



COURT REPORTERS RECORD

VOLUME 45 of 57 VOLUMES

TRIAL ON GUILT/INNOCENCE

TRIAL CAUSE NO. F97-01215-PJ

THE STATE OF TEXAS

IN THE CRIMINAL DISTRICT COURT

VS,

NO. 3

GREGORY EDWARD WRIGHT

OF DALLAS COUNTY, TEXAS

APPEARANCES:

HONORABLE GREG DAVIS SBOT: 05493550

HONORABLE NEIL PASK SBOT: 15556700

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ATTORNEYS FOR THE DEFENDANT,

On the 2nd of December, A.D., 1997, a Capital Murder Jury Trial with reference to the above-styled and -numbered cause came on to be heard before THE HONORABLE ROBERT W. FRANCIS, Judge of Criminal District Court No. 3, Dallas, Texas, and the following proceedings were held:

CHRONOLOGICAL INDEX OF WITNESSES

PAGES

VOLUME 45JERRY DON BLANTON

Cross-Examination by MR. JOHNSON	24
Redirect Examination by MR. DAVIS	26
Recross-Examination by MR. JOHNSON	27

SYLVIA PARSONS

Direct Examination by MR. DAVIS	29
Voir Dire Examination (Hrg.) by MR. DAVIS	40
Voir Dire Examination (Hrg.) by MR. JOHNSON	42
Direct Examination, Cont'g., by MR. DAVIS	44
Cross-Examination by MR. JOHNSON	47

DONALD ALLEN COLE

Direct Examination by MR. DAVIS	53
Voir Dire Examination (Hrg.) by MR. DAVIS	69
Direct Examination, Cont'g., by MR. DAVIS	82
Cross-Examination by MR. JOHNSON	90

LLEWELYN MOSLEY

Direct Examination by MR. JORDAN	101
Direct Examination (Hearing) by MR. JORDAN	111
Cross-Examination (Hearing) by MR. JOHNSON	119
Direct Examination, Cont'g., by MR. JORDAN	128
Direct Examination, Cont'g., by MR. JORDAN	145
Cross-Examination by MR. JOHNSON	161
Redirect Examination by MR. JORDAN	179

PET. DAN TRIPPEL

Direct Examination by MR. DAVIS	191
Cross-Examination by MR. JOHNSON	221
Redirect Examination by MR. DAVIS	225
Redirect Examination by MR. DAVIS	233
Direct Examination (Hearing) by MR. DAVIS	227

ALPHABETICAL INDEX OF WITNESSES

	<u>PAGES</u>
<u>VOLUME 45</u>	
<u>BLANTON, JERRY DON</u>	
Cross-Examination by MR. JOHNSON	24
Redirect Examination by MR. DAVIS	26
Recross-Examination by MR. JOHNSON	27
<u>COLE, DONALD ALLEN</u>	
Direct Examination by MR. DAVIS	53
Voir Dire Examination (Hrg.) by MR. DAVIS	69
Direct Examination, Cont'g., by MR. DAVIS	82
Cross-Examination by MR. JOHNSON	90
<u>MOSLEY, LLEWELYN</u>	
Direct Examination by MR. JORDAN	101
Direct Examination (Hearing) by MR. JORDAN	111
Cross-Examination (Hearing) by MR. JOHNSON	119
Direct Examination, Cont'g., by MR. JORDAN	128
Direct Examination, Cont'g., by MR. JORDAN	145
Cross-Examination by MR. JOHNSON	161
Redirect Examination by MR. JORDAN	179
<u>PARSONS, SYLVIA</u>	
Direct Examination by MR. DAVIS	29
Voir Dire Examination (Hrg.) by MR. DAVIS	40
Voir Dire Examination (Hrg.) by MR. JOHNSON	42
Direct Examination, Cont'g., by MR. DAVIS	44
Cross-Examination by MR. JOHNSON	47
<u>TRIPPEL, DAN</u>	
Direct Examination by MR. DAVIS	191
Cross-Examination by MR. JOHNSON	221
Redirect Examination by MR. DAVIS	225
Redirect Examination by MR. DAVIS	233
Direct Examination (Hearing) by MR. DAVIS	227

STATE'S EXHIBITS INDEX

STATE'S EXHIBIT NUMBER X14

Description. TIMBERLAWN RECORDS OF DONNA DUNCAN VICK

STATE'S EXHIBIT NUMBER C2

Description. FAXED LETTER TO JUDGE DATED 12/1/97

STATE'S EXHIBIT NUMBER X15

Description: GENE: SCREEN REPORT

STATE'S EXHIBITS INDEX						
No.	Vol.	Marked	Ident.	Offered	Admitted/Denied	Shown
		Pg-Ln	Pg-Ln	Pg-Ln	Pg-Ln	Page
X14	45 54	10-3	10-8	10-8	10-19	7
X15	45 54	138-1	144-2	144-2	144-9	8
C2	45 45 45 52	16i-8	16-11 16-20 18-24		16-5	3
4A	45 55		219-2			8
4C	45 55		219-2			10
5	45 45 55		36-1 59-17			13
11	45 55		189-24	189-17	189-20	21
12	45 45 45 55		76-4 80-17 83-24	83-17	83-20	22

STATE'S EXHIBITS INDEX							
	No.	Vol.	Marked Pg-Ln	Ident. Pg-Ln	Offered Pg-Ln	Admitted/Denied Pg-Ln	Shown Page
1							
2							
3							
4	14	45		159-5	182-19	183-8	
		45		159-10			
5		45		159-23			
		45		168-1			
6		45		183-6			
		55					24
7							
	15	45		193-17	193-22	193-25	
8		55					25
9	16	45		195-9	194-25	195-4	
		55					26
10							
	17	45		198-11	198-20	198-23	
11		55					27
12	18A	45		201-8	201-15	201-18	
		45		202-3			
13		45		202-12			
		55					28
14							
	18B	45		201-8	201-15	201-18	
15		45		202-15			
		55					29
16							
	18C	45		201-8	201-15	201-18	
17		45		202-21			
		55					30
18							
	19A	45		203-24	204-4	204-7	
19		45		204-9			
		55					31
20							
	19B	45		203-24	204-4	204-7	
21		45		204-13			
		45		205-2			
22		55					32
23	19C	45		203-24	204-4	204-7	
		45		204-18			
24		45		204-21			
		45		204-24			
25		55					33

STATE'S EXHIBITS INDEX

No.	Vol.	Marked Pg-Ln	Ident. Pg-Ln	Offered Pg-Ln	Admitted/Denied Pg-Ln	Shown Page
20A	45 45 45 55		208-13 209-15 209-22	208-23	209-4	34
20B	45 45 55		208-13 210-4	208-23	209-4	35
20C	45 45 45 55		208-13 210-8 210-15	208-23	209-4	36
20D	45 45 55		208-13 210-19	208-23	209-4	37
20E	45 45 45 45 45 55		208-13 211-3 211-19 218-21 219-2	208-23	209-4	38
20F	45 45 45 45 45 45 55		208-13 211-3 211-16 211-19 218-21 219-2	208-23	209-4	39
21A	45 45 45 45 55		212-23 213-18 213-20 214-8	213-8	213-11	40
2 IB	45 45 45 55		212-23 213-23 214-8	213-8	213-11	41

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE'S EXHIBITS INDEX

<u>No.</u>	<u>Vol.</u>	<u>Marked</u>	<u>Ident.</u>	<u>Offered</u>	<u>Admitted/Denied</u>	<u>Shown</u>
		Pg-Ln	Pg-Ln	Pg-Ln	Pg-Ln	Page
33	45		10-21			
	45		13-5			
	55					63

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEFENDANT'S EXHIBIT NUMBER 1
Description: PHOTOGRAPH OF JOHN ADAMS

<u>DEFENDANT'S EXHIBITS INDEX</u>						
<u>No.</u>	<u>Vol.</u>	<u>Marked</u>	<u>Ident.</u>	<u>Offered</u>	<u>Admitted/Denied</u>	<u>Shown</u>
		<u>Pg-Ln</u>	<u>Pg-Ln</u>	<u>Pg-Ln</u>	<u>Pg-Ln</u>	<u>Page</u>
1	45	220-14	221-7	221-19	221-22	
	45					
	56					2

MOTIONS
DECEMBER 2, 1997
VOLUME 45
P R O C E E D I N G S

(Juror not present.)

(State's Exhibit No. X-14

was marked for identification purposes.)

THE COURT: Let the record reflect we're outside the presence of the jury.

Mr. Davis?

MR. DAVIS: Yes. Your Honor, yesterday afternoon, as we took our afternoon break, Mr. Johnson had inquired about some records from Timberlawn concerning the care given to Donna Duncan Vick and this morning I have handed to his co-counsel, Mr. Brauchle, State's Exhibit X-14, which includes all of the records concerning Miss Vick's admissions to Timberlawn both in 1996 and 1997, so at this time, for record purposes only, I'd like to offer State's Exhibit X-14.

MR. JOHNSON: For record purposes, we have no objection, Your Honor, and we'll acknowledge that those records have been tendered to us this morning.

THE COURT: All right. All right. X-14 will be admitted for purposes of the record only.

MR. DAVIS: Also, Your Honor, I do want to make the defense aware that I received a telephone call this morning at 8:00 a.m. from Judy Floyd from Gene Screen. Miss Floyd informed me that she has retested three stains taken from the Umen blue jeans. These will be item State's

MOTIONS
DECEMBER 2, 1997
VOLUME 45

Exhibit 33.

These are items that were previously tested by Carolyn VanWinkle. Miss Floyd has informed me that her findings are that the blood found in those three stains are consistent with the blood of Donna Duncan Vick. The odds on that, she estimates, are 1 in 31 million. She has not prepared a final report. She said she would call me later this afternoon; hopefully be able to fax a final report to me, but wanted to make me aware that she had completed her testing and that those would be her findings.

And as I stated yesterday, she has no further testing that she's scheduled to do.

MR. JOHNSON: Okay. Mr. Davis, can I inquire of you if the -- if, in fact, those -- those odds, as you call them, are substantially higher than the results given to you by SWIFS on their testing on the same jeans?

MR. DAVIS: Yes, they are.

MR. JOHNSON: And, therefore, would be substantially more incriminating evidence in this case.

MR. DAVIS: I would think so.

MR. JOHNSON: Okay. Your Honor, at this time we will renew our motion for a continuance in this case. Clearly the State has continued to do DNA testing at this late stage of the trial process. They have just given us notice of -- of the -- orally of the results of these tests. We certainly

MOTIONS
DECEMBER 2, 1997
VOLUME 45

have not seen the reports yet, and again, we would ask the Court to allow the defendant to have time to have his expert review not only the SWIFS testing, but now Gene Screen, which is another entity's testing, which has only been reported after the trial has started.

Obviously, the defendant has -- could not have ever had any opportunity to have an investigation of those results at this point, and in -- in all fairness, I believe the -- the defendant is entitled to have the opportunity to have those tests. If he is not allowed to have those tests, to have sufficient time to have an expert to test those results, to be able to testify in the State's presentation of those results, and be available for cross-examination of the State's witnesses to assist the defense counsel in that cross-examination; that the defense attorneys will be ineffective.

We also will probably need to have those witnesses possibly available to testify in -- in our phase of the guilt/innocence trial, and certainly at this point, there is no conceivable way that there's anything that the defense could have done to be prepared at this time to answer this new evidence, and based on that, we again ask for our continuance.

THE COURT: All right. So the Court's clear, I'm assuming that the records, or this -- this -- the records that you've just given to the defense, that information, is a

MOTIONS
DECEMBER 2, 1997
VOLUME 45

retest of the information that we talked about in court yesterday that was completed on November 3rd, and then made available to the defense through the State by November 11th; is that correct?

MR. DAVIS: Yes, sir, that's correct. If -- if we referred to Miss VanWinkle's report of -- of November the 3rd, we're dealing again with items number 33, the Umen jeans, and we're dealing with that portion of her result where she concludes that her sample 33 T-6, Donna Duncan Vick, is a potential contributor, and the odds of that, according to her testing, is 1 in 1700 Caucasians. So we're talking about the very same samples that were previously tested by Carolyn VanWinkle.

THE COURT: So that in the previous report, the -- the evidence would be incriminating against the defendant; is that correct?

MR. DAVIS: Certainly. Yes, sir.

THE COURT: All right. And the subsequent report did the same thing, it just is different odds.

MR. DAVIS: It's a different test, actually, but the results are consistent with what Miss VanWinkle found in her testing.

THE COURT: All right. And each test came out as incriminating against the defendant.

MR. DAVIS: That's correct.

MOTIONS
DECEMBER 2, 1997
VOLUME 45

THE COURT: All right.

MR. JOHNSON: Your Honor, I also want to point out one more thing, and that is, yesterday when -- when the motion for continuance was presented to you, it was my understanding that the State, through its prosecutor, Mr. Davis, indicated to the Court that they had -- that they had decided not to continue the DNA testing through this second facility, and that's what was represented to this Court, and the Court making its decision on whether or not to grant our motion for continuance at that time. And now this morning, this morning, one day later, the State comes in and tells this Court that that, in fact, was not exactly correct.

MR. DAVIS: No, that -- that is absolutely not true. That's a misrepresentation of what I stated to the Court yesterday.

THE COURT: It was my understanding yesterday we were talking about a fingerprint, correct?

MR. DAVIS: Exactly. And I did state to the Court, and I still will state to the Court that I have no intentions of having Judy Floyd, or any other person, test that, and I'm doing that at the request of Mr. Johnson who stated to me that to do that would -- to prevent his expert from examining that fingerprint, and I want to do nothing that prevents his expert from looking at that fingerprint, and, so, I'll stand by that.

MOTIONS
DECEMBER 2, 1997
VOLUME 45

I'm saying to the Court at this time, given the results, the final results of Judy Floyd, there is no other testing that I intend to have Judy Floyd do in this case.

THE COURT: All right. Anything else, Mr. Johnson?

MR. JOHNSON: Well, Your Honor, I think the record will speak for itself as to what was represented to the Court yesterday as to further testing with another facility, and I certainly apologize to the Court and Mr. Davis if I misheard what was said, but it was -- it was certainly my impression that the representation to the Court was, was that there was going to be no further testing.

Clearly, clearly, when the Court made its ruling yesterday, I don't think the Court was contemplating there being any further testing, was there, Judge?

Did you have any -- any indication from the State that they were actually doing further testing when you made your ruling yesterday?

THE COURT: I'll go ahead and let the record reflect how I made my ruling from yesterday.

MR. JOHNSON: Okay. Well, again, we'll re-urge our motion for continuance.

THE COURT: The Court having heard your motion for continuance re-urged, and again, reviewing the fact that the previous tests were completed on November the 3rd; that

MOTIONS
DECEMBER 2, 19 97
VOLUME 45

1 you acknowledge having received the report on November 11th;
2 that the request had been made first yesterday and then today,
3 that being December 1st and 2nd, I deny your motion for
4 continuance.

5 At this time the Court intends to place in the
6 record, ior record purposes, Court's Exhibit Number 2.

09A 7 THE COURT: Donna, go off the record.

8 (Court's Exhibit No. 2
9 was marked for identification purposes.)

10 (Off-the-record bench conference was had.)

11 THE COURT: Court's Exhibit Number 2 is
12 avai.Lable; for both sides to look at. This will not be
13 publLshed to the jury. The Court has placed it in the record.

14 MR. JOHNSON: Your Honor, I would like to ---
15 have you seen this?

10A 16 MR. DAVIS: No. (Examining document)

17 MR. JOHNSON: Can we have a moment to review
18 this, Your Honor?

19 THE COURT: Certainly.

12A 20 MR. JOHNSON: Your Honor, may I inquire of the
21 Court as to Court's Exhibit Number 2?

22 THE COURT: I guess.

23 MR. JOHNSON: Your Honor, it appears to me that
24 this was received by the Court via fax; is that correct?

25 THE COURT: That's correct.

MOTIONS
DECEMBER 2, 1997
VOLUME 45

MR. JOHNSON: And the fax, it appears, the transmittal part of the fax would -- did it all come together, or did it come at different -- different places, or --

THE COURT: I -- I -- we can go off the record.
(Off-the-record bench conference was had.)

MR. JOHNSON: Your Honor, the Court did not have any of this information prior to making -- did not, at least, have any of these documents prior to making its decision to replace juror number 2 with the alternate juror, did it?

THE COURT: No. The documents were received this morning.

MR. JOHNSON: The documents were received this morning? And this morning is December the 2nd, 1997, so these documents were actually received after the Court had already made its decision to replace juror number 2 with the alternate.

THE COURT: Right. The documents, as I placed in the record yesterday, I received the information by phone and instructed them to send me documentary evidence thereafter.

MR. JOHNSON: Okay. Had -- had the Court been able -- had the Court talked to a doctor about the condition of Miss Downey prior to making its decision?

THE COURT: The record will reflect what the information was that the Court had yesterday.

MOTIONS
DECEMBER 2, 1997
VOLUME 45

MR. JOHNSON: And, so, in fact, the answer to that is, no, you have not talked to any medical personnel to make an evaluation of the juror prior to making your decision to replace Mrs. Downey.

THE COURT: All right. We're off the record at this point, Donna.

(Off-the-record bench conference was had.)

THE COURT: On the record.

Mr. Johnson, the procedures in a court in the State of Texas are that you may question the witnesses, and I'm not your witness, so if you have an objection to the Court's document, please state it on the record. Otherwise, we're going to rule on the motion to suppress and bring in the jury.

MR. JOHNSON: And it is the Court's position that they've just told me that they will not answer questions of this attorney regarding this issue.

THE COURT: All right. Mr. Johnson, I will now rule on the motion to suppress.

Do you have any argument on the motion to suppress that was left over regarding the blood and hair samples yesterday?

MR. JOHNSON: Just, - if I may just finish.

Your Honor, I have no objection to this for record purposes, this Court's document Number 2, but,

MOTIONS
DECEMBER 2, 1997
VOLUME 45

Your Honor, I will tell the Court that we continue to object to the jury as it's impaneled. We continue to object to juror number 2 being excused without a hearing.

And, Your Honor, as to the motions to suppress, just so the record's clear, Your Honor, we object to all the evidence that we have asked to have suppressed by our motion to suppress. Each -- each motion to suppress.

We make those objections based on the Fourth Amendment of the U.S. Constitution; Article I, Section 9, of the Texas Constitution; and the Texas Code of Criminal Procedure, Articles 1.06, 14.01, 14.06, 15.01 through 15.17. 16.01 through 16.21, 18.01 through 18.21, and 38.23.

We cite each of those provisions in each motion to suppress on each issue of each -- each search, and we again re-urge our motions to suppress in all matters.

THE COURT: Anything from the State?

MR. DAVIS: No, Your Honor.

THE COURT: All right.

MR. BRAUCHLE: Your Honor, also in regard to the issue of standing, we would contend that a person named in an evidentiary search warrant, such as the search warrants that the Court has before us, has automatic standing in that regard, in that if they are named in the warrant, that they have standing to contest items taken under the warrant in which they are named.

MOTIONS
DECEMBER 2, 1997
VOLUME 45

17A 1 We would further ask that the Court suppress all
2 items seized under each of these warrants that are not named
3 specifically in those warrants, in that as the Court is aware,
4 these warrants were issued under 18.02, Section 10. They each
5 ask for specific items.

6 In many of the returns, more items than were
7 named in the warrants were seized. We would ask that the
8 Court suppress the items that are not named in the specific
9 warrants because, obviously, the executing officers exceeded
10 the bounds and the authority of the -- the search warrants.

11 We would state that when the provisions of 18.01
12 and 18.02 are not followed, that the defendant's only recourse
13 is to have those items suppressed, and we would ask that the
14 Court suppress the items that are in the returns of each of
15 those.

19A 16 (Fire alarm went off.)

17 THE COURT: Duey, let's do this for a moment.
18 Would you put the defendant back until we find out what's
19 going on?

20 (Recess taken)

21 (Court reconvened; jury not present.)

22A 22 THE COURT: All right. Back on the record,
23 still outside the presence of the jury.

24 I was hanging on to your final few statements,
25 Mr. Brauchle.

MOTIONS
DECEMBER 2, 19 97
VOLUME 45

MR. BRAUCHLE: Where was I?

2 THE COURT: The search warrants were your last
3 three words. The executing officers exceeded the bounds of
4 the authority of the search warrants. We would State that
5 when the provisions of 18.01 and 18.02 were not followed, the
6 defendant's only recourse were to have those items suppressed.

23A 7 MR. BRAUCHLE: We would urge that the Court, in
8 fact, do that in compliance with our motions to suppress
9 heretofore filed and heretofore heard.

10 The defendant would also state that he has shown
11 standing in accordance with the case law of the State of
12 Texas, at least in regard to one or more of these locations,
13 and because of that, we would ask that the Court reconsider
14 its ruling in regard to those warrants and to suppress the
15 evidence seized thereunder.

16 THE COURT: Mr. Johnson, some closing thoughts?

17 MR. JOHNSON: Thank you, Your Honor.

18 I just want to address the search warrant as to
19 the -- the blood, and I do want to point out to the Court that
20 we object on several grounds: The first is, is that the
21 search warrant was the result of -- of three previous search
22 warrants that we -- we claim were improper, illegal, and
23 invalid.

24A 24 THE COURT: Well, I've reviewed your arguments
25 from yesterday. Do you have anything in addition to what you

MOTIONS
DECEMBER 2, 1997
VOLUME 45

1 argued yesterday?

2 MR. JOHNSON: Well, I do, Your Honor, and this
3 is going to be very brief.

4 THE COURT: All right.

5 MR. JOHNSON: We also state that every other
6 searches -- the affidavit for those searches relies on the
7 statement of the informant, Adams, which was -- was never
8 shown to be credible or that he'd ever given credible
9 information in the past.

10 Further, the affidavit fails to state any
11 probable cause to allow a magistrate to decide that -- that
12 they should sign a search warrant for the blood, and
13 ultimately, the search warrant fails for the reasons we stated
14 yesterday, and that is that it asks that the blood be obtained
15 from a completely different individual, and it is done in bold
16 letters and names John Wade Adams, in bold letters, and it
17 clearly makes the search warrant void.

18 THE COURT: Mr. Davis, anything from the State?

25A 19 MR. DAVIS: No response, Your Honor.

20 THE COURT: All right. The rulings the Court
21 made yesterday in regards to the individual warrant remain the
22 same.

23 In regards to the three portions of the broad
24 motion to suppress, remain the same, and the Court denies your
25 motion to suppress in regards to the final prong of your broad

MOTIONS
DECEMBER 2, 1997
VOLUME 45

motion to suppress.

We're ready.

MR. JOHNSON: Your Honor, the final prong referring to the search warrant for the blood?

THE COURT: Correct.

MR. BRAUCHLE: Can we have a running objection to any items recovered under any of these searches?

THE COURT: You may.

Mr. Blanton, you can go ahead and come back and have a seat on the stand.

Again, I'll ask you to speak loudly, clearly, and slowly into the microphone.

THE WITNESS: Okay.

(Jury present)

THE COURT: You may be seated.

Good morning, ladies and gentlemen.

Let me say this now, in case I forget whenever we take our next break. Whenever we take the next break, if y'all would discuss in the jury room whether or not an hour-and-a-half is more than enough time at lunch, if we can cut it back to an hour, if you'll let my bailiff know, that will be fine. If you need an hour-and-a-half to get away and get something to eat, that's fine, we'll continue with that, but I'll go with what y'all say.

All right, Mr. Blanton, you're still under oath.

CROSS of JERRY BLANTON by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

I believe he's on cross-examination. Either
Mr. Johnson or Mr. Brauchle.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: You may continue.

THEREUPON,

JERRY DON BLANTON

was recalled as a witness by the State, having been previously
first duly sworn by the Court, was examined and testified as
follows:

CROSS-EXAMINATION - CONTINUING

BY MR. JOHNSON:

Q. Good morning, Mr. Blanton.

A. Good morning.

Q. Yesterday we were talking about your mom and the fact
that she was very giving, very caring, very religious woman.
You recall that, don't you?

A. Yes.

Q. And you had testified that it was not unusual for her
to take items and property, go buy things for people, and go
out and give to people who were less fortunate than her; is
that correct?

A. Correct.

Q. In fact, your mother had quite a history of doing
that, didn't she?

A. Yes, she did.

CROSS of JERRY BLANTON by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

Q. And it was not unusual for your mother to take somebody off the streets and try to help them; isn't that correct?

A. She did it on occasion.

Q. Yeah. And some of the things that she might do for somebody that she felt needed the help where she might take them and buy them clothes?

A. Yes.

Q. She might buy them maybe even the lawn equipment to help them mow yards --

A. No.

Q. --to get work?

A. No.

Q. You don't think she'd do that?

A. No.

Q. Okay. She'd buy them clothes.

A. She'd buy them clothes.

Q. Okay. Let me ask you this: Would she give away -- would she give away her property to them?

A. No.

Q. She would not.

A. Just clothes and blankets that she would buy.

Q. Okay. She wouldn't give people money?

A. Money, yes.

Q. All right. Would she give them -- would she give

REDIRECT of JERRY BLANTON by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

them, at times, large sums of money?

A. Yes.

Q. You're familiar with -- with the fact that she had -- had some individuals that she had given thousands of dollars to?

A. Yes, I do.

Q. And that's -- that's just the type of person she was. She was willing to give her property to others; isn't that true?

A. If she was convinced that they needed help.

Q- And there was really no limit what she might give them if she could give it to them; isn't that true?

A. Correct.

Q. Thank you, sir.

MR. JOHNSON: Pass the witness.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q. Mr. Blanton, we talked yesterday about some of the property that was inside your mother's home, and I want to direct your attention specifically to the kitchen. Did you have an opportunity to be in your mother's kitchen while you were staying there with her?

A. Yes, sir, I was.

Q. Okay. Let me ask you whether or not your mother kept knives in her kitchen?

RECROSS of JERRY BLANTON by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

A. Yes, she did.

Q. Okay. Did she keep them in drawers, or in some other instrument?

A. She had a butcher block on the cabinet.

Q. Okay. Do you remember the color of that butcher block, sir?

A. It was kind of a dark color. I'd say either a dark brown or, you know, wood. Brown finish, or something like that.

Q. Right. Did she keep the knives in there?

A. Yes, she did.

Q. Okay. And those would have been in her kitchen; is that correct?

A. Correct.

MR. DAVIS: No further questions, Your Honor.

MR. JOHNSON: Just a couple more.

RECROSS-EXAMINATION

BY MR. JOHNSON:

Q. Are you familiar with the fact that your mother gave thousands and thousands of dollars to an individual named Steven Blue?

A. There is possible knowledge of that. I mean, a figure amount, I don't know.

Q. Okay. It was -- you're aware that it was well over \$10,000, aren't you?

RECROSS of JERRY BLANTON by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

A. It was a pretty substantial amount, that I know of.

Q. And she also gave thousands of dollars to another individual named David Bode, or Bodie?

A. As far as I know, David Bodie is the guy that built the canopy on the back of her house. That's where his money came from.

Q. Okay.

A. He did work for her.

Q. But there have been people that she had been willing to give thousands of dollars to just because she felt like they deserved some help.

A. That number was very few.

Q. Okay. But it certainly did happen.

A. Yes.

MR. JOHNSON: Thank you.

