Stevens a copy of the "Gay Interview Handwritten Statement 1998 04 25" which on the last page, contained Stevens' signature. Stevens confirmed that it was in fact her signature and stated that she believes she must have been asked to witness Shannequia Gay sign the statement but denies having been present for the interview. Stevens stated that she may recall "flashes" of the event and believes that it occurred in a parking lot.

I then shared with Stevens a copy of the "Gay VSP Interview 1998 05 13" in which is appears as though Shannequia Gay was interviewed by Stevens and Stevens typed up a summary of the interview. Stevens agreed that the document appeared to have come from her but stated that she did not recall conducting the interview.

Stevens denied having anything to do with creating any photo lineups. I shared several with her and she stated that they did not look familiar. Stevens does not recall any individual photos shown to Shannequia Gay either. She also did not recall the names Tommy Cheek, Moe Williams, Greg Russell, or Valerie Patterson. Stevens maintains that no interview that she took part in occurred at someone's house.

# 338 Bruce St  
Galloway Terr. Franklin

off parole 3-9-97  
sept - 3, '96 ~~Released~~ Released

8 yrs - 500 sus. for Larceny

4.30.98

State Police message on answering machine

A male caller called in and stated Leonard Newby was involved and has cut his druds.

H. Dickerson also involved had druds but has since cut them off.

Tony White who is the boyfriend of Evette Newby was involved in the shooting of the officer.

John on shot area office

Male caller indicated Herman Newby who is the brother of Evette Newby was involved and that he had druds has since cut them or made them into mud.

5-4-98

AREA OFF

K1111

HANICK



4/26/98 0205 A.M.

Leonard Newby Lives with his sister LORANE TAYLOR at Pine heights in Smithfield, VA. LEONARD advised he works for GWANTY Packing Co., works 2nd. shift which is from 2:30 P.M. until 12:30 To 12:45 A.M., I went to LORANE's house and Took a BATH AND WATCHED T.V. until ABOUT 2:30 OR something til 3 A.M., I woke up at ABOUT 9 A.M. OR 10 A.M. AND WAS LISTENING TO THE RADIO my mom CALLED AT ABOUT 11 A.M. AND WANTED me To send her some money. ABOUT 11:15 A.M. I went To SEABORNE BARBER shop in Smithfield, VA. I always get the Third guy To TRIM my BEARD AND MUSTASH, I wen Back To my sisters house AND THEN went To NEWPORT News with Jennette Finney AND my sister LORANE. I stayed in Newport News until AFTER DARK, The Guy THAT TRIMS my FACE is TROY SEABORNE. The BARBER Shop is at 509 N. MAIN ST. Smithfield AND The Phone is 357-4704. x Leonard Newby

-72



VIRGINIA STATE POLICE

Date of Transcription 4/27/98

TROY DION SEABORNE, black male, DOB: [REDACTED]-63, [REDACTED], Smithfield, Virginia 23434, was aware of the identity of this agent and the purpose of the interview. This agent talked with SEABORNE telephonically and the following was provided:

SEABORNE indicated he was familiar with LEONARD NEWBY. SEABORNE recalls NEWBY being in the barber shop after lunch, around 2:00 - 3:00pm. NEWBY was not there in the morning hours. SEABORNE was awoken out of a sleep and could not recall details immediately.

Investigation on 4-27-98 at Smithfield, Virginia File # 98-85-00-0518 41

by SA BRUCE N. WILLIAMS Date dictated 4-27-98

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VIRGINIA STATE POLICE

Date of Transcription 5/1/98

TROY DION SEABORNE, black male, DOB: [REDACTED] 63, [REDACTED], Smithfield, Virginia 23434, was aware of the identity of this agent and the purpose of the interview. SSA John Polak was present during the interview at the barber shop. SEABORNE provided the following information:

TROY indicated, after talking with this agent earlier, he got to thinking about the time. TROY remembers NEWBY coming into the shop before 12:45 pm that day because at 1:00 pm the television set in the shop was turned on to watch the game. Nobody was looking at the clock when NEWBY arrived. Continuing, TROY stated NEWBY talked about purchasing a gun in Newport News and filing the form associated with the purchase. TROY also indicated NEWBY may have been in the shop after 12:00 noon, however, he really was not sure of the time. NEWBY had been known to TROY about 3-4 years ago when he was cutting his hair. Appearing about 6 months ago, NEWBY has been visiting the shop on a regular basis having his beard trimmed about every two weeks.

Investigation on 4-29-98 at Smithfield, Virginia File # 98-85-00-0518 14  
by SA BRUCE N. WILLIAMS  
SSA JOHN R. POLAK Date dictated 4-29-98

[redacted] -55 [redacted] [redacted]

Sister  
Lorenda Taylor [redacted] Smithfield

5-4-98  
3:15 PM

I had gotten up around 7 AM to go to a yard sale around 7 AM. The girl I was going to ride with called and stated she was having car trouble. I told her that was OK because my money was a little short. Leonard is my brother and he had come home about 12:30 AM that morning and was asleep at that time of the call. Leonard was here at the house then and stayed here to about around 10:30 AM I went and told Leonard KP was here, Kenneth Parkham is the friends name. Leonard wanted KP to take him to the Barber shop but KP was busy and couldn't. KP left and Jeanette Finney she had already been here she was driving her car. We talked for a few minutes and she said she would take Leonard I guess the time was between 10:30 and 10:45 AM. They went to the barber shop and returned around 11:45 AM. We all the family and myself all went to New port News around 12:30. Leonard was here during all the time <sup>until</sup> he left for the barber shop. Leonard stays here at my home and I am his sister. Lorenda Taylor  
before

Raywell  
T. J. Chuk

## PROSECUTOR EXPLAINS DECISION TO BARGAIN IN COP- KILLING CASE

Daily Press (Newport News, VA)

December 12, 1999, Sunday,

Final

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**Section:** LOCAL,

**Length:** 283 words

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### **Body**

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The prosecutor who made a controversial plea bargain with two men charged in the killing of a Waverly police officer says he did so because the case had too many problems.

Sussex County Commonwealth's Attorney J. David **Chappell** said he knew reducing capital murder charges to involuntary manslaughter and a misdemeanor would upset family and colleagues of Allen W. **Gibson** Jr., the slain officer.

But, **Chappell** said, "the risks in going to trial with a jury were just astronomical" because the murder case was compromised.

One of the first officers to reach the scene was **Gibson's** boss, Waverly Police Chief Warren Sturrup. Sturrup later acknowledged he had been so upset that he had unthinkingly picked up **Gibson's** gun - the homicide weapon - from the ground and held onto it while angrily ordering a crowd of onlookers to tell him who had shot **Gibson**. Sturrup's handling of the gun had wiped out any fingerprints that might have been on it.

And the only witness who could tie the defendants to the killing was an acquaintance of one of the accused men, Terence **Richardson**, who said **Richardson** had admitted to him that he "accidentally" shot **Gibson**. But the acquaintance was a convicted felon and had previously denied knowing anything about the killing, **Chappell** said.

**Richardson**, 28, pleaded guilty Wednesday to involuntary manslaughter for his role in **Gibson's** death. Ferrone Claiborne, 23, pleaded guilty to acting as an accessory after the fact to involuntary manslaughter, a misdemeanor.

**Gibson's** mother called the prosecutor a coward and told reporters after the trial that her family had pleaded with him to pursue murder charges even it meant risking that the two defendants could be acquitted.

**Load-Date:** December 13, 1999

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# PROSECUTOR EXPLAINS DECISION TO BARGAIN IN COP- KILLING CASE

Daily Press

DECEMBER 12, 1999 | SUSSEX

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