THE COURT: Mr. Blanton, you may step down.

The State may call its next witness.

MR. DAVIS: The State will call Sylvia Parsons.

Your Honor, may this witness be allowed to stay in the courtroom? I don't anticipate any further testimony on guilt/innocence from this witness.

MR. JOHNSON: Your Honor, we have no objections to him remaining in the courtroom, but we would like to have the rule waived to him in case there is some reason to have him testify again.

DIRECT of SYLVIA PARSONS by MR. DAVIS

DECEMBER 2, 1997

VOLUME 45

MR. DAVIS: Yes. Certainly. Thank you.

THE COURT: All right.

THEREUPON,

SYLVIA PARSONS

was called as a witness by the State, having been previously first duly sworn by the Court, was examined and testified as follows:

THE COURT: Ma'am, if you'd have a seat up here on the witness stand.

THE WITNESS: Yes, sir.

THE COURT: I believe you were previously sworn in; is that correct?

THE WITNESS: Yes, sir.

THE COURT: All right. Once you're comfortable, that chair doesn't move a whole lot, so once you get turned around, if you'll just pull that microphone toward you, I'm going to ask you to speak loudly, clearly, and slowly into that microphone. I need to make sure the jurors hear, and the court reporter and I hear as well, and I guess the attorneys, too, as well.

Mr. Davis, you may proceed.

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Ma'am, if you would please state your full name.

A. My name is Sylvia Parsons.

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. And if you would, just keep your voice up loud enough so that the last jurors down here can hear you, okay?

A. Uh-huh.

Q. Miss Parsons, where do you live?

A. I live at 862 Lexington Drive, Lancaster, Texas.

Q. How long have you lived there?

A. 20 years.

Q. Are you married at this time?

A. I'm a widow.

Q. Are you employed?

A. No.

Q. Do you have other family members that live there with you at 862 Lexington?

A. Yes, I do. I have my son that lives with me.

Q. Okay. What's his name?

A. David Benners (phonetic).

Q. Miss Parsons, let me ask you, if you would, to look at the individual seated to my far left at the end of this other counsel table. He's wearing a gray jacket. Do you know who this individual is?

A. That's Gregory Edward Williams. Excuse me. I've got a frog in my throat.

Q. Gregory Edward Wright?

A. Wright.

Q. Do you need a glass of water?

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 19 97
VOLUME 45

A. Can I?

Q- Sure.

A. I've got a cold.

MR. DAVIS: Your Honor, may the record please reflect this witness has identified the defendant in open court?

THE COURT: It shall.

BY MR. DAVIS:

Q. Miss Parsons, would you please tell us, how did you come to meet Gregory Edward Wright?

A. My brother was an associate -- was a friend of his.

Q. And your brother's name is what?

A. Aubrey Wayne Morris.

Q. So you had met Mr. Wright through your brother; is that right?

A. Yes, sir.

Q. Okay. You say that he was associated with him. In what way was he associated with Gregory Wright?

A. They were both -- my brother's a street person. He lives on the street, and him and Gregory were friends. And he brought him to my home and asked if he could stay two or three days, and I said yes, it would be all right.

Q. All right. So did Gregory Wright actually then move into your house there in Lancaster?

A. Yes, he did.

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. About when would this have been?

A. Around October of last year.

Q. October of '96?

A. Yes, sir.

Q. How long did he end up staying at your house?

A. Oh, about -- maybe about two weeks.

Q. Did you ever know Mr. Wright by any other name, maybe a nickname, anything like that?

A. Yes, sir. They all -- they always called him Maverick.

Q. Maverick?

A. Uh-huh.

Q. Okay. Is that what your brother called him?

A. Yes, sir.

Q. Did you come to find out where Mr. Wright was from?

A. Yes, sir.

Q. Where was that?

A. From Tennessee.

Q. Did he ever receive any mail at your house?

A. Yes, sir.

Q. Did any of it ever come from Tennessee?

A. Yes, sir.

Q. Now, during the time that Mr. Wright was staying at your home, where was he working?

A. I didn't understand that, sir?

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. While Mr. Wright was staying at your home, could you tell us where he was working?

A. He wasn't working at the time.

Q. Well, would he -- would he stay there at your house, then?

A. Yes, sir.

Q. Did he ever go out with your brother?

A. Yes, sir.

Q. Did Mr. Wright own a -- own a car when he got there to your house?

A. No, sir.

Q. How did he get around town, then?

A. He walked.

Q. Okay. How about money to spend, did you give Mr. Wright money, your brother, or --

A. I gave him a few dollars, that's all I gave him.

Q. Okay. Let me ask you if you -- if you ever had any of Mr. Wright's friends, besides -- besides certainly your brother, did Mr. Wright ever bring any of his other friends over there to your house?

A. He brought a friend over, and he had -- he had red hair. I can't remember his name.

Q. Okay. Did you -- did you -- was he called by his given name, or by a nickname?

A. A nickname.

DIRECT OF SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. Okay. And right now you can't recall that name?

A. I can't remember the name.

Q. Okay. If I said Zig, or Zigzag?

A. That -- I believe that was the name.

Q. All right. When was it that Mr. Wright brought this man named Zigzag over there to your place?

A. I can't remember exactly when he brought him over there, but he came over to my house in a pickup truck, and --

Q. Okay.

A. -- he wanted his friend -- they were together, him and Maverick were together, and Maverick came in to ask my son would he go and cash his check for him. And my son went with him and Zigzag, and they went to cash his check.

Q. Okay. Now, besides this occasion where you saw this -- this red-headed man with Maverick, did you ever see the two of them together any other place?

A. No, sir, that was the first time I'd ever seen him.

Q. Did you ever see him after that any other place?

A. Not that I can remember.

Q. All right. Now, you say that Mr. Wright stayed there two or three weeks; is that right?

A. Yes, sir.

Q. Did he leave -- did he just leave, or did you ask him to leave?

A. I asked him to leave.

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. Now after -- after he left your house, did you ever have any more contact with him?

A. He called me about two times.

Q. And did he ever come back over to your house?

A. Yes, sir, he did.

Q. When was it that he came back over to your house, Miss Parsons?

A. Well, the first time it was on a Monday. He picked up some clothes that he had left there.

Q. All right. Now, again, what time period are we talking about now?

A. In March.

Q. March of '97 this time?

A. Yes, sir.

Q. So that was a Monday he came over and picked up some clothes; is that right?

A. Yes, sir.

Q. Did he come over by himself at that time?

A. No, he came with that lady that had a white car, Donna.

Q. Okay. Let me, if I may, --

MR. DAVIS: May I approach the witness,
Your Honor?

THE COURT: You may.

BY MR. DAVIS:

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. Miss Parsons, let me show you a photograph, State's Exhibit Number 5. Do you recognize the woman who's in this photograph?

A. Yes, I recognize her.

Q. All right. Is this the woman that you're talking about --

A. Yes, sir.

Q. -- that Mr. Wright came over on the Monday, the woman that you knew as Donna; is that right?

A. (Nods head.)

Q. And I think you were just saying they came over in her white car?

A. She had a white car.

Q. And did Mr. White, in fact, pick up some of his clothes?

A. Yes, sir, he did.

Q. All right. Did Mr. Wright tell you why he wanted to pick up his clothes; why he wanted them out of your house?

A. No. He just said he needed them, and I gave them back to him.

Q. Now did he ever come back over to your house after that Monday?

A. Yes, sir, he did.

Q. Okay. And when would this have been?

A. I think it was on a Thursday.

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. All right.

A. I had received a package from his mother in Tennessee. He called me and asked me if it was there, and I told him yes. And so he came by to pick it up, and that's when I met the lady, and she came into my home.

Q. Okay. This time, did they come back over in her white car again?

A. Yes, sir, they did.

Q. So Mr. Wright and Miss Vick came over together. Did you have an opportunity to talk with Donna Vick?

A. Oh, yes. She was a very nice lady. And she asked me to go to church with him and Gregory on Sunday.

Q. Okay. Do you know about what time it was that day that they came over?

A. I believe it was around 2:00 -- between 2:30 and 3:00 in the afternoon when they came by.

Q. How long did they stay at your house?

A. Oh, about 45 minutes. They wasn't there very long.

Q. Okay. Did they tell you why they had to leave, or what prompted them to leave?

A. She told me that they were going to go get him some shoes to wear to church for Sunday, is what she told me.

Q. Was Mr. Wright's appearance any different that day than it is here, his physical appearance?

A. Oh, it's a lot different.

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. Okay. Tell the members of the jury how he looked back on that Thursday when he came over to your house with Miss Vick.

A. The day that he came to my house he had long, shaggy hair. He wore a shirt and blue jeans, that's what he had on when he came to my house.

Q. You say they stayed there about 45 minutes. Did you ever see him again that day, --

A. No, sir.

Q. -- Miss Parsons?

A. No, sir.

Q. Let me take you to that -- that next day, Friday. Did you see him or talk to either one of them?

A. No.

Q. How about the Saturday?

A. I didn't speak to either one of them.

Q. Okay. You mentioned that she said something about church for Sunday. Did you -- did you talk with them on Sunday; do anything with them on Sunday?

A. No, sir, I didn't. They never came by. I never got a call, and I wondered what happened, and -- because she didn't call. I didn't get anything from anybody.

Q. Now I want to take you -- I want to take you now to the following week, okay? And I'm talking about the week after the Thursday when Mr. Wright came over to your house

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 with Miss Vick, okay? Did you receive a telephone call from
2 Gregory Wright?

43A 3 A. I can't remember.

4 Q. Okay. Have you ever gotten -- have you ever gotten a
5 call from Mr. Wright since he's been in jail?

6 A. Yes.

7 Q. Okay. And was that call placed to your house?

8 A. Yes, sir.

9 Q. When he called you, did you know that he was in jail?

10 A. He told us he was in jail.

11 Q. All right. And, if you would, just tell the members
12 of the jury what Mr. Wright said to you when he called you
13 from jail, Miss Parsons.

14 A. He --

15 MR. JOHNSON: Your Honor, we will object. to this
16 as being hearsay.

17 THE COURT: Would y'all approach the bench for a
18 minute?

19 (Off-the-record bench conference was had.)

44A 20 THE COURT: Ladies and gentlemen of the jury,
21 I'm going to ask you to step back into the jury room for a few
22 minutes. I will bring you back in in a few minutes.

23 If y'all remember, you may discuss that lunch
24 issue among yourselves.

25 (Jury not present.)

VOIR DIRE of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

THE COURT: All right. Let the record reflect we're outside the presence of the jury.

At the request of the defense, we will have this hearing outside the presence of the jury in regards to the admissibility of any statements made by Mr. Wright.

Mr. Davis, you may continue.

MR. DAVIS: Yes.

VOIR DIRE EXAMINATION

BY MR. DAVIS:

Q. Miss Parsons, would you tell the Court what Mr. Wright asked you to do, if anything?

A. He asked me would I go and pick up his clothes, and --

Q. Did he tell you where to go to, to pick them up?

A. In that shack over there behind K-Mart's.

Q. And did you know which place he was talking about?

A. Yes, sir.

Q. So he asked you to go over there to that shack and to pick up the clothes that he had inside the shack; is that right?

A. Yes, sir.

Q. Did he say anything else to you?

A. No, sir.

MR. DAVIS: Well, Your Honor, that would be the -- the evidence that I'd put before this jury, and I would
DONNA HILL-WYNKOOP, RMR, CRR, RPR, CSR 214-653-5923

DECEMBER 2, 1997

VOLUME 45

argue that it is certainly a statement against his interest, since as we discussed in the motions yesterday, we intend to offer blue jeans and other evidence found in that shack that will connect this defendant to the crime, in particular, clothing that has the deceased's blood on it, and, so we would argue that what the defendant's trying to do, is certainly to have this witness go to take evidence away so that it cannot be used against him in this case.

THE COURT: Mr. Johnson, do you have any questions of the witness, or do you have simply a response? Obviously, --

MR. JOHNSON: I just have a response, I mean, if that's all the testimony that they're --

THE COURT: Fine.

MR. JOHNSON: Your Honor, if somebody's in jail and if they call somebody to go take care of their property, I -- I don't think that there's anything unusual about that, and it certainly doesn't mean that it's incriminating, and we would argue that it's irrelevant.

And it's a -- it's a hearsay statement that's inadmissible under -- under the rule.

MR. DAVIS: In addition, I would also state to the Court, it's certainly against his interest since, Your Honor, one argument that we'll be making is that that shack where all that property was found, was, in fact, his

VOIR DIRE of SYLVIA PARSONS by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 shack and his property. And, so, this again would tie this
2 defendant to both that shack and to the property found inside
3 that shack.

4 So from that standpoint, also, it's a statement
5 against his interest in this case.

6 MR. JOHNSON: Well, Judge, it almost sounds to
7 me like the State's admitting standing to the search. They
8 can't have it both ways, Judge.

9 This is also a statement, Your Honor, I'd point
10 out, that was made while the defendant was in custody.

11 MR. DAVIS: Well, I think certainly not in
12 custodial interrogation, unless Miss Parsons is some special
13 agent of an unknown police agency none of us are aware of,
14 so, ...

15 MR. JOHNSON: Your Honor, can I ask this witness
16 a question on this point?

17 THE COURT: You may.

18 MR. JOHNSON: Okay.

19 VOIR DIRE EXAMINATION

20 BY MR. JOHNSON:

21 Q. Ma'am, is that all he said to you, was to just go get
22 his stuff?

23 A. That's all he asked me to do.

24 Q. Did you assume just to take care of it for him?

25 A. He just asked me to pick up his clothes.

VOIR DIRE of SYLVIA PARSONS by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 Q. All right. He didn't ask you to get rid of them,
2 destroy them, wash them, do anything else?

3 A. No, sir. He just told me to pick them up, that's all
4 he said to me.

5 Q. And would you assume, or did you assume that that
6 just meant to pick them up and keep them for him?

7 A. Yes, sir.

8 Q. Ma'am, did you consider that shack that he was asking
9 you to go to, to be his residence?

49A 10 MR. DAVIS: I'm going to object to that. It
11 calls for speculation on the part of this witness --

12 THE COURT: Sustained.

13 MR. DAVIS: - to decide the purpose of this
14 hearing,

15 MR. JOHNSON: Your Honor, we think she can
16 answer that if she knows.

17 THE COURT: Well, I appreciate that. I
18 sustained the objection.

19 MR. JOHNSON: Well, Judge, we're outside the
20 presence of the jury, and we ask that she answer that question
21 for record purposes.

22 THE COURT: Well, it doesn't have anything to do
23 with the hearing, so, --

24 MR. JOHNSON: Well, Judge, it certainly has to
25 do with the issue of the motion to suppress, which certainly

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 is an issue that can be revisited, and we would ask that she
2 answer that question to go towards the motion to suppress.

3 THE COURT: Well, I think I'll go ahead and give
4 you the same ruling I've had twice before. No.

5 MR. JOHNSON: Note our exception, Your Honor.

51A 6 THE COURT: Let's take a break for about three
7 minutes.

8 (Recess taken.)

9 (Court reconvened; jury not present.)

57A 10 THE COURT: Back on the record still outside the
11 presence of the jury.

12 I'll sustain the defendant's objection.

13 Jan, if you'd get the jury.

14 (Jury present.)

58A 15 THE COURT: All right. You may be seated.

16 Mr. Davis, you may continue.

17 DIRECT EXAMINATION - CONTINUING

18 BY MR. DAVIS:

19 Q. Miss Parsons, besides this one call that Mr. Wright
20 made to you from the jail, did he ever call you again, or was
21 that the only phone call?

22 A. Well, he made another one, but I didn't answer it.
23 My brother did. He talked to my brother.

24 Q. Do you have any knowledge as to whether Mr. Wright
25 was panhandling on street corners in either Lancaster or

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

DeSoto?

A. Yes, sir.

Q. Okay. Was he?

A. Yes, he -- he was panhandling in DeSoto.

Q. Okay. How do you know that?

A. Because I was coming down Pleasant Run going home on a Saturday, and he was out there with a sign panhandling.

Q. Okay. When you say "a sign", what kind of sign was he holding?

A. I can't remember exactly what the words were on the sign, but he did have a sign and he was holding it up.

Q. What, a cardboard sign?

A. Yes, sir.

Q. And what intersection was this?

A. Pleasant Run, and I can't think of the side street there. I just know it's right off of Pleasant Run there as you turn off of 35.

Q. Right. Is there a Texaco station down there?

A. Yes, sir, there is.

Q. All right. Do you know where the VFW Lodge is in Lancaster?

A. Yes, sir.

Q. Is that close to that intersection, also?

A. Yes, sir.

Q. How about the -- the K-Mart, is that close to the

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 intersection of Interstate 35 and Pleasant Run, also, over on
2 the DeSoto side?

3 A. Yes, sir.

4 Q. Are you familiar with a -- I guess, a shack or
5 something, a red-framed shack that's behind that K-Mart?

6 A. Yes, sir.

7 Q. Again, would that be close to the intersection of
8 Interstate 35 and Pleasant Run?

9 A. Yes, sir.

10 Q. Ma'am, do you know whether or not Gregory Wright was
11 ever staying in that shack behind that K-Mart?

10:00A 12 A. He told me that's where he was staying.

13 Q. Did you ever go over there?

14 A. I went over there one time.

15 Q. Okay. Just, if you would, just describe this place.

16 A. Well, I did not go into the shack. I parked behind
17 the K-Mart on the back of the side of the parking lot, and
18 there's a bunch of bushes all back over there. You really
19 can't see it, but it's just a bunch of bushes over there. I
20 did not go into that shack.

21 Q. What's it look like from the outside? Just how would
22 you describe it?

23 A. It's just like -- I really can't -- it's just like --
24 just an open area place with a bunch of boards is all I can
25 remember, and a bunch of trees and stuff around it. That's

DIRECT of SYLVIA PARSONS by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

all I can remember.

Q. That's where Greg Wright said he was staying?

10:01A 3 A. Yes, sir, that's where he told me.

4 Q. Ma'am, did you ever learn whether or not Gregory
5 Wright had begun living with Donna Vick; staying with her?

6 A. Well, he called me, but I can't remember what time or
7 date it was, but he told me that this lady picked him up and
8 took him into her home and gave him a place to stay, and I
9 told him, I said, that was a good place for him to go,
10 somebody, you know, who would take care of him.

11 MR. DAVIS: I'll pass the witness, Your Honor.

12 THE COURT: Mr. Johnson?

13 MR. JOHNSON: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. JOHNSON:

16 Q. Hi, Miss Parsons.

10:02A 17 A. Hi.

18 Q. My name's Karo Johnson, and I represent Mr. Wright.

19 Now you and I have never met, have we?

20 A. No, sir.

21 Q. And we've never spoken, have we?

22 A. Not that I can remember.

23 Q. You've testified that you've known Mr. Wright for
24 some time; is that correct?

25 A. Yes, sir.

CROSS of SYLVIA PARSONS by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 Q. In fact, he lived with you for two to three weeks;
2 isn't that right?

3 A. Yes, sir.

4 Q. And do you recall some of the things that he did for
5 you during that time? Do you recall him fixing your
6 dishwasher, the electrical washer?

7 A. Yes, sir.

8 Q. Okay. Do you remember that he would cook sometimes
9 and help clean up the kitchen? Would he do those sort of
10 things?

11 A. He did help cook. He did.

12 Q. Now, can you recall him buying food for David and his
13 wife?

14 A. Yes, he did.

15 Q. He -- he would also, if he could, buy food for the
16 house as well, wouldn't he?

17 A. Yes, sir.

18 Q. Did he help fix a hole in the wall that Wayne had
19 finished? Do you remember doing that?

10:04A 20 A. I don't remember that.

21 Q. But he would -- he would try to be as handy as he
22 could around the house to help you, didn't he?

23 A. Yes, he did.

24 Q. Now you -- do you recall that sometimes he did have a
25 job, did he not?

CROSS of SYLVIA PARSONS by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 A. When he came to my home, he did not have a job. I
2 took him down on Industrial where he could get a job.

3 Q. Did he -- did he fix your sliding-glass door for you?

4 A. Yes, he did.

5 Q. Now, there were times when he was working, wasn't he?

6 A. I took him to another place on Industrial. There was
7 two places that he went to, to apply for work. I got up at
8 6:00 o'clock in the morning and took him down on Industrial,
9 and there's a place down there that they -- I can't exactly
10 remember where it was, and they take people in and work them
11 that day, like a day workday.

^ I O S A 12 Q. Now, so he -- he did try to get work, didn't he?

13 A. Yes, he did.

14 Q. And you testified that you gave him a few dollars.
15 Isn't it true that he also gave you money?

16 A. Yes, he did.

17 Q. Now, when you say that he came by on Monday and he
18 got some clothes, that's because you were keeping them for
19 him; isn't that right?

20 A. Yes.

21 Q. And, in fact, you allowed him to get mail at your
22 house; isn't that true?

23 A. He asked me if he could have his mail come to my
24 house.

25 Q. And you let him do that, didn't you?

CROSS of SYLVIA PARSONS by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 A. Yes, sir, I did.

2 Q. Now you testified that -- that when you -- when you
3 saw him that first time on Monday, his hair was kind of long
4 and shaggy; is that right?

5 A. That I can remember.

6 Q. Okay. Do you remember when he came back, when he
7 came back with -- when you met Mrs. Vick, do you remember that
8 he had a haircut at that time?

9 A. I believe he did, because he did mention something to
10 me about it when he came into my house, that he did have a
11 haircut. He did. And she paid for it.

0:06A 12 Q. She paid for it and she kind of helped him get
13 cleaned up, didn't she?

14 A. Yes, she did.

15 Q. And when you met Mrs. Vick, you noticed immediately
16 she was a very religious woman, didn't you?

17 A. Yes, sir, I did.

18 Q. And what was it that led you to that conclusion?

19 A. She told me just right before she left that God was
20 going to bless me. That's what she told me. And -- and she
21 seemed like a real sweet person. She really was.

22 Q. Was your brother Wayne staying with you some on or
23 about this time?

24 A. Yes, sir, my brother was living with me.

25 Q. At that time.

CROSS of SYLVIA PARSONS by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

A. Uh-huh.

Q. Do you remember Mr. Wright and Wayne discussing trying to find work together?

A. Well, if they did, he didn't mention it to me at the time. He talked to my brother quite a bit, but, you know, there's times that they didn't speak to me.

Q. Okay. So that they talked to each other.

A. Yes.

Q. You're not privy what it was, --

A. Right.

Q. -- but that might have been one of the things that they were talking about.

A. Right.

Q. Now did they -- did Miss Vick talk to you about his -- did y'all talk about going to church together?

A. Yes, sir. She sure did. She asked me to go to church with her and Gregory on Sunday.

Q. And the two of them, they -- they had plans to go to church on Sunday.

A. Yes, sir.

Q. In fact, that was one of the reasons she said she was going to go buy him some shoes, and that's why they were leaving; is that correct?

A. Yes, sir.

Q. She was going to buy him some clothes and shoes so

CROSS of SYLVIA PARSONS by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 that he could be properly dressed to go to church on Sunday.

2 A. She did.

3 Q. And it seemed like they were getting along --

4 A. I didn't see any scuffle or anything. They wasn't
5 mad at each other She was real friendly and she wanted me to
6 go to church with them on Sunday.

7 Q. Basically, the experience that you had with -- with
8 them was very pleasant.

9 A. It was very pleasant.

10 Q. Okay.

11 MR. JOHNSON: We'll pass the witness,

12 Your Honor.

13 MR. DAVIS: No further questions.

14 THE COURT: All right. Miss Parsons, you may
15 step down.

16 THE WITNESS: Thank you.

17 THE COURT: The State may call its next witness.

18 MR. DAVIS: The State will call Donald Cole.

10:09A 19 Your Honor, may Miss Parsons be excused at this
20 time, subject to recall?

21 MR. JOHNSON: Subject to recall, Your Honor.

22 THE COURT: Miss Parsons, you're free to go.

23 I'm sure that you'll leave a phone number with
24 somebody to be available, if you would.

25 THE WITNESS: Okay. Thank you.

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45
THE COURT: All right.

THEREUPON,

DONALD COLE

was called as a witness by the State, having been previously first duly sworn by the Court, was examined and testified as follows:

THE COURT: Mr. Cole, if you'd just have a seat up here on the witness stand.

Let the record reflect that you were sworn in yesterday.

THE WITNESS: Yes, sir.

THE COURT: Why don't you have a seat there, but that chair doesn't move a whole lot, so just move it around and speak slowly, clearly, and loudly into the microphone.

Mr. Davis?

DIRECT EXAMINATION

BY MR. DAVIS:

Q. All right. Sir, would you tell us your full name?

A. Donald Allen Cole.

Q. All right. Mr. Cole, I'll ask you, if you will, as you're testifying, keep your voice up so the last jurors down here can hear you, okay?

A. Yes, sir.

Q. Mr. Cole, what city do you live in now?

A. Lancaster, Texas.

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 Q. Okay. Do you have family that lives there?

2 A. Yes, sir.

3 Q. Let me just ask you up front, have you had problems
4 with the law in the past?

10:10A 5 A. Yes, sir.

6 Q. Okay. And just what sort of problems have you had?

7 A. Misdemeanor thefts; some Pis.

8 Q. Public intoxications?

9 A. Yes, sir.

10 Q. Okay. Have there been times in your life when you've
11 lived on the streets?

12 A. Yeah, a little. Here and there.

13 Q. Okay. Back in March of 1997, of this year, were you
14 working someplace?

15 A. Yes, sir. I was working at a Texaco.

16 Q. All right. Where was that Texaco located?

17 A. Pleasant Run and Beckley, right there at 35.

18 Q. Okay. Now 35, does that divide DeSoto and Lancaster,
19 basically?

20 A. Yes, sir.

21 Q. And your Texaco, was that on the Lancaster side of
22 the road?

23 A. Yes, sir.

24 Q. How long had you been working there?

25 A. About a month, month and-a-half.

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 Q. Okay. And what was your -- what was your job up
2 there?

3 A. I was a cashier.

4 Q. Do you know a person by the name of
5 Gregory Edward Wright?

6 A. Yeah. I basically called him by a nickname, though.

10:11A 7 Q. Okay. What nickname did you call him by?

8 A. Well, I give him the nickname of Jinks.

9 Q. Okay. Do you see Jinks, or Gregory Edward Wright, in
10 the courtroom today?

11 A. Yes, sir.

12 Q. Where is he seated?

13 A. Right over there, sir.

14 Q. Is he at the far end of the counsel table over there
15 in the gray jacket?

16 A. Yes, sir.

17 MR. DAVIS: Your Honor, may the record please
18 reflect this witness is identifying the defendant in open
19 court?

20 THE COURT: It shall.

21 BY MR. DAVIS:

22 Q. When was it that you met -- that you met Mr. Wright?

23 A. He'd come into my work several times while he was
24 panhandling over by the overpass.

25 Q. Okay. And would that be the overpass there at 1-35

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

and Pleasant Run?

2 A. Yes, sir.

3 Q. Okay. Did you see him on one occasion or more than
4 one occasion out there panhandling?

5 A. Oh, quite a few times.

6 Q. Did you ever see him using a cardboard sign while he
7 was panhandling?

8 A. Yeah. As a matter of fact, I gave him some boxes
9 that he made the signs out of.

10 Q. Would there be occasions when he'd come into the
11 Texaco station?

12 A. Yeah. Just about every day he was out there, he'd
13 come in and get something to eat and something to drink.
14 Sometimes he'd even help me clean up around the place.

10:12A 15 Q. Did y'all have occasions, then, when you had a chance
16 to talk to each other?

17 A. Oh, yeah. Every time he'd come in.

18 Q. All right. Did Mr. Wright ever tell you where he was
19 staying?

20 A. Yeah, he said -- let's see, how did he term it. He
21 had this little hooch over by -- back into the wooded area by
22 a K-Mart.

23 Q. He called it a "hooch"?

24 A. Yeah.

25 Q. Okay. Did you ever go over there to this place with

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

him?

A. No, sir.

Q. Did you ever observe an occasion where he pointed out where he was living over there?

A. Yeah.

Q. Okay. And what time was that?

A. It was just one of the times, like I said, he used to help me clean up every once in awhile towards closing, and we'd go over to one of the local clubs right around there, walk over from work, and one of the times I was just curious, and he pointed over towards it when we were walking from across the street to one of the clubs.

Q. Now, did you ever -- did you ever -- well, I think you'd just indicated there were times when you saw him away from the Texaco station; is that right?

A. Yes, sir.

Q. Did y'all have occasions to have some drinks together, maybe?

A. Yeah. One time we went over to the Monterey Club at the Spanish Trails, which is directly across the street from my work, and on several other occasions, we'd go over to VFW, which is on the other side of the Spanish Trails.

Q. Okay. Is that going to be a little bit farther north up on Beckley, then?

A. Yes, sir.

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 Q. It's still in Lancaster, isn't it?

2 A. Yes, sir.

3 Q. And this VFW club, did you have access to that
4 yourself where you could go in yourself and have some drinks?

5 A. Yes, sir. They had an open policy, not to mention I
6 was also a part-time employee there at the time.

7 Q. All right. And did you take Greg Wright in with you
8 then?

9 A. Yes, sir, and we had to sign in on the guest book, on
10 the book for the members and guests, we had to sign in on the
11 guest side.

12 Q. Okay. So as I understand, then, every time that you
13 go in, they've got a log and you have to write your name in
14 there; is that right?

15 A. Yeah. Most of the time I'd sign both of us in. I'd
16 sign him just in as Jinks, or Maverick, one of the two.

10:14A 17 Q. All right. I want to - I want to direct your
18 attention, Mr. Cole, to March the 20th of 1997. That's going
19 to be a Thursday evening.

20 A. Yes, sir.

21 Q. Were you working at the Texaco that evening?

22 A. Yes, sir, I was.

23 Q. All right. And when you finished your shift, about
24 what time did you finish working at the Texaco that night?

25 A. Well, we closed down at 10:00, and give or take,

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

between, say, 10:45 and 11:15, I was out of the store going over to the VFW.

Q. So you headed over to VFW after work?

A. Yeah. When I got off, I'd always go over and have a beer or two, or a pitcher, whichever suited me that day.

Q. Okay. When you got over there that evening, did you -- did you see people that you recognized there in the club?

A. Oh, yeah. I seen a lot of the regulars. I seen Greg and another lady, and the bartender that was working that evening that I knew.

Q. Okay. Did I understand you to say that when you went in that Thursday evening, that you saw the defendant in there?

A. Yes, sir.

Q. Okay. And was he with someone?

A. The lady in the picture.

Q. Okay. And you're -- you're pointing to the photograph, and that's State's Exhibit Number 5 there, labeled Donna Duncan Vick. Is that the woman that Greg Wright was with that evening at the VFW?

A. Yes, sir.

Q. Anybody else with them at that time?

A. Not at that time.

Q. Where were they in the club?

A. Well, when I come in, she was at that -- when I first

DIRECT OF DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 come in, I believe he was over by the pool tables and she was
2 up by the counter, and then I went and visited with some
3 friends, and when I came back from visiting with them, they
4 were both sitting over by the -- he was still over by this --
5 by the front door side of the pool tables, and she was sitting
6 at a table right over there facing the bar --

7 Q. Okay.

8 A. -- with her back to the dance floor.

9 Q. During the time that you saw her up there, was she
10 drinking up there that evening?

10:16A 11 A. She had a wine cooler, or part of one that I seen,
12 and there was an empty wine cooler on the tables. I don't --
13 I'm not sure if she had that -- that other wine cooler, but
14 there was an empty one there.

15 Q. How about the defendant, did you notice him drinking
16 up there that night?

17 A. Yeah, he had some -- some Budweiser, and if memory
18 serves me right, when I got my pitcher, I got him an extra
19 glass.

20 Q. Do you remember that evening how Mr. Wright was --
21 was dressed?

22 A. Yeah. He had a new pair of blue jeans and a nice
23 looking, I call them western shirt. If it's a dress shirt, to
24 me it's sort of like a western style. A darker shirt.

25 Q. How is it that you remember that he had on some

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 newish-looking blue jeans?

2 A. Well, probably because most of his other ones were
3 old and tattered, or real dirty, and these looked brand-new,
4 and he said that he had gotten some money and went out and got
5 some new clothes.

10:17A 6 Q. Did you have a chance to -- to talk with Miss Vick up
7 there at the VFW?

8 A. Yeah, for a little bit. I mean, just general
9 conversation.

10 Q. Had you ever -- had you ever seen Miss Vick before
11 that evening?

12 A. She'd come by the gas station every once in awhile,
13 like when we were doing shift change and stuff, I'd see her
14 coming out from paying for gas or something, and she'd come in
15 and get gas every once in awhile, but I didn't really know
16 that -- meet the lady until that night.

17 Q. Had you ever seen Miss Vick with the defendant before
18 that night?

19 A. Well, I had seen her, a car that looked like hers.

20 Q. What kind of car was that? Do you remember what
21 color it was?

22 A. To be honest, not really.

23 Q. Okay.

24 A. I just remember that -- I just remember the night
25 that I seen them leaving, because we all pretty much left

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 about the same time towards closing.

2 Q. Some of the times when Miss Vick would come up to the
3 Texaco, was Greg Wright out there panhandling at that
4 location?

10:18A 5 A. Well, when she was leaving one of the times, I
6 remember him being out. I think -- I think it was right after
7 he had -- one of the days he had told me that DeSoto told him
8 he couldn't be on the DeSoto side anymore, and I told him,
9 well, I ain't ever hear nobody complain about you being over
10 here, so I ain't got no problem about you being over here on
11 our corner, --

12 Q. All right.

13 A. --at least not on my shift.

14 Q. You know that Thursday evening, again, back up to VFW
15 when you talked with the complainant, do you remember where --
16 I mean, what was her attitude? Was she happy? Was she
17 telling jokes? I mean, what -- what kind of conversation did
18 you have with this lady?

19 A. Oh, she was just, you know, telling me about how she
20 goes to church a lot, and, you know, like I said, just general
21 how are you doing, getting to know me and telling me how she
22 was helping Greg out, and, you know, giving him -- he's been
23 helping her out doing some handiwork around the house, and
24 she'd been giving him a little money and letting him stay
25 there a little bit and feeding him some. You know, just how

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

she always has no problem helping anybody out.

10:20A 2 Q. Did she tell you where she was going to -- where she
3 was going to go once she left the VFW?

4 A. I believe -- I think -- no, wait a second. I believe
5 she said something about they were leaving -- they were going
6 to --

7 MR. JOHNSON: Your Honor, we'll object as to
8 hearsay.

9 THE COURT: I'll overrule your objection.

10 BY MR. DAVIS:

11 Q. Did she tell you where they were going to go, or what
12 they were going to do?

13 A. That they were supposed to be going to pick up his
14 friend Zig.

15 Q. His friend Zig? Did you know who they were talking
16 about?

17 A. Well, I'd seen Greg talking to him once, but I didn't
18 really know the guy.

19 Q. You didn't know him by his true name?

20 A. No.

21 Q. What did he look like, do you remember anything about
22 him that stood out?

23 A. Just sort of his scraggly hair and the hat; that he
24 always wore a cap.

25 Q. Now during the time that you were talking with

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 Miss Vick, was Greg Wright around -- around y'all while y'all
2 were talking?

10:21A 3 A. Not initially, but after a little bit, he came back
4 over and sat back down.

5 Q. What was his attitude when he -- when he came back
6 and y'all were talking?

7 A. I don't know. He -- he just had sort of a weird look
8 on his face.

9 Q- What kind of look?

10 A. I don't know. Sort of like he was irritated about
11 something. I don't know. And I made the wise crack up at
12 him, I says, well, since someone's not going to be a gentleman
13 and introduce me, I'll introduce myself. My name is Don Cole.
14 I says, I know Jinks. He comes over and helps me over at work
15 all the time.

16 Q. You said that you saw Greg Wright and Miss Vick
17 leaving the club; is that right?

18 A. Yes, sir.

19 Q. Okay. Did they leave together?

20 A. Yes, sir, they got in the same car. I asisumed they
21 were leaving together.

22 Q. Did you leave with them?

23 A. No, sir.

24 Q. Okay. Why not?

25 A. I had to work the next morning.

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. At the Texaco?

A. Yeah, because I had just finished a double shift, and I was tired and I just went over there to have a couple beers, relax, and visit with the bartender. She's a friend of mine; help her close up for the night, and then she was going to give me a ride home.

Q. All right. And, so, at least when they left the VFW, Zig was not with them, was he?

A. Excuse me?

Q. When Greg Wright and Donna left the VFW then, Zig was not with them, was he?

A. No, sir. I didn't see anybody else with them.

Q. Did you have plans to -- to see Gregory Wright the next day, or the day after that?

A. Well, we had talked earlier and I asked him if he was getting a -- because I had to work the next day, if he would come over and help me get some of the cleanup done before I got off, because I knew I was going to be super tired, because I only had a couple of hours of sleep before I had to be right back at work after working that double.

Q. Okay.

A. He never showed up.

Q. Well, later that night, did you ever see either one of these people later that night?

A. No, sir, I don't believe so.

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. Okay. Did you go to work the next day at the Texaco?

This would be a Friday.

A. Yes, sir.

Q. Okay. Did Greg Wright come up there like he said he was going to?

A. No, sir.

Q. Did you see Miss Vick on Friday?

A. No, sir.

Q. Let's go now to Saturday, this would be March the 22nd. Did you work at the Texaco that day?

A. Saturday. Yes, sir, I believe I did.

Q. Okay.

A. I was up there. A lot of times I go up there and hang out for a little bit.

Q. Did you ever see Greg Wright that day at the Texaco?

A. Well, I seen him, but I didn't -- you know, I was working at the time until I come outside.

Q. Was he by himself when you saw him, or was he with somebody?

A. No, he was talking to -- I assumed that it was Zig, from what I knew. Some guy that, you know, like I said, he had a baseball cap on and scraggly, blondish-looking hair. Blondish-brown.

Q. How would you describe Greg Wright's appearance when you saw him on Saturday, March 22nd?

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 A. Like he'd been working or something. Sort of
2 scraggly looking.

3 Q. All right. Did he ever mention Miss Vick?

4 A. No.

5 Q. Did he ever ask you anything or say anything to you
6 that you recall up there that day?

7 A. Excuse me?

8 Q. Did he ask you anything or say anything to you while
9 he was up there at the Texaco that day?

10 MR. JOHNSON: Your Honor, we'll object to that
11 as being hearsay.

12 THE COURT: Overruled.

13 A. I don't believe so. I don't -- to be honest, I don't
14 really remember.

15 BY MR. DAVIS:

16 Q. About how long was he up there, then?

17 A. Not very long.

18 Q. Okay. Did he and this fellow that you assume to be
19 Zig, did they leave together?

20 A. I seen them walking for a little bit, and then I -- I
21 went about my business back -- I was taking some trash out.

10:25A 22 Q. All right. Did you see where they were going to when
23 they did leave?

24 A. Well, they were just sort of headed towards the
25 overpass.

DIRECT of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 Q. What, toward -- toward DeSoto?

2 A. Well, actually, they were just head -- we -- we were
3 over towards the middle part of the drive area, and they were
4 headed back up towards the corner towards the overpass. I
5 didn't pay attention which way they really went, though.

6 Q. I believe that you've testified you -- you talked
7 with Greg Wright on several occasions, right?

8 A. Yeah.

9 Q. You drank with him on several occasions?

10 A. Yeah.

11 Q. Did y'all have occasions to discuss maybe some of
12 your your personal lives together?

13 A. Yeah, somewhat. I mean, --

14 Q. I mean, let me just ask you, --

15 A. -- talked about what troubles we got into, stuff like
16 that,

10:26A 17 Q. Let me just ask you, did you ever have occasion to
18 discuss the use of cocaine?

19 MR. JOHNSON: Your Honor, I'm going to object to
20 that,

21 THE COURT: All right. Would y'all approach the
22 bench for a minute?

23 (Off-the-record bench conference was had.)

10:29A 24 THE COURT: Folks, I'm going to ask y'all to
25 step back to the jury room for a few minutes.

VOIR DIRE of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 (Jury not present.)

2 THE COURT: Let's go off the record for a
3 minute

4 (Off-the-record bench conference was had.)

5 THE COURT: All right. Let the record reflect
6 we're outside the presence of the jury.

7 Mr. Davis, if you'd go ahead and repeat your
8 question.

9 MR. DAVIS: Yes.

10 VOIR DIRE EXAMINATION

11 BY MR. DAVIS:

12 Q. Mr. Cole, did you have discussions with Mr. Wright
13 about his use of cocaine?

10:30A 14 A. Well, we talked about smoking weed and --

15 Q. Okay.

16 A. -- and doing coke in the past, and stuff like that.

17 Q. Okay Did he indicate to you that he had used
18 cocaine?

19 A. Yeah Not at -- he didn't specifically say any given
20 time, but --

21 Q. Yeah Did he tell you what form of cocaine he'd
22 used: Powder, rock, any other forms?

23 A. No, inot really sspecifically that I remember.

24 Q. But lhe told you at some time, anyway, that he had
25 used cocaine, correct?

VOIR DIRE of DONALD COLE by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 A. Yeah. And I told him I had done it, too, in the
2 past. I had smoked weed in the past, too.

3 Q. Let me ask you, did you -- did you ever see
4 Mr. Wright when he had gold metallic paint either on his
5 clothes or on his face?

6 A. Yeah. He had some on his clothes before.

10:31A 7 Q. Okay.

8 A. Maybe a little sprinkle like on a -- on a collar or
9 something toward his mustache and beard, but I just assumed he
10 was painting, doing some painting, or something.

11 Q. Okay. Have you ever been around anybody that huffs
12 paint?

13 A. Not so much around people, but I've heard of them
14 doing it, but I didn't think anything about it.

15 Q. So as I understand, then, you actually saw some gold
16 metallic paint on Mr. Wright's clothes at some point; is that
17 right?

18 A. Yeah, on one of his shirts that he had on.

19 Q. And, also, had you seen any -- did I understand you
20 to say somewhere around his mustache?

21 A. Well, sort of like right over on the side.

22 Q. And that was during the time that you were working up
23 there at the Texaco, right?

24 A. Yeah. Like I said, I didn't think anything about it,
25 you know, because I knew he was doing handiwork and stuff, and

VOIR DIRE of DONALD COLE by MR. DAVIS
 DECEMBER 2, 1997
 VOLUME 45

1 I've painted before, so I get -- when I get to painting
 2 sometimes, I get it all over me, from head-to-toe. I got it
 3 on my pants right now, so that's why I didn't think anything
 4 of it.

10:32A 5 MR. DAVIS: The that's all I have, Your Honor.

6 THE COURT: Mr. Johnson?

7 MR. JOHNSON: We don't have any questions.

8 THE COURT: All right. Your objection, if any?

9 MR. JOHNSON: Well, Your Honor, first off, we'll
 10 object that it goes -- first off, he hasn't testified that he
 11 knows that the defendant did cocaine at any particular time,
 12 so it certainly doesn't prove anything as to this offense.
 13 It's certainly not relevant to this offense to show that the
 14 defendant was involved with cocaine at the time of this
 15 offense.

16 Also, as far as the issue goes to him huffing
 17 paints, whatever that, you know, whatever term is appropriate)
 18 for using -- using paint as an intoxicant, he cannot testify
 19 that he ever had any conversations or had any knowledge of
 20 this defendant, Mr. Wright, being involved with that.

21 He's even testified that he just assumed that,
 22 you know, he had been using paint in the odd jobs that he did. f
 23 So that clearly doesn't prove anything as to this -- this
 24 defendant. It's certainly not relevant at this point. I

10:33A 25 We also would point out to the Court that the i

DECEMBER 2, 1997

VOLUME 45

1 State is attempting to get in prior bad acts with this
2 testimony, and we will point out to the Court that -- that the
3 State has never given us notice of these bad acts.

4 MR. DAVIS: Well, that's a -- that's a complete
5 misstatement regarding notice of possible extraneous offenses,
6 and I'm going to let the file speak for itself there.

7 Now with regards to the paint, there's no
8 extraneous offense here. I'm just simply asking if he had
9 seen gold paint on this individual's clothing before around
10 his mustache, so I don't think there even should be an issue
11 about a possible extraneous -- that's not a bad act or an
12 extraneous offense to simply have paint on your face or on
13 your clothing. So I think we're really just talking about the
14 possible use of cocaine by this individual.

10:34A 15 And I -- my -- my argument on that is very
16 clear: That this man's use of cocaine goes right to the
17 motive for this killing.

18 THE COURT: Go ahead, Mr. Davis.

19 MR. DAVIS: It will go specifically to the
20 motive, the motive being to obtain property and money so that
21 he can obtain crack cocaine. We're about to have testimony
22 through the next witness that this individual bought crack
23 cocaine the very night of this murder, and came back up there
24 right after the murder and purchased additional crack cocaine.

25 Certainly this witness's testimony concerning

DECEMBER 2, 19 97

VOLUME 45

1 the defendant's own admission that he used cocaine at some
2 point in the past is relevant. It goes to show his motive for
3 killing Miss Vick and obtaining her property after her death.

10:36A 4 Again, this is a statement made by the
5 defendant.

6 I'll tell you what, Your Honor, just so we can
7 shorten this, I'm going to withdraw the questions concerning
8 the cocaine from this witness at this time. I do intend to
9 ask him questions concerning seeing gold paint on his clothing
10 and his -- and his mustache and face. Again, I don't see how
11 that could possibly be any bad act or extraneous offense, so
12 I'm going to limit my questions at this time to that.

13 > THE COURT: All right. Mr. Johnson, I assume
14 you're going to object to any physical observation this --
15 this witness made of paint appearing on your defendant's face
16 or person?

17 MR. JOHNSON: Well, Judge, before we do that,
18 I'd certainly like to have a hearing outside the presence of
19 the jury so that this -- to make sure that this witness can
20 testify that he's certain that that's what it was.

10:37A 21 MR. DAVIS: I thought that's what we just did,
22 but -- I thought that was his testimony. We're outside the
23 presence of the jury, and I thought that was the purpose of
24 what I just did, but if we need some additional questions,
25 I --

DECEMBER 2, 1997

VOLUME 45

BY MR. DAVIS:

2 Q. Mr. Cole, was that gold paint that you saw on the
3 clothing?

4 A. Yeah. Yes, sir.

5 MR. DAVIS: I think that's all the questions I
6 have, Your Honor, on that point.

7 THE COURT: Do you have any questions,
8 Mr. Johnson?

9 MR. JOHNSON: I do not. But at this time,
10 Your Honor, I would like to ask for a mistrial. The State was
11 on notice that before bringing out any prior or previous bad
12 acts, that we were instructed that we would have hearings on
13 those before they were deemed to be admissible.

14 The State has already indicated that this
15 witness has knowledge about my client's use of cocaine, that
16 that was -- that is already in front of the jury. It was done
17 improperly, and we ask that the jury be instructed to
18 disregard what was said about cocaine, and then we will ask
19 that the Court grant a mistrial.

10:38A 20 THE COURT: All right. Well, I -- let me ask
21 you, do you have any objection at this point to what you
22 believe the testimony is going to be about the paint?

23 MR. JOHNSON: Your Honor, we would re-urge our
24 objection to it as being a -- the basis of it being a prior
25 bad act.

DECEMBER 2, 1997

VOLUME 45

1 We also would object at this time that it is not
2 relevant at this point, and those would be our objections at
3 this time to that testimony.

4 THE COURT: All right. Those objections are
5 overruled. Your request for a mistrial is denied.

6 MR. JOHNSON: Your Honor, we would also, just to
7 clarify the record, it certainly suggests a bad act, and it is
8 a bad act that has not been given to us in the State's notice
9 of intent to use bad acts, and that's clearly what the State
10 is trying to suggest is a bad act, and that is that this paint
11 was being used -- I'm phrasing it "intoxicant" -- it would be
12 illegal and would be a bad act, but we have not been given the
13 proper notice as the Court has ordered to be able to allow his
14 testimony at this point.

10:39A 15 THE COURT: Mr. Johnson, I believe you're suggesting that
16 the fact that you saw paint on Mr. Wright's pants
17 at that time is a bad act, is that correct?

18
19 THE WITNESS: Yeah. Well, it's like the paint
20 I've got all over my pants right now. I didn't think much of
21 it.

22 THE COURT: Are you going to change your
23 testimony when I bring the jury back in?

24 THE WITNESS: No, Sir.

25 THE COURT: All right.

DECEMBER 2, 19 97

VOLUME 45

1 THE WITNESS: Why should I?

2 THE COURT: Overruled.

3 Jan?

4 MR. DAVIS: Just quickly, through this witness,
5 I am going to offer State's Exhibit Number 12. Now, State's
6 Exhibit Number 12 is a portion of the VFW Lodge logbook. The
7 Court has the original. That's been filed at, you know, far
8 more than 14 days prior to trial, and rather than using the
9 original, with the defense counsel's permission, I'd just
10 simply like to, with the jury, just simply tender or offer the
11 portions that are relevant to March the 20th, which would be
12 that Thursday evening. So I just want to see if there's any
13 problem with that, or if I need to pull the original out of
14 the court's file before we -- we have the jury brought back
15 in.

10:40A 16 MR. JOHNSON: Can we see the original? Thank
17 you. (Examining document)

18 THE COURT: All right. So the record's clear,
19 the Court anticipates that there will be future witnesses that
20 may testify to extraneous in regards to the notice and the
21 use of extraneous and unadjudicated offenses that are
22 contained in the court's jacket. If the State would simply
23 let the Court know at the time they intend to go into
24 those, --

25 MR. DAVIS: Yes, sir.

DECEMBER 2, 1997

VOLUME 45

1 THE COURT: -- we'll have a hearing outside the
2 presence of the jury.

3 MR. DAVIS: Yes, sir. With regards -- while
4 Mr. Johnson is looking through the Court's file, I will tell
5 the Court that the next witness that I anticipate will be
6 Llewelyn Mosley. He will testify concerning Mr. Wright's
7 possession and use of cocaine on or about March 20th and 21st,
8 1997.

9 That extraneous offense is listed in the State's
10 first amended notice of intent to use extraneous and
11 unadjudicated offenses, which was filed with this court, it
12 appears, on September the 16th of 1997.

13 And, in addition to that, I would point out to
14 the Court that months ago that I delivered to Mr. Johnson and
15 Mr. Brauchle the written statement of Llewelyn Mosley, wherein
16 he states that -- basically the same facts concerning the use
17 and possession of cocaine.

10:42A 18 Also, certainly, that -- Mr. Mosley's testimony
19 would go into the defendant's unauthorized use of a motor
20 vehicle. Again, that's listed in the same first amended
21 notice of intent to use extraneous and unadjudicated offenses.
22 That's number 23, listed on that notice.

23 I would also point out to the Court with regards
24 to the gold-paint testimony, that if you look at the same
25 first amended notice of intent to use extraneous and

DECEMBER 2, 1997

VOLUME 45

1 unadjudicated offenses, that I have as number 21, listed on or
2 about January through March of 1997, possession and use of
3 inhalants. Certainly that would include paint.

10:43A 4 MR. JOHNSON: What number was that, Greg?

5 MR. DAVIS: Let's see, the inhalants?

6 MR. JOHNSON: Yes, sir.

7 MR. DAVIS: That's number 21.

8 MR. JOHNSON: Well, Your Honor, --

9 MR. DAVIS: I'm sorry. I might also point out
10 that my notice of intent to use extraneous and unadjudicated
11 offenses which was filed with the Court on July the 11th,
12 1997, also listed possession and use of cocaine on or about
13 March 20th and 21st of 1997, as well as -- that was number 23
14 on that notice.

15 Number 24 on that notice is the unauthorized use
16 of a motor vehicle on or about March the 21st of 1997. Again,
17 I would anticipate Mr. Mosley testifying to those facts,
18 Your Honor.

10:44A 19 MR. JOHNSON: Your Honor, I will start by
20 responding to --

21 THE COURT: Well, let's don't even respond to
22 anything about a witness who hasn't gotten here. We'll have
23 that hearing when --

24 MR. JOHNSON: Well, that's something I'm talking
25 about.

DECEMBER 2, 1997

VOLUME 45

1 THE COURT: Okay.

2 MR. JOHNSON: I'm talking about what we started
3 with, and that is the introduction of these business
4 records --

5 THE COURT: Okay.

6 MR. JOHNSON: -- that the State intends to
7 introduce through this witness. And, Judge, the affidavit, or
8 the original that is in the file that the State claims are the
9 originals of these records -- and that is the basis of them
10 introducing the records at this time through this witness --
11 we would object to these because they clearly are not the
12 originals, and just by physical inspection of them, you can
13 see that they are not the original business records.

14 MR. DAVIS: I'm sorry. Mr. -- if Mr. Johnson
15 would have read the last sentence to you, Your Honor, on the
16 affidavit, I think it would be a lot clearer.

17 "The records attached hereto are the original or
18 the exact duplicates of the original," which I think the Court
19 will find tracks the statute, and now that I have the
20 originals in my possession, I will go ahead and offer those
21 instead of the copies that I've just mentioned to the Court.

10:46A 22 MR. JOHNSON: Well, they're clearly not
23 originals. He keeps referring to them as originals. We would
24 object.

25 THE COURT: Mr. Cole, would you do me a favor?

DECEMBER 2, 1997

VOLUME 45

1 Why don't you step back to the witness room.

2 If the attorneys would come back to my chambers
3 for a moment,

4 (Recess taken.)

10:49A 5 (Court reconvened; jury not present.)

6 THE COURT: All right. On the record outside
7 the presence of the jury.

8 So that the parties are clear on the Court's
9 position, in regards to the testimony of Donald Cole, it's my
10 understanding that the State wishes to proceed asking Mr. Cole
11 questions only about paint that has appeared on -- allegedly
12 appeared on Mr. Wright. The defense has objected. I'll
13 overrule that objection. The State may proceed with that line
14 of questioning.

10:51A 15 In regards to the Exhibit Number -- if you'd
16 help me here, Mr. Davis?

17 MR. DAVIS: This would be State's
18 Exhibit Number 12. This would be the four pages of the
19 records kept by the VFW Post 8913.

20 THE COURT: Okay. And your objection to those,
21 Mr. Johnson, is?

22 MR. JOHNSON: Your Honor, our objection was, is
23 that they are being referred to as the original copies, and
24 they were not the original copies, so we'd only ask that they
25 be referred to as copies rather than the original.

DECEMBER 2, 19 9 7

VOLUME 45

1 THE COURT: With that understanding, you have no
2 objection to their introduction -- is that correct? -- that
3 you wish to offer at this time.

4 MR. JOHNSON: That's all we have, Your Honor.

5 THE COURT: All right. Then notwithstanding any
6 objection you might come across between now and the time
7 they're offered, they appear that they would be admissible.
8 Mr. Davis, please refer to them as the State's Exhibit, or
9 copies of the logs, or the original court filing, but not the
10 original sheets from the VFW Hall.

10:52A 11 MR. DAVIS: Yes, sir.

12 THE COURT: Jan, if you'd get Mr. Cole.

10:54A 13 Is the State ready for the jury?

14 MR. DAVIS: Yes, Your Honor.

15 THE COURT: Defense?

16 MR. JOHNSON: We're ready, Your Honor.

17 THE COURT: Jan.

18 MR. JOHNSON: Your Honor, I will remind the
19 Court that in going through the documents that I received
20 yesterday, I found out that there is a video that applies to
21 cross-examination of this witness, and I would ask for a
22 recess before I cross-examine this witness and be allowed to
23 view that video.

24 THE COURT: I understand. I'll try to complete
25 the direct examination before we take a lunch break.

DECEMBER 2, 1997

VOLUME 45

1 MR. JOHNSON: Thank you, Your Honor.

2 (Jury panel present.)

10:55A 3 THE COURT: You may be seated.

4 Mr. Davis, subject to the previous agreements
5 and rulings, you may continue.

6 THEREUPON,

7 DONALD COLE

8 was recalled as a witness by the State, having been previously
9 first duly sworn by the Court, was examined and testified as
10 follows:

11 DIRECT EXAMINATION - CONTINUING

12 BY MR. DAVIS:

13 Q. Mr. Cole, let me just ask you whether you ever had
14 occasion to see Mr. Wright when he appeared to have paint on
15 his clothing, sir?

16 A. Yes, sir.

17 Q. Okay. And where did you -- on -- on what part of his
18 clothing or body did you see the paint?

19 A. Well, on his shirt and a little bit on his face.

20 Q. Okay. Do you remember the color of the paint?

21 A. It looked like a gold color.

22 MR. JOHNSON: Your Honor, again I'd ask that the
23 jury be instructed to disregard the last question that was
24 asked prior to him being taken out of the courtroom.

10:56A 25 THE COURT: La4^s^a4i#->§«s¥tei*enC#fc^^

DECEMBER 2, 1997

VOLUME 45

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MR. JOHNSON Your Honor, we'd also like a running objection to this line of questioning, a continuing objection, Your Honor.

THE COURT: You may have that.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: You may continue, Mr. Davis.

MR. DAVIS: Thank you.

BY MR. DAVIS:

Q. Mr. Cole, I understand -- going back to the VFW Lodge, you said that they keep a log, right?

A. Yes, sir

Q. And as the guests come in, they sign into that log; is that right?

A. Yes, sir That's the only way they'll get served.

MR. DAVIS: Your Honor, at this time we'll offer State's Exhibit Number 12

MR. JOHNSON: No objections.

THE COURT: State's Exhibit Number 12 will be admitted for all purposes.

MR. DAVIS: May I publish this to the jury?

THE COURT: You may.

MR. DAVIS: Ladies and gentlemen, what I have here is State's Exhibit Number 12, will be four of the

DECEMBER 2, 1997

VOLUME 45

1 records -- four pages of records from the VFW Post 8913 at
2 Lancaster. What you'll see, there are two dates. One is
3 3/19/97, and on the second page of the records you'll see
4 where we began with 3/20/97.

10:57A 5 On the third page, still on 3/20/97, you'll see
6 certain names for guests. Included in that will be the name
7 of Gregory Wright.

8 MR. JOHNSON: Your Honor, we're going to object
9 to the State testifying to the jury with those records at this
10 time.

11 THE COURT: All right. Overruled,
12 BY MR. DAVIS:

13 Q. What you'll see will be the name of Greg Wright under
14 that date. You'll see the name of Brenda Vick. You'll also
15 see the name of John Adams.

16 MR. DAVIS: I'll pass this witness, Your Honor.

17 THE COURT: Ladies and gentlemen, -

18 MR. DAVIS: If we could approach the bench for
19 just a moment, please?

20 THE COURT: Certainly.

10:58A 21 (Off-the-record bench conference was had.)

11:00A 22 THE COURT: Ladies and gentlemen, to reward you
23 for your very hard morning, we're going to take a very early
24 lunch break. It is 11:06.

25 Based on the information I've received, we will

DECEMBER 2, 1997

VOLUME 45

cut lunch back to an hour. As I told you before, I won't go less. The attorneys do have things they need to take care of at lunch. So if you'll be back in the jury room by certainly 12:10, I would appreciate it.

(Jury not present.)

THE COURT: Mr. Cole, you're excused until 12:10.

Sir, would you raise your right hand, please?

(Llewelyn Mosely was sworn by the Court.)

THE COURT: All right. You may lower your hand. I'm going to ask that you give your name in just a minute to my court reporter, spelling your first name and your last name.

Let me tell you that you having been sworn in, it means that neither the State nor the defense is required to issue a subpoena to you to get you down here, okay? It appears that you came with Mr. Jordan, so I'm sure he'll tell you when you need to be back.

If you leave the courthouse before you're to testify, or if you're to testify on a day other than today, make sure you have his name and phone number and he has yours so that y'all may contact each other in case conditions change. Please be sure to be here when he tells you to be here, otherwise, I've got to send somebody to get you, okay?

All right. If you'd spell your first and last

DECEMBER 2, 1997

VOLUME 45

1 name for my court reporter, I'd appreciate it.

2 THE WITNESS: First name Llewelyn,

3 L-l-e-w-e-l-y-n. Mosley, M-o-s-l-e-y.

11:04A 4 THE COURT: All right.

5 (Luncheon recess taken.)

12:12P 6 (Court reconvened; jury not present.)

7 THE COURT: All right. Let the record reflect
8 we're outside the presence of the jury.

9 In regards to the videotapes that the defense
10 has been attempting to view over the lunch hour, it's my
11 understanding, Mr. Johnson, that you wish to go ahead in your
12 cross-examination of Donald Cole, and then view the videotapes
13 this evening, and should something arise which you wish to ask
14 him about, then be given the opportunity to recall him for
15 further cross-examination; is that correct?

16 MR. JOHNSON: That is correct, Your Honor.

17 THE COURT: All right. It's my understanding
18 the State has no objection to that; is that correct?

19 MR. DAVIS: That's correct, Your Honor.

20 THE COURT: And, previously, I've asked the
21 State of Texas if they knew of any other documentary evidence,
22 be it written records, audio records, video records, computer
23 records that they intend to use or have in their possession
24 that might be of use in the case that the defense has not been
25 given the opportunity to review, and, Mr. Davis, I believe you

DECEMBER 2, 1997
VOLUME 45

indicated that --

12:13P 2 MR. DAVIS: Well, I've indicated no, and I'll
3 say this: On the Texaco tape, I may have access to a tape
4 that's a little bit better quality. I mean, what I've done is
5 I've asked my investigator, Willie Richardson, to see if it's
6 available, and if so, I've instructed him to make whatever
7 arrangements are necessary so that it can be up here, you
8 know, tomorrow morning. So, you know, I'll see if that's
9 available. If it is, I'll certainly get it here, because I
10 know the quality on that Texaco tape is not very good, because
11 it's a security camera. So I'll see if I can do that. If so,
12 it will be here tomorrow morning.

13 MR. JOHNSON: Is there any chance we can get it
14 today?

15 MR. DAVIS: I don't think so.

16 THE COURT: Mr. Johnson, is there anything else
17 that you can think of that you believe you're going to need to
18 view this evening before tomorrow's testimony begins?

19 MR. JOHNSON: I will tell the Court at this time
20 that there is some -- there are some segments on the other
21 videotape that was given to me. They told me about it
22 yesterday. We actually got to look at part of it this morning
23 at lunch, Mr. Jordan and I viewed a few minutes of it, and on
24 that videotape is the arrest, the raid of the dope house on
25 Denley, and it appears there's an arrest, or at least a

DECEMBER 2, 1997

VOLUME 45

1 detention, and some interrogation of Llewelyn Mosley, and
2 maybe others, that I will -- may be in the same situation in
3 terms of wanting to be able to recall Mr. Mosley for -- for
4 further cross-examination if we get to him today and we get to
5 that point.

12:15P 6 THE COURT: All right. So the record's clear,
7 this tape we're referring to as the other tape, let's refer to
8 tape one as the Texaco tape; the other tape will be the Mosley
9 tape. The Mosley tape is now available for viewing this
10 evening; is that correct?

11 MR. JOHNSON: That's correct.

12 THE COURT: All right. The State has no
13 objection to the defense recalling Mr. Mosley if they wish to
14 continue cross-examination tomorrow, should it begin today.

15 MR. DAVIS: No objection.

16 THE COURT: All right. In that case, the only
17 other thing that the Court views as possibly outstanding would
18 be any report from Gene Screen, so I'll simply order the State
19 to provide a copy of that to the defense by 5:00 p.m. today,
20 and if someone at Gene Screen is unable to produce that
21 report, then I'll deal with that through the sheriff's
22 department.

23 MR. JOHNSON: Just for the record, Judge, I will
24 remind the Court that -- that just prior to starting this
25 trial yesterday morning, December 1st, the State did, in fact,

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 give us a great many documents that have been referred to as
2 being over an inch thick. Now I have -- I have attempted to
3 go through those documents. I know Mr. Brauchle has, and my
4 investigator as well. I will continue to do that again
5 tonight.

12:16P 6 If anything appears to me during investigating
7 those documents, I will try to report to the Court in the
8 morning if there's anything else that I find in there that I
9 will need. I will certainly make every attempt to be able to
10 tell the Court at the earliest possible time.

11 THE COURT: All right. Is the State ready for
12 the jury?

13 MR. DAVIS: The State's ready, Your Honor.

14 THE COURT: All right. Jan, if you'll give us
15 just one minute.

16 THE BAILIFF: Okay.

12:20P 17 MR. JOHNSON: We're ready, Your Honor.

18 (Jury present)

19 THE COURT: All right. You may be seated.

20 Mr. Cole, you remain under oath.

21 Mr. Johnson, you may proceed.

12:21P 22 MR. JOHNSON: Thank you, Your Honor.

23 THEREUPON,

24 DONALD COLE

25 was recalled as a witness by the defendant, having been

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

previously first duly sworn by the Court, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Mr. Cole, good afternoon.

A. Good afternoon.

Q. Mr. Cole, I talked to you for a minute or so yesterday; isn't that true?

A. Yes, sir.

Q. It was very brief, wasn't it?

A. Yeah.

Q. Okay. And one of the things I asked you at that time was whether you could recall what Mr. Wright was wearing at the VFW; do you remember that?

A. Yes, sir.

Q. And you told me that you thought he was wearing blue jeans, but you told me you weren't --weren't entirely sure of that; that it might have been something different; isn't that true?

A. Well, what I meant was a dark pair of jeans. I wasn't sure if it was blue jeans or black. You had asked whether it was a pair of black jeans or not, and I said I wasn't sure about that.

Q. Okay. So, basically, you can't really say whether or not they were blue or black jeans, and that's what you told me

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

yesterday; isn't that correct?

12:22P 2 A. Yeah. They were just a new pair of jeans is all

3

4 Q. Okay. The point is, is they might have been black,
5 or they might have been blue. They were just new-looking
6 jeans.

7 A. It's quite possible; yes, sir.

8 Q. Okay. Sir, you've testified that - that you worked
9 at the Texaco; is that correct?

10 A. Yes, sir.

11 Q. And you've testified that that's where you came to
12 know Mr. Wright; is that correct?

13 A. Yes, sir.

14 Q. And isn't it true that Mr. Wright helped you do some
15 of your duties around the Texaco?

16 A. Yeah, helped me with trash sometimes, sweeping and
17 mopping.

18 Q. Okay. Would he help you clean the bathrooms?

19 A. I think on one or two occasions he did.

20 Q. Okay. He helped you empty the garbage.

21 A. Yeah.

22 Q. Helped you clean up the counters, right?

23 A. (Nods head.)

24 Q. Is that yes?

25 A. Yes, sir.

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 Q. Fill the ice machines sometimes.

2 A. Yeah. Fill up the buckets and take them out there.

3 Like if I was doing paperwork or getting paper -- shutting all
4 the stuff down, getting my readings and stuff for the night.

12:23P 5 Q. Sometimes do some mopping around the bathroom and the
6 store.

7 A. Yes, sir.

8 Q. Okay. Clean the floors.

9 A. Yes, sir.

10 Q. And, basically, he was just -- he helped you out.

11 A. Yeah.

12 Q. And he wasn't an employee there, was he?

13 A. No, sir.

14 Q. I mean, he just happened -- he was around there, he
15 was just the type of person that would come up and say, hey,
16 can I give you a hand and help you out and do some work for
17 you?

18 A. Yeah, pretty much. I mean, like I said, when I met
19 him, we got to talk and stuff, and getting pretty well
20 acquainted, and go out and have drinks and stuff, and he'd
21 come over and help me clean up, and then we'd go out and have
22 drinks afterwards over at the "V".

23 Q. So you had more or less a friendly relationship,
24 didn't you?

25 A. Pretty much.

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 19 97
VOLUME 45

1 Q. Now let's go to the VFW on the night of March the
2 20th. You testified that when you got there, Mr. Wright was
3 already there with this lady that you've identified as
4 Miss Vick; is that correct?

12:24P 5 A. Yes, sir.

6 Q. Okay. Did -- did you ever -- have you ever referred
7 to her in your conversations with the investigators as the --
8 as the "Bible thumper lady"?

9 A. I might have.

10 Q. Okay.

11 A. Because I -- I've been -- my family's been termed
12 that, because I grew up in a First Assembly of God Church.

13 Q. I'm not suggesting that that's necessarily a bad
14 thing to call somebody, but, I mean, that might have been a
15 term that you might have used to refer to her; is that right?

16 A. It's quite possible. I might have.

17 Q. And would you have done that because you knew from
18 your experiences around her that she was a very religious
19 person?

20 A. Yes, sir.

21 Q. Okay. And how did you know that from your
22 experience?

23 A. Just from, more or less, that night talking to her
24 and stuff. She kept on referring to the Bible, and we talked
25 about the fact that I grew up in the church.

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

2:25P 1 Q. Now, do you recall what type of shirt Mr. Wright was
2 wearing that evening?

3 A. Like -- like I said, like a dress shirt, kind of like
4 a western-type shirt.

5 Q. A nice --

6 A. A button-up.

7 Q. -- button-up -- kind of a cowboy western-type
8 button-iup nice shirt; is that correct?

9 A. Uh-huh. Yeah.

10 Q. Now, you -- you testified that you actually shared
11 some beer with Mr. Wright that night, -- is that correct? --
12 some of your beer?

13 A. Yes, sir.

14 Q. Do you recall dancing that night at the VFW?

15 A. It's quite possible. I do on occasion.

16 Q. They have dancing there, don't they?

17 A. Yeah.

18 Q. Okay. Do you recall that Mr. Wright danced with
19 Miss Vick that night?

20 A. No, I don't believe so.

12:26P 21 Q. You don't recall -- you -- you danced with Miss Vick
22 that night, do you remember?

23 A. Not really. I mean, because like I said, I pretty
24 much was there till close, and when I stay there till close, I
25 tend to have a couple too many, that's why I usually get a

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

friend to drive me home.

2 Q. So you might have been feeling good, might have asked
3 Miss Vick to dance, and might not just have a clear
4 recollection of everything.

5 A. I hadn't been there that long. About an hour, an
6 hour-and-a-half before they left, --

7 Q. Okay.

8 A. -- because it was right before close when they left.

9 Q. All right. And what time does the VFW close?

10 A. It varies, depending on how much of the clientele's
11 there. When it gets -- usually when it gets down to about
12 four or five people, they'll shut down. Sometimes it's like
13 that around about 12:00 o'clock. Sometimes it's 2:00 or 3:00,
14 or, well, about 2:00 o'clock in the morning, quarter till 2:00
15 when they pull all the drinks and start running everybody out.
16 It just varies, depending on how many people are there.

12:27P 17 Q. And it's your recollection that you stayed there that
18 night till they closed; is that correct?

19 A. Pretty close to it. Helped do like I normally do:
20 Dumping the trash, and emptying most of the ashtrays.

21 Q. All right. Do you recall speaking to some -- some
22 investigators about -- about this case prior to you
23 testifying?

24 A. Yeah.

25 Q. Okay. Do you recall telling those investigators

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 that -- that you had a conversation with Mr. Wright, and
2 Miss Vick, and -- that involved you being invited over to
3 breakfast at their house, at Miss Vick's house later that
4 night?

5 A. Yeah.

6 Q. Okay.

7 A. Well, the next day, or something like that, but I had
8 to work.

9 Q. Well, actually, weren't you invited over for
10 breakfast later that evening?

11 A. I don't believe so. It may have -- she may have been
12 talking about that that evening. She said in -- that I was
13 invited to come over for breakfast. I just -- I guess I
14 assumed the next day, but I knew I had to go home and get some
15 sleep, because I had to be at work the next morning, or that
16 morning, actually, by that time.

12:29P 17 Q. Who was -- were you sitting at a table?

18 A. Yeah.

19 Q. And was the table occupied by you, and Miss Vick, and
20 Mr. Wright?

21 A. Uh-huh.

22 Q. So these conversations took place with the three of
23 you there.

24 A. Yeah. Pretty much. And the jukebox is right next --
25 right by the table there.

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 Q. Was there anybody else at the table with you during
2 this time?

3 A. No. There may have been some people over at one of
4 the other tables over there, and people around the bar, but I
5 don't believe there was anybody else at the table.

6 Q. All right.

7 A. Unless they were sitting down by the jukebox, you
8 know, picking songs, or whatever. Because there's usually a
9 chair down by it. Every once in awhile someone sits there,
10 but outside of that, no.

11 Q. Do you remember a conversation that night about
12 Mr. Wright having some future employment plans?

13 A. At one point, yeah, because I had talked to a friend
14 of mine that I do work for on occasion, and we was fixing to
15 go out of town to Waco on a job, and I had asked him if he
16 could use the extra hand, me and him, and - me and Mr. Wright
17 had talked about it, and I told him I'd check with my boss and
18 find out. He said, well, let me get the contract confirmed.

19 As a matter of fact, I talked to Miss Vick about --
20 talked to him about that in front of Miss Vick.

12:30P 21 Q. Okay. So part of the conversation was about
22 Mr. Wright's plans to seek employment.

23 A. Yes, sir.

24 Q. Part of the conversation was back about the fact that
25 Mr. Wright was - was currently residing with Miss Vick; isn't

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

that true?

2 A. Yes, sir.

3 Q. And part of the conversation was about the fact
4 that -- that he was residing there and helping her do things
5 around the house.

6 A. Handiwork, as she'd put it.

7 Q. And also about him trying to find some other -- some
8 other employment; is that correct?

9 A. Pretty much, yeah. I was the one that brought up the
10 employment part.

11 Q. All right. And did it appear to you that Miss --
12 Mr. Wright and Miss Vick had a good relationship?

13 A. It seemed that way.

14 Q. Okay. They seemed to be getting along?

15 A. Yes, sir.

16 Q. They seemed pretty happy about -- Mr. Wright probably
17 seemed pretty happy about his situation now being with
18 Miss Vick, didn't he?

19 A. Well, as far as working and everything, yeah. Didn't
20 get too much more personal about it.

21 Q. But from -- from your knowledge of -- of Mr. Wright,
22 you'd seen him. He'd helped you work. He looked like the
23 type of person who would -- would be willing to do work.

12:31P 24 A. Yeah. As far as I knew.

25 Q. Okay. Do you recall another female being at the

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

table with y'all that evening?

12:33P 2 A. Well, I know several of them that go up there that
3 pop by just talking to me every once in awhile.

4 Q. Do you know -- do you know Sylvia Parsons?

5 A. Sylvia Parsons. The name sounds familiar, but I
6 can't place a face to it.

7 Q. Would you know anybody that would -- that would be
8 Sylvia Parsons' next-door neighbor who might have been at the
9 table with you that night?

10 A. Well, without putting a face with the name, I can't
11 really say, to be honest.

12 Q. Sir, do you ever work with paint?

13 A. Excuse me?

14 Q. Sir, do you ever work with paint yourself?

15 A. Yes, sir, I do subcontract work where I do painting
16 and finish carpentry and such, sheetrocking.

17 Q. Okay. When you work with paint, does it sometimes
18 get on your clothing?

12:34P 19 A. Yes, sir.

20 Q. In fact, aren't you, in fact, wearing clothing right
21 now that has some paint on it?

22 A. Yes, sir. Pants and my shoes.

23 MR. JOHNSON: We'll pass the witness, subject to
24 recall, Your Honor.

25 THE COURT: Any additional questions, Mr. Davis?

CROSS of DONALD COLE by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 MR. DAVIS: No, Your Honor.

2 THE COURT: All right. Mr. Cole, you may step
3 down.

4 Any reason why this witness may not be excused,
5 subject to the prior ruling?

6 MR. DAVIS: No, Your Honor.

7 MR. JOHNSON: No, Your Honor.

8 THE COURT: Mr. Cole, you're free to go.

9 Please make sure that your availability is
10 secured for the future; someone has your number.

11 THE WITNESS: Okay.

12 THE COURT: The State may call its next witness

13 MR. JORDAN: The State would call Llewelyn
14 Mosley.

15 MR. JOHNSON: May we approach for a minute,
16 Your Honor?

17 (Off-the-record bench conference was had.)

18 THEREUPON,

19 LLEWELYN MOSLEY

20 was called as a witness by the State, having been previously
21 first duly sworn by the Court, was examined and testified as
22 follows:

12:36P 23 THE COURT: Mr. Mosley, I believe that
24 previously you were sworn in. Let me tell you, that chair
25 doesn't move a whole lot. It just goes back and forth, so if

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

1 you'll pull that microphone up, I'll ask you to speak loudly,
2 clearly, and slowly into that microphone.

3 Mr. Davis, you may proceed.

4 MR. JORDAN: Yes, sir.

5 DIRECT EXAMINATION

6 BY MR. JORDAN:

7 Q. Sir, would you state your name, please?

8 A. Llewelyn Mosley.

9 Q. And, Mr. Mosley, how old a man are you?

10 A. 45.

11 Q. You look a little tired this afternoon. Have you
12 been down here all day?

13 A. Yes, I have.

14 Q. And what kind of work do you do, Mr. Mosley?

12:37P 15 A. Right now I'm laying linoleum and carpet.

16 Q. Okay. And what hours do you usually work?

17 A. I have no certain hours. I more or less all day, and
18 sometime at night.

19 Q. Okay. Late at night?

20 A. Yes.

21 Q. All right. I want to be right up front with the
22 jury, Mr. Mosley. You've had some problems with the law
23 before; is that correct?

24 A. Yes, I have.

25 Q. In fact, in 1988, you were convicted of burglary of a

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 19 9 7
VOLUME 45

vehicle and possession of a controlled substance; is that right?

A. Yes.

Q. In 1990, you also had a conviction for possession of a controlled substance; is that correct?

A. Yes.

Q. Are you currently on parole or anything, or are you completely through with that?

A. I'm finished with everything.

Q. Are you married or single?

A. I'm married.

Q. Okay. Is your wife here today?

A. Yes, she is.

Q. Okay. Is she seated in the courtroom back here, or did she go back out?

A. No, she -- she went back outside.

Q. Okay. And where do you live, Mr. Mosley?

A. 614 North Denley Drive. That's in Oak Cliff.

Q. Okay. Is that near Townview High School?

A. Yes, it is.

Q. The new magnet high school?

A. Yes.

Q. About how far away do you live from that high school?

A. Oh, I guess about three blocks.

Q. Okay. You're -- Denley runs right along the side of

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Townview High School; is that correct?

A. Yes, it does.

Q. And you're just right down the street from the high school, then; is that right?

A. Yes.

Q. Do you know an individual by the name of Maverick?

A. Yes, I do.

Q. Do you see that person here in court today?

A. Yes.

Q. Okay. Would you point him out for the jury, please?

A. Okay. He's right there (indicating).

Q. Okay. Can you describe what he's wearing today?

A. Gray suit.

Q. Okay. What color shirt has he got on?

A. Blue.

Q. All right. And is he the individual seated at the far end of the table down there today?

A. Yes, he is.

MR. JORDAN: All right. Your Honor, let the record reflect the witness has identified the defendant in open court.

THE COURT: It shall.

BY MR. JORDAN:

Q. Mr. Mosley, how do you know the defendant, or as you know him, Maverick?

DIRECT OF LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

1 A. Through a bunch of homeless friends that come by my
2 house.

3 Q. Okay. Homeless friends.

4 A. Yes.

5 Q. Okay. Now, you're from Dallas; is that correct?

6 A. Yes, I am.

7 Q. Where did you go to high school?

8 A. Franklin D. Roosevelt.

9 Q. Did you graduate from high school?

10 A. Yes, I did.

11 Q. Okay. And did you go to school after that?

12 A. Yes, I did.

13 Q. Where?

14 A. I had a scholarship to UCLA, and then I lost it and
15 went to Portland State University where I graduated.

16 Q. Did you get a bachelor's degree?

17 A. Bachelor and masters.

12:40P 18 Q. Okay. In what subject?

19 A. English.

20 Q. Okay. Now, the people that you're referring to, some
21 of the homeless people, how did you meet them?

22 A. Some of them went to school with me, and some stayed
23 down in the area where I -- where I stayed.

24 Q. Okay. And did you open your house up from
25 time-to-time to let people come and stay with you, --

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

1 A. Yes, I did.

2 Q. -- people that you knew?

3 People that you knew?

4 A. Yes, and more or less friends of those that -- that I
5 didn't know, but I later, you know, came to know.

6 Q. Okay. So you let people you know come back to your
7 house, and they'd bring people with them; is that correct?

8 A. Yes.

9 Q. Is that how you met Maverick?

10 A. Yes, it is.

11 Q. One of the people that you knew brought him to your
12 house?

13 A. Yes.

14 Q. All right. Now, how long have you known Maverick?

15 A. Well, right now it's been close to about two years.

16 Q. Okay. At that time, the time we're talking about in
17 March of 1997, would have been a year and-a-half, thereabouts?

12:41P 18 A. Yes, uh-huh.

19 Q. Okay. Did you also know an individual who went by
20 the name of Zigzag?

21 A. Yes.

22 Q. How did you meet this person named Zigzag?

23 A. Through the same way. Through some of the same
24 friends that brought Maverick by.

25 Q. Okay. And the names Maverick and Zigzag, is it your

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

1 understanding that those are just street names?

2 A. Yes, it is.

3 Q. Okay. That's not their real names; is that right?

4 A. No, it isn't.

5 Q. In fact, do you know Maverick's real name?

6 A. Now I do, yes.

7 Q. Okay. But you didn't back in March of 1997?

8 A. No.

9 Q. All right. I want to direct your attention to the
10 evening of March 21st, it would have been a Friday, and I'll
11 ask you if you saw Maverick that evening?

12 A. Yes, I did.

13 Q. Okay. Where did you see him?

14 A. He came to my house.

15 Q. And do you recall about what time that was?

12:42P 16 A. Oh, I guess around, about 5:00 o'clock that evening,
17 first.

18 Q. Well, let me back up one more day, Thursday, which
19 would have been March 20th.

20 A. Okay, yeah.

21 Q. That's the night I'm referring to. I may have
22 confused you.

23 A. Yes.

24 Q. I was confused on the date. Was that the evening you
25 saw Maverick with someone else at your house?

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

1 A. Yes, it is.

2 Q. Okay. Who was he with at that time?

3 A. A woman. I don't know her name, but --

4 Q. Were they in a car, or --

5 A. Yes, they were in a car. Yes.

6 Q. What kind of car were they in?

7 A. A white Chrysler.

8 Q. Did you ever hear the woman's name being mentioned?

9 A. No, I didn't.

10 Q. Was she ever introduced to you?

11 A. Vaguely, yes, but, you know, I don't remember her

12 name.

12:43P 13 Q. Okay. Was -- can you describe her?

14 A. Well, I guess she's about 55, 56, and I think she was

15 blond orf brunet

16 Q. Okay. Let me ask you to take a look at the

17 photograph over here to your right. Does that look like the

18 lady that came to the house with Maverick?

19 A. No.

20 Q. Do you need glasses?

21 A. No.

22 Q. Close? Okay. But you don't think that resembles her

23 very well?

24 A. No.

25 Q. Okay. But the lady that he came with was driving a

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

white Chrysler four-door?

A. Yes.

Q. Okay. What did they come to your house for, Mr. Mosley?

A. They came in to buy some crack.

Q. When you say "crack," are you referring to crack cocaine?

A. Yes.

MR. JOHNSON: Your Honor, can we approach?

THE COURT: Let's do this. Ladies and gentlemen, I'm going to have to take up some things outside the presence of the jury, so if you'd step back to the jury room for a few minutes.

(Jury not present.)

THE COURT: Before we proceed to any hearing, I believe that before this witness testified, and on today's date, I made it very clear to the State of Texas that before going into anything that would require a hearing, I just wanted them to approach the bench. I just want them to remember that in case we have any further witnesses.

MR. DAVIS: Well, if I could, I mean, we went over this at length before this man ever, ever got on the stand, and we informed the Court and defense counsel again exactly what this witness intended to testify to, and I -- and I recall testifying, or -- or relating to the Court that he

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

would testify that this defendant came over to purchase crack cocaine. I mean, it's no secret. I don't know why there's any -- any real mystery here about what this man's going to testify to. It was made abundantly clear to everyone. And, you know, Mr. Johnson may shake his head, but --

MR. JOHNSON: Oh, I agree with you.

THE COURT: I agree with everything you said, but the problem that I have is that the Court made it abundantly clear that everyone knew this testimony was coming, and I had instructed you to approach the bench so that if the defense wanted to have some sort of hearing, they would be allowed to have it. That's -- I agree with everything you said, that's why I made that instruction, so, ...

MR. DAVIS: Well, I'm just --

THE COURT: Well, just in that regard, should we have any other witnesses that are going to testify to this, y'all know it, defense knows it, I know it. It is proper for them to have a hearing before it occurs. So, I will reiterate.

If another witness is going to testify about an extraneous offense, whether notice has or has not been given, whether the defense knows, whether you know, whether I know, I would appreciate it, or actually, I -- I won't appreciate it. I'm going to instruct the State that it is my order to approach the bench and let us know that this testimony is

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

1 about to arise so we can have a hearing.

2 MR. DAVIS: And I certainly -- I understand
3 that.

12:47P 4 THE COURT: So you have no question about that.

5 MR. DAVIS: No, and can I --

6 THE COURT: Do you have any questions,
7 Mr. Jordan?

8 MR. JORDAN: No, sir.

9 MR. DAVIS: And I -- can I --

10 THE COURT: Excuse me, Mr. Davis.

11 Mr. Pask, do you have any questions?

12 MR. PASK: No, Your Honor.

13 MR. DAVIS: All right. If I could be heard.

14 My -- my intent in relating that to the Court
15 was to do that, Your Honor, so that we wouldn't have to take a
16 break so that, you know, we could have a hearing prior to this
17 witness testifying.

18 THE COURT: I don't see any way we can have a
19 hearing on what the witness's testimony will be without the
20 witness being here to tell us.

21 MR. DAVIS: Well, no, and that's why I -- when
22 this witness is called, you know, I'm having, basically,
23 without even approaching the bench, come to you and said,
24 before he even gets here, I'm telling you right now, this is
25 what his testimony will be, so that if any hearing is

DIRECT of LLEWELYN MOSLEY by MR. JORDAN (Hearing)
DECEMBER 2, 1997
VOLUME 45

1 necessary, let's -- let's know that before he gets on the
2 stand. You know, I --

3 THE COURT: Okay. Well, I'm going to instruct
4 you that we're going to do it my way: That when he hits the
5 stand and he reaches the point in his testimony where you
6 believe this is going to be elicited, to approach the bench
7 and let me know.

8 We will have his testimony heard outside the
9 presence of the jury. Both sides can ask their questions. If
10 there's any objections, they'll be heard now.

11 Any questions, Mr. Davis.

"2:48? 12 MR. DAVIS: No question whatsoever, Your Honor.

13 THE COURT: Any questions, Mr. Pask?

14 MR. PASK: No, Your Honor.

15 THE COURT: Mr. Jordan?

16 MR. JORDAN: No, sir.

17 THE COURT: Perfect.

18 Mr. Jordan, if you would go back to your last
19 question, repeat it, and let us have this hearing outside the
20 presence of the jury.

21 MR. JORDAN: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. JORDAN:

24 Q. Mr. Mosley, why did Maverick and the lady come to
25 your house?

DIRECT of LLEWELYN MOSLEY by MR. JORDAN (Hearing)
DECEMBER 2, 1997
VOLUME 45

1 A. To buy crack cocaine.

2 Q. All right. And once they arrived at your house, did
3 they come inside?

4 A. Yes, they did.

5 Q. And once inside, who was it that asked for the crack
6 cocaine?

7 A. Maverick.

8 Q. And was there anyone else present at the time, other
9 than you, and Maverick, and the lady?

10 A. Yes, there was.

11 Q. Who was that?

12 A. Well, a guy named JT, --

13 Q. Okay. And JT, Jeremiah Tatum, is that what JT stands
14 for?

12:49P 15 A. Yes, it does.

16 Q. And what does Jeremiah Tatum do, is he a drug dealer?

17 A. He's a drug dealer, yes.

18 Q. Does he deal in crack cocaine?

19 A. Yes, he does.

20 Q. And did he sell crack cocaine to Maverick?

21 A. Yes, he had.

22 Q. All right. Now, after the cocaine was purchased,
23 what happened? After he bought the crack cocaine, what
24 happened?

25 A. Well, they left.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN (Hearing)
DECEMBER 2, 1997
VOLUME 45

Q. Okay. He and the lady left?

A. Yes, they did.

Q. And did they leave in the white Chrysler?

A. Yes.

Q. When you next saw Maverick, was it several hours later?

A. Yes, it was.

Q. In fact, was it in the early morning hours?

A. Yes.

Q. Was that the very next morning?

A. Yes.

Q. Okay. And do you recall about what time it was?

A. Oh, about 4:00 o'clock.

Q. So that was Thursday evening when they were -- came by to buy the crack cocaine. It's now Friday morning --

A. Yes, it is.

Q. -- about 4:00 a.m., when you saw Maverick again; is that right?

A. Yes.

Q. And when you saw him this next time at 4:00 a.m., who was with him at that time?

A. Zigzag.

Q. All right. And did they come to your house?

A. Yes.

Q. Were they walking, or were they in a car, or do you

DIRECT of LLEWELYN MOSLEY by MR. JORDAN (Hearing)
DECEMBER 2, 1997
VOLUME 45

know?

2 A. They were in a car.

3 Q. What kind of car were they in?

4 A. The white Chrysler four-door.

5 Q. Was this the same white Chrysler you had seen

6 Maverick and the lady in earlier?

12:51P 7 A. Yes, it is.

8 Q. Okay. Was there anything that drew your attention to

9 that?

10 A. Well, it was on flat.

11 Q. Okay.

12 A. The front tire was on flat.

13 Q. And did they then come to your house?

14 A. Yes, they did.

15 Q. And once they came to your house, what did they want?

16 A. They asked did I know how to get rid of some

17 merchandise, and I --

18 Q. What -- what merchandise were they referring to?

19 A. A weed eater, jamb box, TV, you know, microwave, you

20 know, things in this sort, and I didn't -- I told him I didn't

21 know, you know.

22 Q. Okay. Where did they have these things that you just

23 talked about?

24 A. In the trunk of the car.

25 Q. Okay. In the same white Chrysler?

DIRECT of LLEWELYN MOSLEY by MR. JORDAN (Hearing)
DECEMBER 2, 1997
VOLUME 45

A. Yes.

Q. All right. Who was driving the car, do you know?

12:52P 3 A. Maverick.

4 Q. Okay. And once they showed these items to you, what
5 happened?

6 A. Well, I told them that, hey, that I would fix the
7 flat to where they could go ahead on, you know, because I did
8 not know, you know, anything about selling no merchandise.

9 Q. Okay. What did you think when you looked in the
10 trunk and saw those things in there?

11 A. Well, he done stole something, that's what I thought.

12 Q. Okay. Did you go ahead and fix the flat?

13 A. Yes, I did.

14 Q. During the time that you were fixing the flat and
15 they were there, did they make any statement to you with
16 regard to where the merchandise came from?

17 A. He said some woman in DeSoto, --

18 Q. Okay.

19 A. -- and don't worry about it. You know, it's going to
20 be all right.

21 Q. They told you don't worry about it?

22 A. Yes.

12-.53P 23 Q. After they told you that, did you go ahead and fix
24 the flat?

25 A. Yes, I did.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN (Hearing)
DECEMBER 2, 1997
VOLUME 45

1 Q. Now at some point after they arrived, did JT,
2 Jeremiah Tatum, did he come back over to your house?

3 A. Yes.

4 Q. And did they talk with Jeremiah Tatum?

5 A. Yes, they did.

6 Q. Did that take place in your house?

7 A. Yes.

8 Q. What were they doing?

9 A. They were making deals and, you know, selling the
10 merchandise.

11 Q. Now, JT, or Jeremiah Tatum, is the same guy you told
12 us earlier was the drug dealer; is that right?

13 A. Yes, he is.

14 Q. Is that what they were trading the merchandise for:
15 Drugs?

16 A. Yes.

17 Q. Okay. Do you know how much of the drugs was
18 involved?

19 A. No, I don't.

20 Q. During the time that they were sitting in there
21 making deals trading the items for drugs, were you in and out
22 of the house still working on the flat?

12:54P 23 A. Yes.

24 Q. Okay. At some point, though, after you had the flat
25 fixed, did you go back in the house?

DIRECT of LLEWELYN MOSLEY by MR. JORDAN (Hearing)
DECEMBER 2, 1997
VOLUME 45

1 A. Yes, I did.

2 Q. And was Zigzag, and Maverick, and Jeremiah Tatum all
3 in the house at that time?

4 A. Yes.

5 Q. All right. A little point later, some point later,
6 did Jeremiah Tatum come back with a truck and load several of
7 those items up?

8 A. Yes, he did.

9 Q. Okay. And did you ever see them again after that
10 when he left?

11 A. Who, Jeremiah?

12 Q. The stolen items.

13 A. No, I didn't.

14 Q. What about the white Chrysler, was it still parked at
15 your house?

16 A. Yes, it was -- it was there and it was in and out,
17 you know.

18 Q. When you say "it was in and out", who was in and out?

19 A. At one time, Maverick would leave and come back, and
20 then Zigzag would leave and come back.

12:55P 21 Q. Okay. About what time did you go to work that
22 morning, if you did?

23 A. It was about 7:00 o'clock Saturday morning.

24 Q. Okay. And when you left to go to work, who was at
25 your house?

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 1997
VOLUME 45

A. Zigzag, I think he was there then.

Q. When was the last time you -- well, had Maverick left already?

A. Yes.

Q. And when he left, how did he leave?

A. In the car.

Q. In the white Chrysler, you're talking about?

A. Yes.

Q. Was any of that merchandise still in the car when he left with it?

A. I think so, yes.

MR. JORDAN: We'll pass the witness, Your Honor.

THE COURT: Mr. Johnson, do you have any questions in regard to the hearing?

MR. JOHNSON: I do, Your Honor.

Your Honor, could I have just a few minutes to talk to my client prior to this?

THE COURT: You may.

(Brief break taken.)

MR. JOHNSON: Judge, --

THE COURT: Mr. Johnson, do you have any questions regarding the hearing admissibility?

MR. JOHNSON: I do, Your Honor, but before we do that, something came to my attention shortly upon this witness beginning his testimony, and that is that evidently his wife,

CROSS Of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 1997
VOLUME 45

who I believe -- is that Louise Washington?

THE WITNESS: Yes.

MR. JOHNSON: That his wife, who is on the State's witness list, has been here and may have been in the courtroom.

MR. DAVIS: No, I must say that when -- when Mr. Mosley began his testimony and I saw her in the courtroom, I got her out of here before Mr. Mosley actually started testifying.

I recognize that she was on, so she has been outside the courtroom during Mr. Mosley's testimony.

MR. JOHNSON: I appreciate that. And what I would like to ask is, is if there are any other witnesses that are on the State's list that are in the courtroom, that they be asked to step outside and be under the rule, whether they've been sworn in or not, because they may just as easily be our witnesses as the State's witnesses, and we would -- is that all right with the State?

THE COURT: That's fine. If y'all would just try to keep your eyes open.

MR. JOHNSON: Thank you, Your Honor. Now I do have some questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. JOHNSON:

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 1997
VOLUME 45

Q. The first time you saw -- you call him Maverick, right?

A. Yes, I do.

Q. The first time you saw Maverick in this white car, when he had the lady with him, Maverick was driving; is that correct?

A. No, I don't think he was.

Q. Okay. Was the lady driving?

A. Yes.

Q. Okay. Now, you've testified that when they came -- when Maverick came back the second time, that he didn't have the lady with him, and that this time he had the person you knew as Zigzag with him; is that correct?

A. Right.

Q. And you just testified that at that time Maverick was driving; is that correct?

A. Yes.

Q. All right. Now, you've -- you've testified that they asked you if you could sell some property; is that correct?

A. Right.

Q. Can you tell me what you mean by "they" asking you that?

A. They came to me and asked me did I know where they could, you know, get rid of this merchandise.

Q. Okay. And when you say "They did that", did they

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 1997
VOLUME 45

both say it in unison?

A. No, they didn't.

Q. Can you recall exactly who came to you? Can you just share with us the details of them arriving at this --

A. Okay. Zigzag came to the door and got me, you know. Maverick was still in the car, all right? When, you know, Zigzag was the one that really -- he asked, you know, could I -- do I know where they could get rid of some merchandise.

Q. So your testimony is, it was Zigzag that came to the door and asked you if you could help him get rid of some -- some property; isn't that correct?

A. Zigzag asked first. Maverick, then he did ask, too, though.

Q. When did Maverick ask?

A. When I came outside to the car.

Q. And what did Maverick do when you came out to the car?

A. He got out of the car and he threw Zigzag the key where Zigzag unlocked the trunk.

Q. All right. And, then, so Zigzag was the one who opened the trunk and showed you the property; is that correct?

A. Yes, he was the one who opened the trunk. They both were out.

Q. All right. Now, you testified that at some point Zigzag -- was it Zigzag that told you that they got this

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)

DECEMBER 2, 1997

VOLUME 45

property from some lady in DeSoto?

A. Yes.

3 Q. Yes?

4 A. It was -- the both of them were right there together,
5 yes.

6 Q. Okay. But it was Zigzag that told you that; is that
7 correct?

8 A. Okay. Yes.

9 Q. But it was while they were both standing there
10 together.

11 A. Right.

12 Q. Okay. Now you've testified that JT came back and
13 made some deals for the property; is that correct?

14 A. Yes.

15 Q. And -- and did he -- did he trade cocaine for that
16 property? Or do you know?

17 A. I more or less -- I seen at times it was cocaine,
18 yes, and that was about it, that's all I could see.

19 Q. All right. And the cocaine, he gave -- JT gave the
20 cocaine to Zigzag.

05P 21 A. To -- to both of them. They were both making their
22 deals separately, you know. One would -- one would make a
23 deal on this, and the other one would make a deal on that.

24 Q. Okay. What did -- what -- let's talk about those
25 deals. What deal did Zigzag make with JT?

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 1997
VOLUME 45

A. All -- all I know is just different merchandise coming up at a certain time, and one would be in the living room, and one would be sometime back there with me, and then it would reverse.

At the time, I really didn't know which -- what was being more or less sold, or purchased.

Q. What time was this when this happened?

A. This was in the morning.

Q. What time?

A. I guess, oh, what, about 9:00. Yeah, around about 9:00 o'clock that morning.

Q. And what time did they originally arrive there this particular morning?

A. Around about 4:00, 5:00 o'clock in the morning.

Q. Okay. How do you know what time it was?

A. I looked at the clock.

Q. You looked at the clock?

A. (Nods head.)

Q. Do you do that pretty regularly when somebody comes into your house?

A. Yes.

Q. So everybody who comes over to your house, you pretty much make --

THE COURT: Mr. Johnson, if you would go ahead and confine your questions to the relevant -- the issue at
DONNA HILL-WYNKOOP, RMR, CRR, RPR, CSR 214-653-5923

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 19 97
VOLUME 45

hand in the hearing.

BY MR. JOHNSON;

Q. Do you recall which particular property Zigzag traded for dope?

A. No.

Q. Do you recall which particular items or property that Maverick traded for dope?

A. No.

Q. Okay. Sir, were you smoking crack that night?

A. Yes.

Q. You testified that -- that Maverick left at some point?

A. Yes.

Q. Did he leave alone?

A. Yes.

Q. When was that?

A. It was - it was - it was -- the first time he left, you know, I didn't look at a clock then. He left and come back. Then the other one would leave and come back, like they was going to get something, you know, like you would go to get something to drink, or something like that, but it wouldn't -- it wouldn't be for no length of a time.

Q. All right. You testified that you think some of the property was still in the car when Maverick left. Do you remember testifying to that?

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 19 97
VOLUME 45

A. Yes.

Q. You don't know whether there was any property still in that car or not. You just think there was; is that right?

A. Right.

Q. So you can't really say that there was any property still in that car at that time; is that right?

A. That's true.

Q. When -- when they first arrived that evening and they opened the trunk and it had that property in there, didn't you have Zigzag take all of that property in your house in the back -- back bedroom?

A. I did.

Q. Okay. Have you been granted any type of immunity, or given any -- any indications that charges might not be filed against you, or that they would be filed against you if you didn't testify? Have you had any conversations to that effect with anybody --

A. No.

Q. --in law enforcement?

A. No.

Q. Did anybody ever suggest to you that it would probably be in your best interest just to come down here and testify in this?

A. No. When you're subpoenaed, I know you're supposed to come for sure.

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 1997
VOLUME 45

Q. Well, you've told the police, didn't you, that you thought that this property was probably stolen, didn't you? You've told them that, haven't you?

A. I don't remember saying that.

MR. JORDAN: Excuse me, Judge. I'll object. This is beyond the scope of the hearing.

MR. JOHNSON: Well, Judge, if it goes into any agreement that he might have or might think he has with the State, and I think --

MR. JORDAN: Well, I think he's already testified he has no such agreement, is what I understand.

THE COURT: Well, he has testified in regards to any agreement.

I believe earlier in his testimony, he stated today that he thought the property was stolen.

MR. JOHNSON: May I ask him another question, Your Honor?

THE COURT: You may.

BY MR. JOHNSON:

Q. Sir, you're aware, aren't you, that it's -- that it's against the law to receive stolen property?

A. Yes, sir.

Q. You know that, don't you?

A. Yes.

Q. You know that's a crime. Isn't that true?

CROSS of LLEWELYN MOSLEY by MR. JOHNSON (HEARING)
DECEMBER 2, 1997
VOLUME 45

A. Uh-huh.

Q. And you know that you may have committed a crime in having them bring that stolen property in your house. You're aware of that, aren't you?

A. Yes.

Q. Okay. Have you ever been charged with theft, sir?

A. What, stolen --

Q. With this -- in this particular --

A. No.

Q. --in connection with this particular property, were you ever charged with this?

A. No.

Q. You know it's a crime to smoke crack cocaine, don't you?

A. Yes.

Q. You know it's a crime to possess and sell crack cocaine, don't you?

A. Yes.

Q. As a result of this investigation, have you been charged with any of those offenses?

A. No.

Q. Are you hoping you won't be?

A. Well, yes, I'm hoping I won't, but, ...

MR. JOHNSON: That's all we have at this time,
Your Honor.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

THE COURT: All right. In regards to the testimony the State wishes to offer, does the defense have anything to say?

MR. JOHNSON: Your Honor, we would object to this to be an extraneous offense that he's testifying to. We would object to the testimony about our client buying crack cocaine that he testified that he bought when he first came to the location.

It is extraneous, and also is irrelevant to this case, because he's testified that the person who was with him at that time was somebody other than the complainant, Donna Vick, and that there's no evidence that there's any connection to this case.

THE COURT: All right. Those objections are overruled.

MR. JOHNSON: Your Honor, we would ask for a running objection to all that testimony during the course of his --

THE COURT: I will grant that request.
We'll bring the jury back in, then ask some more questions

(Jury panel present.)

THE COURT: You may be seated.

Mr. Jordan, you may continue.

DIRECT EXAMINATION - CONTINUING

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 19 97
VOLUME 45

BY MR. JORDAN:

Q. Mr. Mosley, let me go back to March 20th, in the evening of March 20th, it would have been that Thursday. I believe you told us that an individual you've identified here in court as Maverick, and a woman in a white Chrysler, came to your house that evening; is that correct?

A. Yes.

Q. Okay. And why did they come to your house?

A. To buy drugs.

Q. Okay. What kind of drugs?

A. Crack cocaine.

Q. All right. And was there another individual at your house who sold the drugs?

A. Yes, it was.

Q. Did he sell crack cocaine?

A. Yes, he did.

Q. And who was that individual?

A. JT.

Q. You call him on the street JT?

A. Yes, I do.

Q. Does JT initials stand for Jeremiah Tatum?

A. Yes.

Q. And where does Jeremiah Tatum live?

A. Where does he live?

Q. Yes, sir.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

A. Right now I don't know, but he was staying up the street.

Q. Okay. In March of '97 he was staying right up the street from you; is that correct?

A. Yes.

Q. One block up, two blocks up?

A. Two blocks.

Q. In fact, he was right across the street from Townview High School.

A. Yes, he was.

Q. Now when Maverick and the lady in the white Chrysler came to your house to buy crack cocaine from JT, were they by themselves when they came there?

A. Yes.

Q. And after they bought the crack cocaine, what happened?

A. They left.

Q. All right. About how long do you think they were at your house?

A. Oh, around, about 35, 40 minutes.

Q. Okay. Was any of the cocaine smoked at your house that they bought?

A. Yes.

Q. Okay. Who smoked it?

A. Maverick, myself.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 19 97
VOLUME 45

- 16P 1 Q. Okay. Did anybody else have anything?
- 2 A. A few of the other homeless guys.
- 3 Q. After they were there for that period of time and he
4 and the lady in the white Chrysler left, when did you next see
5 Maverick?
- 6 A. That morning.
- 7 Q. Okay. Did he and the lady in the white Chrysler come
8 back to your house?
- 9 A. Yes, they came back later that evening, and that's
10 when they picked up Zigzag.
- 11 Q. All right. So they were there and bought the crack
12 cocaine and then left; is that correct?
- 13 A. Yes.
- 14 Q. And was it then that Zigzag came to your house?
- 15 A. Yes.
- 16 Q. Now, when Zigzag came to your house, was he with
17 other people or was he by himself?
- 18 A. He was with other people.
- 19 Q. Okay. Who were the other people that he was with?
- 20 A. Just some more of the homeless guys.
- 21 Q. Kind of drifted over to your house?
- 17P 22 A. Yes.
- 23 Q. Were they smoking any drugs or anything at your
24 house?
- 25 A. Not then they wasn't, no.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Q. Okay. And about how long were they there before Maverick and the lady in the -- in the white Chrysler came back?

A. Oh, I guess he was there, what, I guess about an hour before they had came back.

Q. Now, when Maverick and the lady in the white Chrysler came back to your house, what did they come back for?

A. I -- I don't know, but I had, you know, I had a feeling, you know, I guess to buy some more crack, but they didn't.

Q. Well, let me ask you this: Were they acting any different towards one another when they came back the second time than they were the way they were acting towards each other the first time?

A. Yes, they were.

Q. How were they acting towards each other the first time they came?

A. Well, they were more or less quiet, you know. They -- they talked, you know. But the second time, it's say like a little upset feeling, you know. It wasn't any really loud talking or hollering, but it was just a little anger some kind of way in that.

Q. You could tell there was some kind of anger between Maverick and the lady in the white Chrysler?

A. Yes.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Q. And you think they came back the second time to buy crack cocaine, but they didn't buy crack cocaine; is that right?

A. Right.

Q. Now was this Maverick trying to buy the crack cocaine?

A. I guess.

Q. Okay. And when they came back now, Zigzag was at your house; is that correct?

A. Yes.

Q. Was there any conversation between Maverick and Zigzag?

A. Yes.

Q- Okay. And after that, did Zigzag leave with Maverick?

A. Yes.

Q. And the lady in the white Chrysler?

A. Yes.

Q. Did they all leave together?

A. Yes.

Q. Had any of them - had either Maverick or Zigzag bought any crack cocaine the second time they were at your house?

A. No.

Q. Do you know if they had any drugs with them when they

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

left the house?

A. No.

Q. Okay. And do you know about what time that was when they left: The lady, Maverick, and Zigzag?

A. It was, oh, I guess around about -- about 10:30 or 11:00 o'clock that night.

Q. That night, okay. So this is 10:30 or 11:00 o'clock Thursday night, then.

A. (Nods head.)

Q. What about Friday morning, then, were you at home Thursday night into Friday morning?

A. Yes, I was.

Q. Okay. Can you tell the jury whether or not somewhere around 4:00 o'clock Friday morning, in the early morning hours, something caught your attention?

A. Yes. I heard a noise coming down the street, like a flat tire on a car. It pulled over into my other lot and parked.

Q. Now you said your "other lot".

A. Yes. I have three lots.

Q. I'm sorry?

A. I have three lots.

Q. You have three lots that the houses would be built on; is that correct?

A. Yes.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Q. Were there houses on the other two lots at one time?

A. At one time, there was.

MR. JOHNSON: May we approach, Your Honor?

THE COURT: You may.

(Off-the-record bench conference was had.)

THE COURT: Ladies and gentlemen, if you'd step back to the jury room for a few moments.

(Jury not present.)

THE COURT: Mr. Davis and Mr. Johnson, if you'd come back to my chambers for a minute.

(To the witness:) You may go on back there.

Sir, you may step back to the ...

(Recess taken.)

(Court reconvened; jury not present.)

THE COURT: Mr. Mosley, if you'd come up here for a minute. Let me talk to you for a second.

Mr. Pask and Mr. Johnson, would y'all do me a favor and step back to counsel table?

Mr. Mosley, so the record's clear, we just took a break because at the moment we took a break, an attorney for the defense had indicated that they didn't want you testifying any further until you had the opportunity to speak to an attorney yourself, all right? But they -- that was the first time any mention of that was made. No mention of that was made during the break taken previously, and it was not made

DECEMBER 2, 1997

VOLUME 45

until the testimony that you've already given was in front of the jury.

So, I'll tell you what. There's an attorney, Mr. Kent Traylor here, and just so that he's clear about what -- what has occurred up to this point, is that roughly the testimony that you've given so far, is that you were there; some fellows came over; wanted to sell some stolen property and buy some drugs, and -- and you'd already told us that.

Anyhow, you also testified that you made no deal with the State of Texas; is that right?

THE WITNESS: (Nods head.)

THE COURT: And nobody's charged you with anything at this point; is that right?

THE WITNESS: Right.

THE COURT: Nobody's issuing an arrest warrant for you at this point, have they?

THE WITNESS: No.

THE COURT: Nobody's indicated they're even going to do that, have they?

THE WITNESS: No.

THE COURT: All right. Just so everything's covered, let me have you talk to Mr. Traylor for a few minutes. Why don't you just tell him a few things that you said, and then we'll finish up this, all right?

DECEMBER 2, 1997

VOLUME 45

Why don't you go back ...

MR. KENT TRAYLOR: I was just going to talk in this witness room, Judge, to see if anybody's there.

THE COURT: Why don't y'all go back to Al's office and shut the doors there.

MR. KENT TRAYLOR: All right.

THE COURT: Mr. Mosley, if you'd just talk to Mr. Traylor for a few minutes, and then I think we'll finish.

THE WITNESS: Who is Mr. Traylor?

THE COURT: I'm sorry?

THE WITNESS: Who is Mr. Traylor?

THE COURT: Mr. Mosley, Mr. Traylor is this fellow right here --

MR. KENT TRAYLOR: Yes, sir, Mr. Mosley.

THE COURT: - in the white shirt.

MR. KENT TRAYLOR: How are you, sir?

THE COURT: He's an attorney licensed in the State of Texas, and he's a good man. Just talk to him for a few minutes, and lthen ...

MR. KENT TRAYLOR: Do you need to let the bailiff know - Let Al know, Judge, or do I just go in there?

THE COURT: Jan, is Al there? Even if he's not, go on in.

Jan, if he is, Jan, if you'd tell him they all want to step in there.

DECEMBER 2, 19 97

VOLUME 45

1 (State's Exhibit No. X-15

2 was marked for identification purposes.)

3 (Jury not present.)

4 THE COURT: All right. Let the record reflect
5 we're outside the presence of the jury.

6 Mr. Wright is present; the attorneys are
7 present.

8 Mr. Traylor, I believe there's some things you
9 wish to put on the record.

10 MR. KENT TRAYLOR: Yes, Your Honor, if I may.

11 THE COURT: You may.

12 MR. KENT TRAYLOR: Thank you, Judge.

13 Mr. Mosley, you understand that -- you see the
14 jury's not present right now, do you understand that?

15 THE WITNESS: Yes.

16 MR. KENT TRAYLOR: All right. And you
17 understand that the Judge has appointed me to talk with you
18 about your testimony in this case.

19 THE WITNESS: Yes.

20 MR. KENT TRAYLOR: And I've explained to you
21 that I'm your lawyer, and you can talk freely with me and --
22 and explain to me anything you wish to; is that right?

54P 23 THE WITNESS: Yes.

24 MR. KENT TRAYLOR: All right. Now, from what I
25 understand, an issue has come up about whether you needed an

DECEMBER 2, 1997

VOLUME 45

attorney to consult with, and we've talked about the fact that - if I understand the facts correctly - the State could perhaps try to charge you with some -- with some crime as a result of these facts. Do you understand that?

THE WITNESS: Yes.

MR. KENT TRAYLOR: Is that a yes?

THE WITNESS: Yes.

MR. KENT TRAYLOR: All right. And I've explained to you that I could go to the district attorney and ask them to give you a deal in writing whereby they guarantee they would not prosecute you for anything you say. We've talked about that, haven't we?

THE WITNESS: Yes, we did.

MR. KENT TRAYLOR: And I told you that I could try to get a bigger immunity that would prevent them from prosecuting you for anything that you may have done, which is broader than just giving you immunity for whatever you say in here.

We've talked about that, right?

THE WITNESS: Yes.

MR. KENT TRAYLOR: And you've told me, I believe your statements are that you just want to go forward and you've already testified and you want to keep going; is that correct?

THE WITNESS: Yes.

DECEMBER 2, 1997

VOLUME 45

MR. KENT TRAYLOR: And I've explained to you that there is no deal; that if the State wanted to charge you with some crime, If they wanted to try to, you understand that they could try to do that; is that correct?

THE WITNESS: (Nods head.)

MR. KENT TRAYLOR: Is that a yes?

THE WITNESS: Yes.

MR. KENT TRAYLOR: And for the record, when you and I were in the coordinator's office, did one of the prosecutors come into the office where we were?

THE WITNESS: Yes.

MR. KENT TRAYLOR: And did he ask if he could sit in while I talked with you?

THE WITNESS: Yes.

MR. KENT TRAYLOR: Did I ask him if he would leave and let me talk with you?

THE WITNESS: Yes, you did.

MR. KENT TRAYLOR: And did he do that?

THE WITNESS: Yes.

MR. KENT TRAYLOR: All right. And it's my understanding that even though -- you understand that the State may try to prosecute you.

THE WITNESS: Yes.

MR. KENT TRAYLOR: No question, you understand that; is that right?

DECEMBER 2, 1997

VOLUME 45

THE WITNESS: Yes.

MR. KENT TRAYLOR: Without any kind of a deal, you still want to go forward with your testimony.

THE WITNESS: Yes. Why not.

MR. KENT TRAYLOR: All right. That's all I have.

MR. JOHNSON: Can I just ask one question about that, Your Honor, because that's not what I saw happening.

THE COURT: Sure.

MR. JOHNSON: Are you saying that at the time that you asked the prosecutor to leave the room, that y'all had completed your conversation at that time, and he just happened to come in after you had completed your conversation with your attorney?

THE WITNESS: Again, I -- I couldn't understand that much.

MR. JOHNSON: Sir, I just saw you come out of a room over here on the side --

THE WITNESS: Uh-huh.

MR. JOHNSON: -- with the attorney the Court has appointed you; isn't that correct?

THE WITNESS: Yes.

MR. JOHNSON: And there was a female attorney in there with you all as well; is that right?

THE WITNESS: Right.

DECEMBER 2, 1997

VOLUME 45

MR. JOHNSON: And the attorney that's been asking you questions for the State here this morning, this gentleman right here, do you know him as Rick Jordan?

THE WITNESS: Yes.

MR. JOHNSON: Okay. When I saw that door open, I saw you come out, Mr. Traylor come out, the -- the blond attorney, what's her name?

MR. KENT TRAYLOR: Kimberly Moore.

MR. JOHNSON: Kimberly Moore, and I also saw Mr. Jordan walk out of that room at the same time; is that what I saw?

THE WITNESS: Yes.

MR. JOHNSON: So Mr. Jordan was in there at some point while -- while you were talking to your attorney; isn't that correct?

THE WITNESS: Yes, but we had already -- we had already discussed that before.

MR. JOHNSON: Okay. So had he just walked in there just before you walked back out? Is that what happened?

THE WITNESS: Over there, you know, we had already talked about that back here before, you know, him. This -- you know, him and I, we had already talked.

THE COURT: Well, you're pointing to him with your left hand, you're talking about Mr. Traylor; is that right?

DECEMBER 2, 1997

VOLUME 45

THE WITNESS: Yes, we had already talked.

THE COURT: Just go ahead and call him Mr. Traylor, and the other fellow is Mr. Jordan, so the record's clear.

MR. JOHNSON: Well, Mr. Jordan came back in there to kind of check on things, didn't he, back there in that room?

THE WITNESS: I guess.

MR. JOHNSON: You certainly saw him there, didn't you?

THE WITNESS: Yes, he was there.

MR. JOHNSON: And you knew who he was, didn't you?

THE WITNESS: Yes.

MR. JOHNSON: Thank you, sir.

THE COURT: So that I'm clear, Mr. Mosley, I've provided you with the opportunity to talk to Mr. Traylor; is that correct?

THE WITNESS: Yes, you did.

THE COURT: All right. And after talking with Mr. Traylor, do you wish to continue testifying?

THE WITNESS: Yes, I will.

THE COURT: Okay. Mr. Davis and Mr. Johnson, would y'all approach? Or, Mr. Jordan, I suppose you're certainly ...

DECEMBER 2, 19 97

VOLUME 45

1 (Off-the-record bench conference was had.)

2 MR. DAVIS: If the record could reflect, it's
3 2:09 p.m. I've got State's Exhibit X-15, which is the written
4 report from Judy Floyd of Gene Screen. I've tendered a copy
5 of that to defense counsel, and I'll offer for record purposes
6 only State's Exhibit X-15.

7 MR. JOHNSON: For record purposes, Judge, we
8 have no objections and we have been given a copy.

9 THE COURT: All right. Exhibit X-15 will be
10 admitted for purposes of the record only at this point.

11 MR. JOHNSON: All right. I've got - I need to
12 tell them that my fingerprint expert has contacted Sgt. Howell
13 of the sheriff's office. He has said that he has not been
14 given any permission to allow my guy to come over there and
15 view those.

16 THE COURT: Okay. Mr. Davis, if you could have
17 your investigator take care of that for me right now.

18 MR. JOHNSON: I don't think he heard that,
19 Your Honor.

20 THE COURT: Chief, take care of that.

05P 21 All right. Mr. Davis, did y'all get the
22 opportunity to have an investigator check with the Sheriff's
23 Department on that?

24 MR. DAVIS: Yes, sir. I've instructed Mike Aman
25 to go down and speak to Jim Howell, Sgt. Jim Howell, with the

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Sheriff's Department directly, and report back to me.

THE COURT: All right. Great. Is the State ready for the jury?

MR. JORDAN: State's ready.

THE COURT: Defense ready?

MR. JOHNSON: Ready, Your Honor.

THE COURT: Jan, I guarantee you, I'm ready.

(Jury panel present.)

THE COURT: All right. You may be seated.

Mr. Jordan, do you remember where you were at, at this point?

MR. JORDAN: I do, Your Honor.

THE COURT: All right.

DIRECT EXAMINATION - CONTINUING

BY MR. JORDAN:

Q. Mr. Mosley, I believe the point where we left off, you had testified that Maverick, Zigzag, and the lady in the white Chrysler left your house, and at that point in the evening when they left was about, what time did you say?

A. About 9:00.

Q. About 9:00 o'clock?

A. 9:00 or -- 9:00 -- between 9:00 and 11:00 o'clock, yes.

MR. JOHNSON: Your Honor, can he -- I'm sorry -- I think there's two different times that they left the house.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Can we ask that they clarify which time they're talking about?

THE WITNESS 11:00 o'clock.

THE COURT: Mr. Jordan, if you can clear up any corifusion, I'd appreciate it.

MR. JORDAN: Yes, sir.

BY MR. JORDAN:

Q. They -- when the three of them left, it was 11:00 o'clock.

A. Yes.

Q. I think earlier you said Maverick and the lady in the white Chrysler had come to your house and bought some crack cocaine and they had left. About what time was that earlier in the evening?

A. Okay. It was about 5:00, 5:30, something like that.

Q. Okay. And that was the first time that they -- Maverii=k and the lady in the white Chrysler, Miss Vick, --

A. Yes.

Q. -- came to your house, they bought the cocaine, and they left, --

A. Yes.

Q. -- and they then came back.

MR. JOHNSON: Your Honor, we're going to object to that. That's assuming facts not in evidence.

THE COURT: Overruled.

BY MR. JORDAN:

DIRECT OF LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 19 97
VOLUME 45

Q. They then came back, that being Maverick and Miss Vick, came back to your house in the white Chrysler, and that's when they met up with Zigzag.

A. Yes.

Q. Who was at your house at that point?

MR. JOHNSON: Your Honor, there has been no showing that it was Miss Vick that was there, and those are facts that are not in evidence.

THE COURT: Ladies and gentlemen, you'll recall the evidence as you heard it.

You may continue, Mr. Jordan.

BY MR. JORDAN:

Q. Now, once Maverick, the lady in the white Chrysler, and Zigzag were back at your house, did the three of them agree to leave together?

A. Yes.

Q. Okay. And you said that was about 11:00 o'clock?

A. Yes.

Q. All right. And I believe you then testified that it was somewhere around 4:00 o'clock in the morning, now we're into Friday morning, when you heard a car coming down the street with a flat tire; is that right?

A. Yes.

Q. And was that car this same white Chrysler that you had seen the lady, and Maverick, and Zigzag in earlier?

DIRECT OF LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

A. Yes.

Q. Now, who was in the car, or who was there when they came to your house?

A. Who was where?

Q. Who was in the car when they came to your house?

A. Maverick and Zigzag.

Q. Okay. Was the lady with them?

A. No.

Q. Who came to your door first, if you recall?

A. Zigzag.

Q. Okay. And did you go to the door or did your wife answer the door?

A. I did.

Q. All right. And what did Zigzag want?

A. They were -- he wanted to find out if I knew how to get rid of some -- they wanted me to see something that they had in the car.

Q. And did you go out to the car?

A. Yes, I did.

Q. Okay. Who else was in the car?

A. Maverick.

Q. And where was Maverick situated in the car?

A. He was in the driver's seat.

Q. Did he have the keys to the car?

A. Yes, he did.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Q. And when you went out to the car, what happened?

A. Maverick got out and tossed the keys to Zigzag and they opened the trunk.

Q. Okay. Did Maverick ask you anything about getting rid of some stuff?

A. Yes. They -- did I know where to get rid of some stuff that they had in the car.

Q. Okay. Did you ask them where they got this stuff?

A. Yes, I did.

Q. What did they tell you?

A. And he said from a woman in DeSoto, and he said don't
worry about it.

Q. He told you not to worry about it.

A. Yes.

Q. Now, all these things were in the trunk of the car?

A. Yes.

Q. What kinds of things did you see there, Mr. Mosley?

A. Colored TV, jamb box, a weed eater, rifle, a color printer, a microwave oven.

Q. Okay. Do you recall whether or not -- you mentioned a rifle. Can you tell us any more about that rifle?

A. No, I can't.

Q. Okay. Was it in some kind of a case?

A. Yes, it was in a brown case. It had a scope and everything.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Q. Okay. It was in a brown case, but you could tell it had a scope on it?

A. Well, while it was in the case?

Q. No, could you tell that it had a scope on it? I think you said it had a scope on it.

A. Yes. Yes.

Q. What did you do with these items that you saw in the trunk of the car?

A. As I said, I told -- you know, I asked them to take the stuff out of the car where I can fix the flat, and, in turn, I told them to take the stuff into the house.

Q. Did you help them take the things into the house?

A. I took the weed eater, and that was all.

Q. That's the only thing you took in the house?

A. Yes.

Q. Who took the other things in the house?

A. They did. Maverick and Zigzag.

Q. Okay. They both worked at --

A. Yes.

Q. -- taking those things into the house?

A. Yes.

Q. And while they were taking those things in the house, what did you do?

A. I came back, and more or less I was trying to fix the flat.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Q. Okay. Did they know how to fix the flat?

A. I guess so, but, you know, I asked them, and they said it wasn't a spare tire, and that's when I said, you know, the spare tire had to be on the bottom. So when -- and to get the tire, they had to take everything out of the trunk.

Q. Okay. And once they had done that, did you show them where the spare tire was?

A. Yes.

Q. Okay. And after you got the spare tire out, did you then go ahead and fix the flat?

A. Yes, I did.

Q. Change the tire out?

A. Yes.

Q. Okay. Now, after you got these things out of the car, did you have anymore conversation with Zigzag and Maverick?

A. Not right off, no.

Q. Did you notice anything about the way they were acting?

A. Well, they was kind of cheerful like, kind of like giving each other high-fives.

Q. When you say "high-five", what do you mean?

A. A slap, you know, two hands over both their head.

MR. JORDAN: May I approach the witness, Judge?

THE COURT: You may.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

MR. JORDAN: May I have the witness stand down?

THE COURT: You may.

BY MR. JORDAN:

Q. Mr. Mosley, if you would, stand down here for a second.

(The witness came down off the witness stand.)

Q. When you say that Maverick and Zigzag were giving each other high-five, were they talking about doing something like that (demonstrating)?

A. Yes.

Q. Okay. You may retake the stand.

(The witness returned to the witness stand.)

Q. Did you know at that time why they were giving each other the high-fives?

A. No, I didn't.

Q. But they were in good spirits, as far as you could see.

A. Yes.

Q. Now, after these things were -- were taken into your house, did JT, the person you said was Jeremiah Tatum, the drug dealer, did he come back by your house?

A. Yes, he did.

Q. Okay. And what happened once he arrived?

A. Well, Maverick and Zigzag began -- they began to try to sell the merchandise, you know. They was making their

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

little deals. I'm still, you know, trying to, you know, fix the tire.

Q. Okay. Were you in and out --

A. Yes.

Q. -- while this deal was going on?

A. Yes. And after that, I just went in and -- after I had finished fixing the tire, yes.

Q. Okay. Now, the deals that were being made, you said for the weed eater -- I'm sorry, the TV, the VCR, the microwave, and this rifle that you described with the scope on is, that's what they were trading; is that right?

A. Yes.

Q. And what was it, JT, the drug dealer, what was he trading?

A. Drugs.

Q. Did he sell crack cocaine, that you know of?

A. Yes, he did.

Q. Do you know how much drugs he traded in for these -- for these items?

A. No, I don't.

Q. Okay. Did that exchange take place in front of you, or were you out of the house back and forth?

A. It wasn't in front of me, but I was in the house. It wasn't in front of me, though.

Q. Okay. You say they were both making deals. Did it

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

appear to you that any one of them was in charge of -- of making deals?

A. More or less, yes.

Q. Okay. Who was that?

A. Maverick. Maverick.

Q. And why do you say that?

A. Well, he was more or less, you know, telling them -- telling Zigzag, you know, -- you know, whether or not, you know, to do this or that.

Q. Okay. And after this -- after this trading was all done, did JT later come back and -- and pick up some of these items?

A. Yes, he did.

Q. And what kind of vehicle was he driving at that time?

A. A pickup truck.

Q. Did you help load any of these items into JT's truck?

A. No.

Q. Who did that?

A. Maverick and Zigzag.

Q. Did JT help him load it at all?

A. Yes.

Q. The three of them: Maverick, Zigzag, and JT, then took these items from your house and put them in JT's truck; is that right?

A. Yes.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Q. Now, what about the white Chrysler, or the car that they drove up in, that's the same car you had seen Maverick and the lady in before; is that correct?

A. Yes.

Q. Who had that car?

A. Maverick.

Q. Who had the keys -- I'm sorry?

A. Maverick.

Q. Maverick, being this individual right over here; is that correct?

A. Yes.

Q. Okay. Did he leave your house and come back and forth with the car while you were there?

A. Yes, he did.

Q. What about Zigzag, did he drive the car any?

A. Yes.

Q. When they would leave the house, did they stay gone for a very long period of time, or just a few minutes?

A. No, it wasn't no -- not long, no.

Q. Now, during the time that JT was there and all this dealing was going on, was anybody smoking any crack cocaine during any of that time?

A. Not during -- not while they was making the deals, no.

Q. Okay. After the -- after the deals were made, --

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

A. Yes.

Q. -- was some crack cocaine smoked at that time?

A. Yes.

Q. Okay. Who smoked it?

A. Maverick, Zigzag, myself.

Q. Okay. And were Maverick and Zigzag still in this same cheerful mood that you described earlier?

A. No, they kind of -- kind of got in a different mood, but then they kept trying to lift each other up, you know. They kind of got kind of quiet, but then they would try to pick each other up, you know. Would come by and, like, you know, hey, what's up, buddy? Come on.

Q. Trying to make cheerful --

A. Yeah.

Q. -- sense out of it; is that correct?

Now after they left, and I guess it was on a Sunday, then. We're into Sunday, did you have occasion at that time to be home and be visited by the DeSoto Police Department?

A. Yes, I did.

Q. Okay. Now, when that happened, tell us who was at your house.

A. Okay. Me -- me, my wife, and about four or five other people.

Q. Were these -- some of these people homeless people, too?

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

A. About one or two of them, yes.

Q. Okay. And what happened when the police come?

A. Well, we heard two loud booms, shots, you know, and it hit the windows, and then we heard them come in and said, "On the floor," you know. "Show your hands."

Q. Okay.

A. You know, the two things that they shot didn't make it into the house, because they hit the burglar bars, but they broke the windows, so I guess then, you know, with tear gas, or whatever, and -- but the door wasn't even locked.

Q. Okay. The door wasn't locked.

A. No.

Q. But the guys broke in anyways; is that right?

A. Yes.

Q. How were these guys dressed?

A. Like a SWAT team.

Q. Black uniforms?

A. Yes.

Q. And after that, did you have occasion -- or after you were taken out of the house, did you sit down and talk to the police about what had taken place with Zigzag and Maverick, and the stuff that they brought over, and the white Chrysler?

A. Yes, I did.

Q. You did that on Sunday at -- at your house; is that correct?

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

A. Yes.

Q. And you also sat down with the police on March 25th and talked with a Det. Pothen, or Inv. Pothen and told him what you knew about the whole incident; is that correct?

A. Yes.

Q. And at that time did you give a written statement --

A. Yes, I did.

Q. -- about what happened?

A. Yes.

Q. Now was any of that property that had been brought over to your house in the white Chrysler, was any of that property still at your house when the police got there?

A. Just the weed eater.

Q. Okay. And why -- why was the weed eater there?

A. Maverick had told me that it was his personal weed eater; that the woman had bought it for him, and he was giving it to me because I did yard work, too.

Q. Okay. So that had been given to you. It wasn't in any deal or anything like that.

A. No.

Q. More like a gift; is that right?

A. Yes.

Q. Any other -- were there any of the other things there?

A. No.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Q. Okay. Now, --

MR. JORDAN: May I approach the witness?

THE COURT: You may.

BY MR. JORDAN:

Q. Mr. Mosley, I'm going to show you what's been marked for identification purposes as State's Exhibit Number 14, and I'll ask you to take a look at that document if you would, please.

A. (Examining document)

Q. Do you recognize what's been marked for identification purposes as State's Exhibit Number 14?

A. Yes, I do.

Q. And is that a copy of the statement that you gave, a written statement?

A. Yes, it is.

Q. All right. Does it bear your signature on each one of the pages?

A. Yes.

Q. Okay. And do you recognize that as a complete and correct copy of your statement?

A. Yes, it is.

Q. All right.

MR. JORDAN: Your Honor, let the record reflect I'm tendering what's been marked for identification purposes as State's Exhibit 14 to defense counsel.

DIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

BY MR. JORDAN:

Q. Mr. Mosley, earlier today you were asked about the testimony that -- that you've given this afternoon. You understand that in testifying, you've testified about things that you've done that could be prosecuted as a criminal offense.

A. Yes.

Q. Okay. You understand that by doing that, the district attorney's office could prosecute you for those offenses.

A. Yes.

Q. You had an opportunity to talk with an attorney about that, and to try to reach some agreement if you wanted to with the State, whereby you would not be, or could not be prosecuted for those things that you've testified about, things that constitute criminal offenses; is that correct?

A. Yes, it is.

Q. Okay. Now, after talking with the lawyer, you decided you wanted to go ahead and testify without any deals, --

MR. JOHNSON: Your Honor, we're going to object to this as bolstering.

THE COURT: Sustained.

BY MR. JORDAN:

Q. Well, let me ask you this, Mr. Mosley: Do you have
DONNA HILL-WYNKOOP, RMR, CRR, RPR, CSR 214-653-5923

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

any agreement, deal, or understanding with the State?

A. No.

Q. Okay And you didn't have any agreement or anything when you gave that written statement, did you?

A. No, I didn't.

MR. JOHNSON: Judge, I'm going to again object to this <as bolstering.

THE COURT: Sustained.

MR. JOHNSON: Ask that you instruct the jury to disregard the answer.

THE COURT: All right. Ladies and gentlemen, I'm going to ask that you disregard the last question

MR. JOHNSON: Move for a mistrial.

THE COURT: Denied.

MR. JORDAN: May I have just a moment, Judge?

THE COURT: You may.

MR. JORDAN: That's all I have, Judge. I'll pass the witness.

THE COURT: Mr. Johnson?

MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Mr. Mosley, you and I have never spoken before, have we?

A. No.

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

Q. Okay. Now, Mr. Jordan was just talking to you about whether or not you have any -- any deals with the State. Do you remember that -- those questions he just talked to you about?

A. Yes, I did.

Q. And he also asked you if you had an opportunity to talk to a lawyer about possibly trying to get some deals with the State. He asked you about that, didn't he?

A. Yes.

Q. Now, I happened to see you come out of a room here a moment ago with the attorney that you were talking to about your situation, and Mr. Jordan came out of that room as well.

MR. DAVIS: I'm sorry, could we approach the bench?

(Off-the-record bench conference was had.)

THE COURT: You may continue, Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor.

BY MR. JOHNSON:

Q. Mr. Mosley, what I was asking you about was I -- I observed you come out of a -- a room here by this courtroom with your attorney just a few moments ago before you retook the stand; isn't that correct?

A. Yes.

Q. Okay. And I also observed that when you came out of that room, this gentleman right here came out of that room

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

with you at that time, didn't he?

A. Yes.

Q. Okay. And you do understand that he's the -- the State's attorney; don't you understand that, sir?

A. Yes.

Q. Okay. Sir, you have a criminal history, don't you, sir?

A. Yes.

Q. Okay. And are you what they call "joint-wise"? Have you ever been to the penitentiary?

A. Yes, I have.

Q. Do you know what "joint-wise" is?

A. No.

Q. Well, when you -- when you -- have you learned in your dealings, in your many dealings with the criminal-justice system, have you learned that he who helps the State is helped by the State?

A. No, I haven't learned that.

Q. All right. So you don't have any -- any hopes that the State will not prosecute you on these offenses that you've testified that you've committed?

A. Repeat that again, please.

Q. Do you hope that the State will not prosecute you for these offenses that you've just basically confessed to?

A. Yes.

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

Q. You're hoping they won't; isn't that correct?

A. Right.

Q. Now let's talk about the offenses that you've just testified to.

You've testified that you thought that this so-called property that was brought to your house was stolen. You've testified to that, didn't you?

A. Yes.

Q. And you testified that -- that you had these people bring this property into your house, didn't you?

A. Yes.

Q. Okay. And, sir, you know that receiving and concealing stolen property is a crime. You're aware of that, aren't you?

A. Yes.

Q. So you know you were committing a crime right then, weren't you? Sir?

A. Not at the moment, I didn't, no.

Q. Oh, you didn't know.

A. No. More or less what I was doing was getting the stuff off of the street where I could fix the flat where they could go. That was my main thing to do.

Q. Okay. Just trying to help the community.

A. No, it was helping me.

Q. Help you? Okay. Now, you've also testified that you

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 19 97
VOLUME 45

have people in your house selling crack cocaine.

A. Yes, they -- they do, yes.

Q. Yeah. In fact, your house is a dope house, isn't it?

A. No, it isn't.

Q. Well, if the police characterize it as that, -- would it surprise you that the police would characterize it as a dope house?

MR. JORDAN: Your Honor, I'd object to the form of the question.

THE COURT: Sustained.

MR. JORDAN: I'd ask the jury to disregard the question.

THE COURT: Ladies and gentlemen of the jury, I'm going to ask you to disregard the form of the last question.

BY MR. JOHNSON:

Q. Sir, people come to your house to buy dope, don't they?

A. No, they do not. They come there and they probably smoke, but they do not come there to buy.

Q. Well, people came there this -- you testified that people came there this night to buy dope, didn't you?

A. The guy came down to the house. He came down to my house, right, where the -- where the merchandise was.

Q. And that was just a coincidence? That was a rare

CROSS OF LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 19 97
VOLUME 45

event?

A. Yes.

Q. Sir, you have had an opportunity to basically prepare or rehearse your testimony before you came here today, haven't you?

A. I couldn't have. You know, I don't know the questions that would be asked.

Q. Oh, is that -- okay. So you have never -- never been talked to about the testimony that you were going to give in this case?

A. Not really, no.

Q. Not really? Let me ask you, sir, prior to today, have you had a chance to visit with this -- this man right here before you testified?

A. Yes.

Q. Did he talk to you about what you were going to testify here today?

A.....Yes^^.

Q. Okay. Let me ask you about this gentleman right here, okay? Did you have an opportunity to talk to him about what you were going to testify to? Did he interview you about this case?

A. No, he didn't.

Q. You don't remember talking to him sometime last week and going over your statements?

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

A. Okay. Yes, I remember him. Yes.

Q. Oh, you do remember him.

A. Yes. Yes. He came to my house, yes.

Q. All right. Anybody else?

A. No.

Q. Nobody else.

A. No.

Q. Well, how about those investigators that took your statements? You've talked to them, haven't you?

A. Not any --no. No, I haven't.

Q. You didn't.

A. The one that took -- took the statement was in DeSoto, so I haven't seen him again.

Q. Okay. So what you're saying is you haven't seen him since then, --

A. Right.

Q. -- since you gave him that statement. Okay.

Do you recall giving him that statement?

A. Yes.

Q. Do you remember when that was?

A. It was on -- I think it was either a Monday, or a Tuesday, after I was arrested on a Sunday.

MR. JOHNSON: May I approach, Your Honor?

THE COURT: You may.

BY MR. JOHNSON:

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

Q. I'm going to show you what's already been marked as State's Exhibit Number 14. Will you take a moment to look at that?

A. (Examining document) Okay.

Q. Do you recognize that?

A. Yes.

Q. Okay. Can you tell me what that is?

A. This is a statement.

Q. All right. And who's statement is it, sir?

A. Mine.

Q. And you recognize your name on it?

A. Yes, sir.

Q. Have you had an opportunity to read that recently?

A. Yes.

Q. When did you read it last?

A. Today.

Q. Today? You've read that today? Okay. Very good. I'm going to leave that one with you so you can refer to it while I ask you some questions, okay?

Now, when you gave that statement, you were trying to give all the facts and details as you remembered them; is that correct?

A. Yes, I was.

Q. And do you remember, you've already testified that you gave that statement on the 25th of March of 1997. Are you

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

aware of that?

A. Yes.

Q. Okay. And, so, that was basically right about the time that these events happened; is that correct?

A. Yes.

Q. Now, sir, let me ask you to review that statement and tell me if it says anywhere in there that -- that this person that you call Maverick came to your house with a female?

Does it say anything about that in your statement?

A. No.

Q. Does it say anything in your statement about him returning another time with -- with a female?

A. Yes, I think it is.

Q. Well, could you read it and tell me where it says that in there, sir?

A. (Examining document) It isn't in -- it's not there.

Q. There's nothing in there about that, is there, sir?

A. No.

Q. And it's your testimony to this jury today that all of a sudden your memory has gotten better; is that what you're telling this jury?

A. What I'm saying is, I -- I'm answering the questions that I'm asked.

Q. Okay. Now, are you saying that when this investigator talked to you he never asked you anything about

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

whether you'd -- whether you'd seen Maverick before?

A. Whether I seen him -- no, he really didn't ask it.

Q. He didn't ask it.

A. No.

Q. So this investigator didn't think that was important.

A. I don't know.

Q. All right. Now, did you volunteer that information to him?

A. Yes.

Q. Oh, so you told the investigator that at that time?

A. What, on that statement?

Q. The part about Zigzag being there with -- I'm sorry. Maverick being there with a female, did you tell the investigator that at that time?

A. Tell which investigator, the first one?

Q. Did you tell the investigator that prepared that statement for you to sign?

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

Q. Okay. Now, do you recall him asking you to give you all the details that you could surrounding the events that led up to you being arrested at your house?

A. (Nods head.)

Q. Did he ask you to do that?

A. Yes.

Q. But you -- you just forgot about that part about

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

seeing Maverick with a female. You left that out; is that correct?

A. I said -- I said like this. I believe I said that, but it wasn't typed up. You know, there's a lot of things I know I said there that isn't typed up in this -- in this here statement, because --

Q. Would it surprise you that none of that information is in his notes, in that investigator's notes?

A. No, it wouldn't surprise me. No.

Q. He probably wouldn't have thought that was important; probably wouldn't have written that down.

MR. JORDAN: I object to speculation.

THE COURT: Sustained.

BY MR. JOHNSON:

Q. Now how do you know what time each of these events you testified to took place?

A. The majority of the times, I -- I had a watch. I would look at a clock. The other times, it was more or less an estimate.

Q. Okay. So when people arrive at your house, you're pretty good about looking and kind of logging it in; is that correct?

A. More or less, yes.

Q. You know, there's a videotape of -- of your house being raided, okay?

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

A. Yes.

Q. On that videotape, it appears that several individuals --

MR. JORDAN: Excuse me, Judge. I'll object to the testimony --

THE COURT: I'm sorry. I didn't hear you.

MR. JORDAN: I'll object to the testimony regarding the tape. It's not even in evidence.

MR. JOHNSON: Okay. Let me rephrase the question.

BY MR. JOHNSON:

Q. There were several individuals that were in your house and were detained at the time the police came in there, weren't there?

A. Yes.

Q. Can you tell me how many people there were in your house at that time?

A. Seven.

Q. Okay. Can you name them, please?

A. Can I name them all?

Q. Yes, sir.

A. Street names, I can give. Big Man, my wife, myself, a person named OC.

Q. I'm sorry?

A. OC.

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

Q. OC?

A. I can't think. There's two more. I can't think of their names right off.

Q. You can't think of their names?

A. Right.

Q. Well, maybe you don't remember their names, but I'm sure you remember what time they came to your house, don't you?

A. Yes.

Q. What time did those people, whose names you can't remember, get to your house?

A. They were there, more or less, all night.

Q. Well, what time did they get there?

A. What time? Each one?

Q. Yes, sir. You can't really recall, can you?

A. Do you want me to try to tell you, because --

Q. Well, are you telling this jury that you remember the time that everybody comes to your house every day?

A. No, I'm not saying that. No.

Q. Okay. Now, sir, you never say anything in your statement about the person you call Maverick buying any crack cocaine when he comes to your house with some female, do you?

A. No, I didn't.

Q. You don't say anything in there about him returning a second time --

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 A. No.

2 Q. with that woman, do you?

3 A. No.

4 Q. It's not in there, is it?

5 A. No.

6 Q. Sir, when the police raided your house, they detained
7 you and all those people in your house, didn't they?

8 A. Yes.

9 Q. Okay. Were you charged with any offenses in
10 connection with this incident?

11 A. No.

12 Q. You've never been charged for receiving or concealing
13 stolen property.

14 A. No.

15 Q. You haven't been charged with selling crack cocaine
16 out of your house.

17 A. No.

18 Q. You haven't been charged with possession of crack
19 cocaine, have you?

20 A. No, because there was none.

21 Q. Now, did you just say something else, sir, that I
22 didn't hear?

23 A. I said there was none when they -- there was no crack
24 cocaine there.

25 Q. Sir, you have testified that when these people

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

arrived at your house when it was Maverick and Zigzag, when they come supposedly in the morning hours, that -- you've testified that they asked if you could sell the property.

A. If I --

Q. Sir? I'm sorry?

A. If I knew where.

Q. Okay. But what your testimony was is if they asked you that, didn't they?

A. Yes.

Q. But the truth of the matter is, is it was Zigzag who came to your door that night, wasn't it?

A. Yes.

Q. And it was Zigzag who asked you to come out to the car --

A. Yes.

Q. --to look in the car; isn't that correct?

A. Yes.

Q. And it was Zigzag who opened the trunk of the vehicle and showed you the property; isn't that correct?

A. Yes.

Q. Is that right?

A. Yes.

Q. And Maverick -- Maverick, at that time, was back by the driver's door, correct?

A. Yes.

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

Q. At that time, when Zigzag's opening the trunk, right?

A. Yes.

Q. Okay. And, sir, do you recall -- do you recall Zigzag -- do you recall telling the detective that took your statement from you that it was Zigzag who said, "Do you think we can get rid of this stuff?"

A. No, I can't.

Q. You don't recall telling the detective that?

A. No.

Q. But that's the way it happened, isn't it? Zigzag was the one who was showing you the property, and he's the one who asked you if you thought you could get rid of the stuff, isn't that true?

A. The thing of it is, it was the both of them that asked. They both asked.

Q. So they just asked it in unison, like a -- like a chorus, or something?

A. No, they were right there together. They both asked.

Q. Sir, I'm asking you, at the time that that trunk was opened, it was opened by Zigzag, and at that time it was Zigzag who asked you, not in unison with the person you called Maverick, but Zigzag alone who said to you, "Do you think you can get rid of this stuff?" Isn't that correct?

A. No.

Q. No.

CROSS of LLEWELYN MOSLEY by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 A. The both of them asked --

2 Q. You don't recall --

3 A. The two of them. It was in unison, but they both
4 asked.

45P 5 Q. And, so, you're telling me that you do not recall
6 making that statement to Detective, I believe, Pothen, at 8:37
7 a.m., <Dn March the 25th, 1997, the statement that Zigzag said,
8 "Do you know where we can get rid of this stuff?" You don't
9 recall making that statement?

10 A. I might have said Zigzag said, but both of them still
11 asked, did I know.

12 Q. Okay. It doesn't help you much with the State to
13 stick with that story at this point, does it?

14 A. Well, ...

15 Q. Does it, sir?

16 A. I'm just -- I'm just telling you the best I can tell.

17 Q. Did you testify that after -- sometime after you
18 fixed the flat tire, that Maverick left in the vehicle?

46P 19 A. Yes.

20 Q. Did you testify to that?

21 A. Yes.

22 Q. Okay. And he left alone, didn't he?

23 A. Yes.

24 Q. And he left leaving the property that came out of
25 that trunk in your house with Zigzag, didn't he?

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

A. Yes.

Q. And Zigzag remained there, and he tried to sell or trade that property for dope, didn't he?

A. He did.

Q. Okay. With JT, and whoever else he could try to trade or sell it to; isn't that right?

A. Yes.

Q. And at that time Maverick was gone, wasn't he?

A. At one time, yes.

Q. Okay. At that time, Maverick was gone.

A. Uh-huh.

Q. That's my question, sir.

A. Yeah, okay.

Q. And he left the property there, and left Zigzag there, didn't he?

A. Yes.

MR. JOHNSON: May I approach, Your Honor?

THE COURT: You may.

(Off-the-record bench conference was had.)

MR. JOHNSON: Your Honor, we'll pass the witness, subject to recross.

THE COURT: All right. Mr. Jordan, anything else at this time?

MR. JORDAN: I just have a couple of questions, Your Honor.

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45
REDIRECT EXAMINATION

BY MR. JORDAN:

Q. Mr. Mosley, I'd like to clear up a little bit. You said those people asked you if you knew how to get rid of this stuff; is that correct?

A. Yes.

Q. Where were you when Zigzag asked you if you knew how to get rid of this stuff?

A. Like I said, Zigzag came to the door and asked me out. Maverick was sitting in the car, and that's how Zigzag got the keys. Maverick tossed the keys to Zigzag back at the trunk.

Q. Where were you with Zigzag at the time Zigzag asked you if you knew how to get rid of this stuff?

A. I was in the house.

Q. Okay. Now, later, did Maverick ask you if you knew how to get rid of this stuff?

A. Yes.

Q. Where did that conversation take place?

A. This was outside.

Q. Outside where?

A. By the car.

Q. Okay. So each of them asked you independent of one another --

A. Yes.

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 19 97
VOLUME 45

Q. --if you knew how to get rid of the stuff; is that correct?

A. Yes.

Q. Okay. You -- you said on cross-examination that Maverick left and Zigzag was doing the dealing, or you said you left Zigzag there with the property.

A. Uh-huh.

Q. Let me ask you this: Was the dealing already done when Maverick left, or was the dealing still going on when Maverick left?

MR. JOHNSON: Your Honor, ...

THE COURT: You may answer the question, Mr. Mosley.

A. It wasn't all done.

BY MR. JORDAN:

Q. So some of the --

A. Some of the stuff was still there.

Q. Okay. I'm not -- I'm not asking you had it been moved. I'm asking, during the process where they were trading this property to JT for -- for crack cocaine, was that trading already completed when Zig -- when -- when Maverick left, or not?

A. No.

Q. Okay. So part of it had been completed. Maverick left for a few minutes and came back; is that right?

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

A. Yes.

Q. When he came back, was -- was the trading still going on?

A. Yes.

Q. Okay. So the time when he was gone, both before he left and after he came back, the trading was still going on; is that correct?

A. Yes.

Q. All right. Now the weed eater you said the police took from your house on Sunday, was that the same weed eater that Maverick brought to your house?

A. Yes.

Q. And gave to you saying that it was his.

A. Yes.

Q. The same weed eater.

A. It was.

Q. All right. And you told the jury that you -- you changed the tire and you had to get all this stuff out of the trunk so you could get to the spare; is that correct?

A. That's right.

Q. What did you do with the full-sized tire that you took off the car?

A. It was left right there.

Q. Left right where?

A. On the lot.

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

1 Q. On the lot?

2 A. (Nods head.)

3 Q. To the side of your house?

4 A. Yes.

5 Q. Okay. Would that lot be what some people might refer
6 to as an empty field?

53P 7 A. Yes.

8 Q. Okay. And would the tire and the wheel cover have
9 been left right over there?

10 A. Yes.

11 Q. Okay. Can you tell us, Mr. Mosley, whether or not
12 that field is kind of overgrown with weeds, or grass, or
13 whatever?

14 A. Yes.

15 Okay.

1.6 MR. JORDAN: May I approach the witness,
17 Your Honor?

18 THE COURT: You may.

19 MR. JORDAN: Your Honor, at this time we'll
20 offer into evidence what's been marked for identification
21 purposes as State's Exhibit Number 14.

54P 22 MR. JOHNSON: Your Honor, we'll object that it's
23 cumulative; that it's basically already evidence that's
24 already been testified to; that it's -- that it's just an
25 attempt to bolster this witness by giving the statement.

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

We'll object to it, Your Honor.

THE COURT: Overrule those objections.

MR. JORDAN: Request permission to publish,
Your Honor.

THE COURT: What's that Exhibit Number?

MR. JORDAN: State's Exhibit Number 14,
Your Honor.

THE COURT: State's Exhibit 14 will be (admitted.
You may publish it to the jury.

MR. JORDAN: The State ---

MR. JOHNSON: Your Honor, before we go *on*, it's
a prior consistent statement, Judge. We'd object to it on
that grounds as well.

THE COURT: Overruled.

MR. JORDAN: May I publish, Your Honor?

THE COURT: You may.

MR. JORDAN: "Statement]", Lora D Stallings,
am typing this statement for Llewelyn Ethan Mosley, a black
male, date of birth of 7/19/52, residing at 614 North Denley
Drive, Dallas, Texas."

MR. JOHNSON: Judge, we re going to objset to
this being read to the jury. The document speaks for itself.
The jury can read it themselves.

THE COURT: Overruled.

MR. JORDAN: "75203, at the request of

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Lt. P.P. Pothen number 11. This statement is being submitted on March 25th, 1997. The statement begins now.

"On March 25th, 1997, at 8:30 a.m., I was advised of my Constitutional Rights by a police officer who identified himself as Lt. P.P. Pothen. I signed a card detailing my Constitutional Rights with the date and time.

"I graduated in 1970 from Roosevelt High School in Dallas, Texas. I then attended UCLA, and then obtained my degree in English from Portland State University in 1974. I have a common-law wife, Louise Washington, who resides with me at 614 North Denley Drive.

"After being advised of my Constitutional Rights by Lt. Pothen, he showed me two six-picture lineups. I identified the person in number five, in the first lineup, as being a white male I know as Maverick. I placed my initials and today's date in the appropriate slot beside the photograph I identified.

"I identified the person in number three, on the second lineup, as being the white male I know as Zigzag. I placed my initials and today's date in the appropriate slot beside the photograph I identified as Zigzag.

"I met Maverick about a year and-a-half ago through other people that are people over on Industrial Boulevard in Dallas. I would let a lot of them come into my house out of the weather during the cold months for shelter at

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

night. They would spend the night and go back and try to find their drinks, or whatever. In parentheses, (the majority of them are alcoholics.)

"I also met Zigzag through these guys, homeless guys, coming over. I met him the same way. He had just gotten out of the penitentiary. By him being over on Industrial, he would come over with these guys. I have known Zigzag about six to eight months.

"Early Friday morning on March 21st, 1997, between about 3:00 o'clock and 4:00 o'clock a.m., both Zigzag and Maverick came to my house driving a white Chrysler four-door."

MR. JOHNSON: Your Honor, may we approach?

THE COURT: You may.

(Off-the-record bench conference was had.)

THE COURT: All right. You may continue, Mr. Jordan.

MR. JORDAN: Yes, sir.

"On March 21st, 1997, between 3:00 o'clock and 4:00 o'clock a.m., both Zigzag and Maverick came to my house driving a white Chrysler four-door. I was awake and I heard the car coming down the road, because it had a flat tire. It pulled up on the lot next to my house. I own the three adjacent lots. And Zigzag and Maverick came and knocked on my door. Zigzag and Maverick asked me to come out and look at

REDIRECT OF LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

what they had in the trunk of the Chrysler. Maverick had the keys to the car. Maverick tossed the keys to Zigzag, who opened the trunk. I saw a TV with remote, a VCR, a microwave, color printer, a yellow McCullough weed eater, a Winchester 30.06 rifle with a scope in a brown case, and a very large jamb box, a hand-carried radio. I saw clothes and blankets in the back seat of the Chrysler. Maverick and Zigzag were wearing gold colored watches when they got to my house.

"That Friday morning, Maverick and Zigzag were talking to other (sic) and to me. I asked who they got the junk from, and Maverick and Zigzag said, 'Oh, a woman in DeSoto.'" They told me not to worry about it.

"On Friday evening, Maverick and Zigzag were taking turns in the car, in and out. Zigzag was acting nervous. Zigzag asked me the penalty for murder. I said, 'Oh, 40 to life.' He kind of mumbled to himself, referring that an assistant who would get lesser time. I think he was referring to murder. He didn't say anything else.

"I brought the yellow McCullough weed eater into my house. Maverick and Zigzag carried the rest of the stuff from the trunk of the Chrysler into my house. When we were all inside my house, Maverick told me the weed eater was his own. Maverick and Zigzag kept asking me where they could get rid of the merchandise that came from the trunk of the Chrysler. Maverick and Zigzag ended up trading the

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

merchandise, except the weed eater, for dope. I thought that Maverick and Zigzag had just done a burglary, and I thought that's where they got the merchandise.

"Maverick and Zigzag, after they unloaded the Chrysler, were joyful and giving each other high-fives. There was a lot of adrenalin pumping. Then, the adrenalin stopped. Maverick and Zigzag separated from each other. Then they would try to pick up the morale of the other one.

"At daybreak, I changed the flat right-front tire on the white Chrysler. Maverick and Zigzag put the merchandise back in the trunk of the Chrysler. The (sic) loaded the jamb box, the TV, the VCR into the Chrysler. The other items were still in the house. Maverick left my house driving the white Chrysler. About an hour later, Maverick came back to my house driving the same white Chrysler.

"I don't remember if Maverick was still wearing the watch or not. The merchandise stayed in the trunk of the Chrysler.

"At about 12:00 noon, a guy named JT, a black male about 20 or 21 years old, came to my house. JT's real name is possibly Jerome, or Jeremy Tatum. He lives on the same street as me, in the 400 block. It is the last house on North Denley Drive before Hutchins. JT's house is directly across from the side of the school, Townview Magnet School. His house has aluminum white siding with blue trim. The front

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

porch has blue bars around it.

"JT arrived at my house driving a blue Ford pickup that belongs to JT's friend. It was kind of an old truck. JT talked to Maverick and Zigzag. JT took the TV, VCR, and the jamb box out of the trunk of the white Chrysler and loaded them into the bed area of the blue Ford pickup. JT took the microwave out of my house and put it into the bed area of the blue Ford pickup.

"On Saturday morning, March 22nd, 1997, Zigzag had the rifle. Zigzag was asking me and other people where he could get rid of the rifle. I left my house at about 7:00 o'clock that morning to go to work. I returned home at about 2:30 p.m. All the merchandise was gone except the yellow McCullough weed eater. Maverick gave me the yellow McCullough weed eater. He expressed that it was his own personal weed eater.

"When the police came to my house on Sunday, March 23rd, 1997, I was looking for the color printer. It seemed like the color printer was the hardest thing for Maverick and Zigzag to get rid of, and I thought the color printer was still in the room in my house, but the color printer was gone. Last I saw, Zigzag had the 30.06 rifle.

"This statement ends now. Signed, Llewelyn Ethan Mosley."

Below that, "State of Texas, County of Dallas.

REDIRECT of LLEWELYN MOSLEY by MR. JORDAN
DECEMBER 2, 1997
VOLUME 45

Before me, a Notary Public, on this day personally appeared Llewelyn Ethan Mosley, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, declared that the statements therein contained are true and correct. Given under my hand and seal this 25th day of March, 1997," signed Lora D. Stallings, Notary Public."

That concludes the statement.

THE COURT: Do you have anymore questions, Mr. Jordan?

MR. JORDAN: No, sir, I'll pass the witness.

THE COURT: Mr. Johnson, do you have any questions at this time?

MR. JOHNSON: No, Your Honor.

THE COURT: All right. Mr. Mosley, you may step down.

THE WITNESS: Thank you.

MR. DAVIS: Your Honor, at this time the State will offer State's Exhibit Number 11.

MR. JOHNSON: No objection, Your Honor.

THE COURT: All right. State's Exhibit Number 11 will be admitted.

MR. DAVIS: If I may briefly publish this to the jury, Your Honor?

Ladies and gentlemen, State's Exhibit Number 11 will be a business record, again. This will be from - this

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

is a business receipt from Uncle Dan's Pawn Shop dated 2/18/97, with the name of the customer as Donna Duncan Vick. The item purchased is going to be described as a Winchester 70, 30.06 rifle, EW Bushnell SP scope included, and again, this was purchased on February the 18th of 1997.

THE COURT: The State may call their next witness.

MR. DAVIS: Yes, sir.

THE COURT: The State would call Det. Dan Trippel.

Ladies and gentlemen of the jury, it's been awhile since our last break. If you want to stand up and stretch, feel free to do so. Stay where you're at.

THEREUPON,

DET. DAN TRIPPEL

was called as a witness by the State, having been previously first duly sworn by the Court, was examined and testified as follows:

THE COURT: Detective, did I swear you previously?

THE WITNESS: Sure did.

THE COURT: All right. If you would do me a favor and please speak loudly, clearly, and slowly into the microphone.

THE WITNESS: Sure.

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45
THE COURT: Mr. Davis, Mr. Pask?

MR. DAVIS: Yes, sir.

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Sir, would you please tell us your full name?

A. I'm Det. Dan Trippel.

Q. Are you employed with the Dallas Police Department?

A. I am.

Q. How long have you been a Dallas Police Officer?

A. 19 years.

Q. And how are you assigned at this time? To what division are you assigned?

A. I'm with the Homicide Division, Dallas PD.

Q. All right. And how long have you been in the Homicide Division?

A. Over four years.

Q. Now let me direct your attention, if I may, Detective, back to Saturday, March the 22nd of 1997, and ask you if on that date, again, you were a Dallas Police Officer assigned to the Homicide Section?

A. I was.

Q. And were you on duty that day?

A. I was.

Q. Were you working by yourself or did you have a partner?

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

A. Had a partner.

Q. And what is your partner's name?

A. Det. Marshall. Carlton Marshall.

Q. Again, let me direct your attention to approximately 7:30 p.m. on that Saturday and ask whether or not you received a 911 call?

A. I did.

Q. And as a result of that 911 call, did you meet an individual?

A. I did.

Q. And where did -- where did this meeting take place?

A. We met at the Red Coleman's Liquor Store right here on Industrial.

Q. Right here downtown, actually. Right down the street from the courthouse.

A. Yes, sir.

Q. And what is the name of the individual that you and Det. Marshall met on Industrial?

A. He was later learned to be John Adams.

Q. When you met with John Adams, did you have a discussion with him there on Industrial?

A. Yes, sir, just a brief one.

Q. And as a result of that conversation that you had with John Adams, Detective, did you, Det. Marshall, and John Adams then go to another location?

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

A. We did.

Q. And can you tell the members of the jury where you went to with John Adams?

A. We went to a condominium complex in the 200 block of Rolling Hills in Lancaster.

Q. Okay. Who was giving the directions to go down there?

A. Who was giving them?

Q. Yes.

A. John Adams directed us there.

Q. And when you got down to the location in Lancaster, were you expecting to find something down there?

A. Yes, we -- we found a white Chrysler New Yorker.

MR. DAVIS: May I approach, Your Honor?

THE COURT: You may.

BY MR. DAVIS:

Q. Det. Trippel, would you please look at what I've marked as State's Exhibit 15 and tell me whether or not this truly and accurately depicts the white automobile that you saw at 200 Rolling Hills in Lancaster on March 22nd, 1997?

A. Yes, sir.

MR. DAVIS: Your Honor, at this time we'll offer State's Exhibit Number 15.

MR. JOHNSON: No objection.

THE COURT: State's Exhibit 15 will be admitted.

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

BY MR. DAVIS:

Q. And again, as I'm publishing this to the jury, Detective, the car was simply parked on the street; is that correct?

A. It was parked in a parking lot behind the condominiums.

Q. And as you first -- as you looked at this here, did you note that there was a spare tire that appeared to be on this vehicle?

A. Yes, I did.

Q. Is that also shown to be the right-front tire --

A. Yes, sir.

Q. -- again on the vehicle?

Would you call this one of those doughnut spare tires?

A. (Nods head.)

Q. Now, when you got down to the vehicle there, Detective, did you make some -- some inquiry into the ownership of that vehicle?

A. Yeah. The back of the car had the license plate to it. We ran the registration on that car. It came back to the complainant.

Q. To a Donna Duncan Vick?

A. Right.

MR. DAVIS: Your Honor, at this time the State

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

will offer State's Exhibit Number 16. This is a certified record, and I've given the defense notice of it prior.

MR. JOHNSON: No objection.

THE COURT: All right. State's Exhibit 16 will be admitted.

MR. DAVIS: And if I may briefly publish this?

THE COURT: Yes.

MR. DAVIS: Thank you.

Ladies and gentlemen, State's Exhibit Number 16 is a vehicle title history showing that the ownership to the 1992 white Chrysler with license TJX-23Y is, in fact, that the owner is Donna Duncan Vick.

BY MR. DAVIS:

Q. You said that evening, what did you do, just over the radio ask for confirmation of the ownership?

A. Right. We were in our police car, and asked for registration on the car.

Q. Did you make any sort of a search of that vehicle when you went down there, Detective? Did you go inside the vehicle?

A. No, I did not.

Q. Did you have a chance to look inside?

A. We did.

Q. Okay. Did you observe anything inside the vehicle?

A. Yeah, in the back of the car, or the back seat of the

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

car we noticed some computer equipment in the back seat. It was at night. It was hard to see completely inside the car.

Q. Okay. When you found out that Donna Duncan Vick owned the vehicle, did you also learn her last known address?

A. Yes, we did.

Q. And as a result of that, did you call the DeSoto Police Department?

A. We did.

Q. And did you ask them to go to her address on Granada to check on her?

A. We did.

Q. Did you at some point leave John Adams there in Lancaster and go to 1205 Granada in DeSoto, Texas?

A. Right. Once finding the car, we contacted Lancaster Police Department to assist us. The patrolman arrived there. We had him watch John Adams in his car, and then we proceeded on over to the address of Miss Vick.

Q. Let me ask you, before you went over there and actually arrived at 1205 Granada, were you expecting to find something once you got there?

A. Yes, we were.

Q. What were you expecting to find?

A. The body of Miss Vick.

Q. Do you know approximately what time you actually arrived there at Miss Vick's residence in DeSoto?

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

A. Approximately 9:30 that evening.

Q. Was the house secured already by DeSoto Police Officers?

A. They were already there, and the house was contained by them and roped off with crime-scene tape.

Q. Did you have a chance to meet with some DeSoto Police Officers before you actually went into the house?

A. We did.

Q. Do you remember the names of any of the officers that you met with?

A. Not off the top of my head, I don't.

Q. Okay. Are some of them back in the witness room?

A. Yes.

Q. Do you recognize the name of Inv. Joe Watson, for instance?

A. Yes.

Q. Was there also a young patrol officer there, also, that was on the scene?

A. Right.

Q. Did you at some point actually go inside the residence, then?

A. We did.

Q. And did you go in with -- with someone, or by yourself?

A. No, it was myself, Det. Marshall and the physical

DIRECT of DET. TRIPPEL by MR. DAVIS

DECEMBER 2, 1997

VOLUME 45

evidence officer with the DeSoto PD went into the home.

Q. This -- was this a single-family residence?

A. It is.

Q. One story?

A. It is.

Q. Brick residence?

A. It is.

MR. DAVIS: May I approach, Your Honor?

THE COURT: You may.

BY MR. DAVIS:

Q. Detective, if you would, if you'll look at a floor plan that I've prepared. This is State's Exhibit Number 17. Does this appear to accurately show the floor plan of 1205 Granada as you found it there on March the 22nd, 1997?

A. Yes, sir.

Q. Okay. Do you believe this would assist you in your testimony in explaining the layout of that house and what you found out there on March 22nd, 1997?

A. Yes, sir.

MR. DAVIS: Your Honor, at this time we'll offer State's Exhibit Number 17

MR. JOHNSON: No objection.

THE COURT: All right. State's Exhibit 17 will be admitted.

MR. DAVIS: If I could publish this by <giving

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

each member of the jury a copy, I think that would be helpful, if I may do that, Your Honor.

THE COURT: You may.

BY MR. DAVIS:

Q. Okay. Detective, as we see here, the front door is located there at the bottom of the diagram, correct?

A. Yes, sir.

Q. Would it be fair to say that the first room that you walked into would be an entry, combination entry/dining room; is that correct?

A. Yeah, it's just a small foyer with the dining room there.

Q. As you came in that house that morning, was it your understanding that the DeSoto Police Officers had found the front door to be unlocked?

A. Well, it was that evening and, no, they found the -- I believe they found the door locked --

Q. Okay.

A. -- when they arrived, along with their fire department.

Q. When you actually went in the house, did you notice anything unusual, personally? You just opened the door and went in there?

A. Well, there was forcible entry into the -- into the door, and as we walked on in, the first thing that struck us,
DONNA HILL-WYNKOOP, RMR, CRR, RPR, CSR 214-653-5923

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 the lights were on.

2 Q. When you say "forceful entry", do you know whether or
3 not the DeSoto Fire Department had had to use what's called
4 the "jaws of life" to open the door?

16P 5 A. Right. Yeah, they needed to make forceful entry to
6 open the door to check on Miss Vick.

7 Q. So that's what you're talking about --

8 A. Right.

9 Q. -- when you talk about forceful entry?

10 A. Right.

11 Q. Okay. Had you noticed any odor when you first walked
12 into the house?

13 A. Well, yeah, you could -- you could -- for lack of a
14 term, you could smell her a little bit when we walked in.

15 Q. Okay. Just where did you go to in the house
16 initially? Just kind of take us through a walk-through of
17 what you did initially, Detective.

18 A. Well, we walked -- continued on into the front, into
19 the dining room, and as you step into the living room, the
20 first thing I remember noticing is, again, the TV stand, which
21 would be the -- would be the northwest corner of the living
22 room. You've got the picket here, a stand, and some videos on
23 the ground near the stand. We could see that the TV was
24 missing, and that was important to us.

17P 25 We proceeded, or the officers then proceeded to walk

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

us back into her bedroom, which would begin to be the bedroom located on the northwest corner of the home. As we walked in, we saw the body of Miss Vick lying on her bed.

Q. Okay.

MR. DAVIS: May I approach, Your Honor?

THE COURT: You may.

BY MR. DAVIS:

Q. Detective, if you will, if you'll please look at the three photographs that have been marked as State's Exhibits 18-A, 18-B and 18-C, do these three photographs truly and accurately depict portions of the living room there at 1205 Granada as they appeared on March 22nd, 1997?

A. Yes, they do.

Q. Okay.

MR. DAVIS: Your Honor, at this time we'll offer State's Exhibits 18-A, 18-B and 18-C.

MR. JOHNSON: No objections, Your Honor.

THE COURT: All right. Those exhibits 18-A, B, and C will be admitted.

MR. DAVIS: May the witness please step down, Your Honor?

THE COURT: He may.

Det. Trippel, if you would try to keep your voice up when you're down there in front of the jury, if you would.

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45
(The witness came down off the witness stand.)

BY MR. DAVIS:

Q. As we -- as we -- first, as we look at State's Exhibit 18-A, would this be more or less an overall photograph of the living room there at 1205 Granada?

A. It would be a photograph, if I was standing just in the dining room looking into the living room, that's what we'd first notice.

Q. Would you categorize the living room as being a pretty neatly kept room?

A. Oh, yeah.

Q. I've indicated with an arrow a certain item there in 18-A. What is this that we're looking at there?

A. It would be a TV stand.

Q. As that's shown in 18-B, which would be the condition you found it in that morning?

A. Exactly.

Q. What does there appear to be on top of that TV tray there, does there appear to be dust?

A. It appeared to be a TV appearance.

Q. Now the bottom photograph, State's Exhibit 18-C, there's a red arrow pointing to an object on the floor. Do you see that?

A. Yes, I do.

Q. Did you ever determine what that object was that

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

morning⁷

A. Yeah, we came back and looked at it. It's a cardboard placard, and on it, I believe it said, "Will work for food."

Q. Was it just laying on the carpet as it's shown here in the photograph?

A. Yes, it is.

Q. As you walk through the living room, Detective, did you see any sign of any struggle in that room?

A. No, nothing occurred other than the TV missing.

Q. No blood?

A. No, sir.

Q. No items that appeared to be weapons?

A. No, sir.

Q. And I believe you said then that -- that you went through other portions of the house; is that correct?

A. Right.

Q. Did you have an occasion to go through the kitchen?

A. After observing Miss Vick, then we went to the -- to the kitchen area. That was important to us, also.

MR. DAVIS: May I approach again, Your Honor?

THE COURT: You may.

BY MR. DAVIS:

Q. Detective, if you'll first look at State's 19-A, 19-B, and 19-C, do these three photographs truly and

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

accurately depict portions of the kitchen there at
1205 Granada as they appeared on March 22nd, 1997?

A. Yes, they do.

MR. DAVIS: Your Honor, we'll offer State's
Exhibits 19-A, 19-B, and 19-C.

MR. JOHNSON: No objections.

THE COURT: 19-A, B, and C will be admitted.

BY MR. DAVIS:

Q. As we look, first, 19-A, would that show a stove
there in the kitchen?

A. Right. It's a photograph taken from the living room
into the kitchen.

Q. And I believe 19-B, does that actually show the sink
there in the kitchen?

A. Yes, it is.

Q. Several items still in the sink?

A. Right.

Q. And then 19-C, another portion of the kitchen; is
that correct?

A. Right.

Q. 19-C shows what appears to be a blue drinking glass.
Was that present out there?

A. Yes, sir.

Q. Also appears, in 19-C, is it not, a paper towel roll
in the kitchen.

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 19 97
VOLUME 45

A. Yes, sir.

Q. Now the items in the sink there in 19-B appears to be at least two table knives and then a -- a sharper knife, and some other eating utensils. Did you look at those items for signs of blood, Detective?

A. Yes, sir, we -- they were important to us for two reasons.

Q. Okay. What were -- what were the reasons that they were important?

A. In -- in this preliminary investigation, we learned that the suspects involved had been eating lunch just prior to this assault, so we could tell clearly that someone had been eating or preparing food.

Q. Does there appear to be a skillet actually still on the stove there in the kitchen?

A. Yes, sir.

Q. But, again, no evidence of blood on any of the items found in the sink; is that right?

A. Yeah, we were seeing if one of them might have been the murder weapon.

Q. As a matter of fact, did you find any blood evidence at all within this kitchen?

A. No.

Q. Any sign that a struggle had occurred in the kitchen itself?

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

A. No, sir.

Q. And I believe that you were -- you were telling us that as a part of this walk-through with the DeSoto Police Department, that you actually then went into the master bedroom of that home; is that correct?

A. Yes, sir.

Q. And, first, if you'll just please tell the members of the jury, what did you observe when you first went into that master bedroom.

(The witness returned to the witness stand.)

A. Well, the first thing one has to observe was the body of Miss Vick lying on her bed. In there, we took our time.

It was important to us, after talking with Mr. Adams, that we needed to observe Mrs. Vick, and we had an idea of how this incident occurred.

When we observed her, we found her lying on her bed. She was lying on her back. Her head was near the headboard of her bed. Her feet were near the foot of the bed. She was dressed in a blue nightie.

I noticed immediately there was a pillow over her face, and what also struck us, or struck me, was that she had been deceased probably for a day.

Q. How did you determine that?

A. Well, just experience. She was in full rigor. The blood that was around her was dried.

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 19 97
VOLUME 45

Again, like I mentioned earlier, that we could -- we could, for lack of a better term, we could smell her as her body was decaying.

The nature of the wounds were dried, so it was just evident that she had been there for some time, and I would say a day.

Q. I'd say -- in the four years that you've been in homicide, could you give us an estimate of the number of murder scenes that you've actually had -- had to go out to?

A. Well, whether it be a murder scene or a death scene, I've probably been on close to a hundred by now.

Q. So you made this examination of her body, made some sort of determination in your own mind about how long she had been dead.

A. (Nods head.)

Q. What else did you think was important to observe out there?

A. Well, we had an idea of how this crime occurred, so we began to look for any trace evidence. We call it trace evidence.

We noticed on the headboard that there was blood splatter. On the wall behind the headboard, there was blood splatter.

If you look on the northern windows of that bedroom, the northwest-corner window, there were drapes. We noticed

DIRECT Of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

that there were blood splatters on those drapes. Of course, her bed beneath her body was just soaked in blood.

We proceeded on to the bathroom to see if anything occurred in there, --

Q. Okay.

A. -- and we walked each bedroom. We knew there were articles probably missing during this incident, and we -- we examined both bedrooms.

Q. Okay.

MR. DAVIS: May I approach, Your Honor?

THE COURT: You may.

BY MR. DAVIS:

Q. Det. Trippel, I would now ask you to look at the photographs that have been marked as State's Exhibits 20-A, 20-B, 20-C, 20-D, 20-E, and 20-F. Do these six photographs truly and accurately depict portions of the master bedroom at 1205 Granada as they appeared on March 22nd, 1997?

A. They are photographs of what we observed when we first walked in the bedroom.

Q. Okay. Do they show the body of Miss Vick, as well as some of the blood evidence that you just told us about?

A. Yes, it does.

MR. DAVIS: Your Honor, at this time we will offer State's Exhibits 20-A, 20-B, 20-C, 20-D, 20-E and 20-F.

MR. JOHNSON: May we approach, Your Honor?

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 199 7
VOLUME 45
(Off-the-record bench conference was had.)

THE COURT: So the record's clear, that
objection will be overruled.

State's Exhibits 20-A, B, C, D, E, and F will be
admitted.

MR. DAVIS: Okay.

BY MR. DAVIS:

Q. Detective, would you please step down for me --
(The witness came down off the witness stand.)

Q. --so we can look at some of these photographs?

MR. JOHNSON: Your Honor, may we have a running
objection to that as well?

THE COURT: You may.

BY MR. DAVIS:

Q. State's Exhibit 20-A, does this show the bed where
you found the body of Donna Duncan Vick?

A. It's a photograph taken from her bedroom door,
entrance into her bedroom, on into the bathroom.

Q. You testified that when you first walked in, her body
was covered; is that correct?

A. Yes.

Q. In 20-A, do we, in fact, see some of the bedding that
was covering her body when you walked into the bedroom?

A. Yes.

Q. You said that her head was covered by pillows. Do

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

we, in fact, still see those two pillows on the bed on her body?

A. Yes.

Q. State's Exhibit 20-B. You mentioned drapes next to the bed that appeared to have some blood on them. Do we see those drapes there in State's Exhibit 20-B?

A. Yes, sir.

Q. State's Exhibit 20-C, would that be a closeup of the headboard and the pillows that were still on the body of Donna Duncan Vick?

A. Yes, sir.

Q. And you said in your testimony that you noted blood spatter on the headboard itself?

A. Yes, sir.

Q. Did you notice -- and does State's Exhibit 20--C actually show blood on both of the pillows covering Donna Vick?

A. Yes, sir.

Q. State's Exhibit 20-D, is that a portion of the wall above the headboard?

A. Yes, sir.

Q. And did you also notice blood spatter upon the wall above the headboard?

A. Yes.

Q. For instance, am I now pointing at one of the larger

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

blood spatters that you noticed there that day?

A. Yes.

Q. State's Exhibits 20-E and 20-F, were these photographs of Donna Duncan Vick taken after her body was uncovered?

A. Right. Yes, sir.

Q. The position that we see in these photographs, does this represent the position of her body when she was first uncovered?

A. Exactly how we found her.

Q. Arms were raised above her shoulders; is that correct?

A. Yes, sir.

Q. Appears to be the palms -- palms up on both hands?

A. Yeah.

Q. State's Exhibit 20-F, do we notice her -- her left eye is open; is that correct?

A. Yes, sir.

Q. You had -- you had noted, I think, in your testimony, that -- that her body was covered with blood. Do we see that in both 20-E and 20-F?

A. Yes, sir.

Q. And the injuries that you noted to Miss Vick, do we see those around the throat and the face area of Miss Vick in these two photographs, also?

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

A. Yes, sir.

Q. Thanks.

(The witness returned to the witness stand.)

Q. You've told us about several areas there around the bed where you saw blood evidence in the -- the headboard, the wall above the headboard, on the drapes there. Did you look -- did you look around the remainder of the bedroom to determine whether there might be blood on other items, or other -- other walls?

A. Oh, yeah. We examined the -- the bedrooms, especially, very specifically. To the foot of her bed, you'll see that there was another chest of drawers. We examined it. We examined that chair that would be in the northeast corner.

She had a long chest of drawers along the south side of the wall.

We also examined the carpet. Did this assault take place on the carpet. Was she positioned from the carpet onto the -- onto the bed.

Q. Okay. Let me stop you there.

MR. DAVIS: If I may approach, Your Honor.

THE COURT: You may.

BY MR. DAVIS:

Q. Let me show you two additional photographs. I've marked these, Detective, as State's 21-A and 21-B. Do these two photographs truly and accurately depict the condition of

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

the remainder of the bedroom: The walls, the furniture, and other items as you found them there on March 22nd, 1997?

A. Yes, sir.

Q. So these were taken after the bedding and the body has been removed, but do they accurately depict the walls and the furniture as they appeared?

A. Yes, sir.

MR. DAVIS: Your Honor, at this time we'll offer State's Exhibits 21-A and 21-B.

MR. JOHNSON: No objection.

THE COURT: State's Exhibits 21-A and B will be admitted.

BY MR. DAVIS:

Q. And, Detective, as we look at these two photographs, you were talking about a chair that was toward the foot of the bed; is that correct?

A. Right.

Q. That's shown in State's Exhibit 21-A, is it not?

A. Yes, sir.

Q. There's also a chest of drawers toward the end of the bed. That's shown in 21-A, also; is that correct?

A. Yes, sir.

Q. There's a bigger dresser here in 21-B. As you looked at the walls, the other walls within that bedroom, did you find any evidence of blood on those walls?

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

A. No, sir.

Q. Okay. As you looked at the furniture in the other portions of the bedroom, did you find any evidence of blood on those?

A. No, sir.

Q. Did you -- have a seat there.

(The Witness returned to the witness stand.)

Q. In fact, did you find evidence in any of those items shown there, in State's Exhibits 21-A and 21-B, in the remainder of the bedroom, did you find any evidence that any of those items had even been disturbed or moved?

A. No, sir.

Q. Okay. You were talking just a moment ago about looking at the carpet for -- for -- what were you looking at when you looked at the carpet?

A. Well, we were looking for any blood-stain evidence. Specifically, this was a violent scene, so we wanted to see if -- did the assault take place while she was standing, on the floor, on the carpet, and somebody then positioned her body onto the bed, and we saw no blood stains, you know, nothing to indicate to us that the assault took place on the floor.

Q. Okay. So did you reach the conclusion that -- that Miss Vick had actually been lying on her bed when she had been attacked?

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

A. The assault took place on her bed; yes, sir.

Q. You know, again, just looking at some of the furniture in her bedroom, any evidence that those pieces of furniture had been ransacked?

A. No, I mean, -- no, sir.

Q. Drawers pulled open?

A. No, sir.

Q. Personal property, clothing, that sort of item thrown on the floor at all?

A. No.

Q. Everything seemed to be in order; is that right?

A. Yes, sir.

Q. Would it be fair to say the only area of that bedroom where anything was out of order was immediately around that bed itself?

A. Yes, sir.

Q. Certainly as you look through the bedroom and the bathroom, did you find any evidence of any -- any weapons within the bedroom?

A. None.

Q. How about the other rooms of that house?

A. None.

Q. Certainly, were you looking for those types of things'?

A. Yes, sir.

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. Let me ask you, after you completed your -- your walk-through of this scene, Detective, did you have an opportunity to examine the exterior doors for -- for signs of blood?

A. I went and did a cursory search around the whole exterior of that home, including the backyard, the fences, down the alleys, to see if anything occurred out there.

Q. Well, first of all, did you ever find any evidence of any forcible entry into that house besides what the fire department may have done on the front door?

A. None.

Q. No broken windows where an intruder may have come through?

A. No, sir.

Q. No broken doors of any sort?

A. No.

Q. How about blood on exterior doors?

A. No, sir.

Q. Did you find anything unusual when you went around the outside of that house? You talked about going through the yard.

What all areas did you go through on the outside of that house looking for something unusual?

A. I walked completely around the whole exterior of the home, including the backyard, the inside and outside of the

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

1 fence, that I could.

36P 2 Q. What are you looking for?

3 A. Anything out of place, anything unusual: Weapons,
4 more blood. Anything that's broken. Property. Anything that
5 seemed out of place.

6 Q. Did you find even one single item that looked out of
7 place outside that house?

8 A. No, sir, not to us.

9 Q. No weapons retrieved?

10 A. No, sir.

11 Q. No blood trail leading from the house?

12 A. No, sir.

13 Q. How long did you remain there at the residence that
14 morning?

15 A. We were probably there a good three hours.

16 Q. Okay. And certainly this was in the -- the City of
17 DeSoto, correct?

18 A. Yes.

19 Q. So would it be fair to say that you're there pretty
20 much as an adviser, but the DeSoto police have control of this
21 crime scene; is that right?

37P 22 A. Yes, sir.

23 Q. So that one of their investigators would actually be
24 the lead detective on this case; is that right?

25 A. Yes, sir.

DIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. That location down there, 1205 Granada, that you went to where you found the body of Donna Duncan Vick, was that on March the - March the 22nd, 1997, is it still today a location in Dallas County, Texas?

A. It is.

Q. Did that pretty much end your involvement in the case once you had talked with John Adams and once you had walked through this house and pretty much left to go to the DeSoto Police Department?

A. Yes, sir.

Q. Thank you, Detective.

MR. DAVIS: I'll pass the witness, Your Honor.

THE COURT: Ladies and gentlemen, we're going to take a break for about five or ten minutes before we begin cross-examination.

Miss Biggerstaff?

(Recess taken.)

(Jury not present.)

THE COURT: All right. Let the record reflect we're outside the presence of the jury.

Previously, the defense objected to the admission of State's Exhibits 20-E and 20-F being indicated in the record by the fact that we took a break or a conference at the bench. At that time I overruled the objections and, Mr. Johnson, I'll go ahead and let you now fill in the record
DONNA HILL-WYNKOOP, RMR, CRR, RPR, CSR 214-653-5923

DECEMBER 2, 1997

VOLUME 45

as to what those objections were.

MR. JOHNSON: Your Honor, State's Exhibits 20-E and F are -- are repetitious of the photographs that the State entered in State's Exhibit 4-C and 4-A.

We would object on the grounds that -- that they're duplicitous, and also that they are -- that their probative value is outweighed by the prejudicial value, by the prejudice that occurs in those photographs. That's our objections to those photographs, Your Honor.

THE COURT: All right. Those were the objections that you made at the bench previously; is that correct?

MR. JOHNSON: Those were the objections that I made, Your Honor, at the bench prior to those photographs being admitted by the Court.

THE COURT: All right. And I overruled those objections at that time, and my ruling will remain the same.

MR. JOHNSON: Thank you, Your Honor.

I also had another objection at the bench, and that was the previous witness, Mr. Mosley, when Mr. Jordan was reading the statement, I approached the bench and made an additional objection prior to the completion of reading that, prior to the defendant (sic) reading the hearsay that was contained in Mr. Mosley's statements, and I want to make -- put that on the record, as the Judge told me they would --

DECEMBER 2, 1997
VOLUME 45

would be a timely objection as far as the hearsay part, and the Judge's ruling was that was overruled.

THE COURT: All right. I overruled those. Those remain the same.

So the record's clear, because my page and line printout is different than it will be in the record, I believe the record will show that a bench conference was held at 2:57 p.m., which was immediately preceded by the words "May we approach" by defense counsel, and it was at that time that those objections were made.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: This is off the record, Donna.

(Off-the-record bench conference was had.)

(Defense Exhibit No. 1

was marked for identification purposes.)

THE COURT: All right. Is the State ready for the jury?

MR. DAVIS: We're ready, Your Honor.

THE COURT: Mr. Johnson, the defense?

MR. JOHNSON: We're ready, Your Honor.

THE COURT: Jan?

(Jury panel present.)

THE COURT: All right. You may be seated.

Mr. Johnson, I believe the witness has been passed for cross-examination.

CROSS of DET. TRIPPEL by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

MR. JOHNSON: Thank you, Your Honor.

THE COURT: You may proceed.

MR. JOHNSON: May I approach, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Sir, I'm going to show you what's been marked as Defense Exhibit Number 1. Do you recognize that, what that's a photograph of?

A. It would be a photograph of John Adams, the person we spoke with on March 22nd.

Q. And this is the person you've been testifying to that you met at the day that you --

A. Yes.

Q. -- told us about; is that right?

A. He was wearing a shirt, but other than that, that's the person we spoke with.

Q. Okay.

MR. JOHNSON We'd offer Defendant's Exhibit Number 1.

MR. DAVIS: No objection.

THE COURT: Defendant's Exhibit Number 1 will be admitted.

MR. JOHNSON May I publish to the jury, Your Honor?

CROSS of DET. TRIPPEL by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45
THE COURT: You may.

BY MR. JOHNSON:

Q. So, Detective, this is the person that you were talking about when you were testifying about the person you met out there.

A. Yes. Yes, sir.

Q. Okay. Now, did Mr. Adams tell you that the knife that was used in this offense was, in fact, his own knife?

A. Yes, sir.

Q. This is not your case to investigate, is it, sir?

A. No, sir.

Q. You would investigate cases that happened in the City of Dallas?

Are you with the City of Dallas?

A. Yes, sir.

Q. So the only part of this offense that you investigated is basically what you told the jury about at this time; is that correct?

A. Yes, sir.

Q. The rest of the investigation was done by the DeSoto Police Department; is that correct?

A. Yes, sir.

Q. You merely were involved in the beginning of the investigation; is that right?

A. Yes, sir.

CROSS of DET. TRIPPEL by MR. JOHNSON
DECEMBER 2, 19 97
VOLUME 45

Q. And you just happened to make yourself available to them at that time because you were already there; is that right?

A. Yes, sir.

Q. Okay. This is a -- it is a bit unusual, would you agree, that you would be involved in the investigation of a homicide in another jurisdiction?

A. Yes.

Q. That's not the ordinary course of business, is it?

A. No, sir.

Q. Again, sir, when you were in that home on Granada in DeSoto, there was a great deal of other property that had some value that was still -- still there; isn't that correct?

A. Yes, sir.

Q. I mean, I noticed in some of those pictures there were still TV sets.

A. (Nods head.)

Q. Did you have a chance to look around that house?

A. Well, I examined the entire home. I didn't go through the chest of drawers, or --

Q. But you had a chance to walk through the entire house.

A. Yes, sir.

Q. And, again, like those pictures represent, there was still a great deal of valuable property that -- that was still

CROSS of DET. TRIPPEL by MR. JOHNSON
DECEMBER 2, 1997
VOLUME 45

1 there; is that right?

2 A. Yes, sir.

3 Q. You know, sir, you testified to start with, that --
4 that forcible entries had to be made into this home?

5 A. Yes, sir.

6 Q. Are you -- are you sure of that?

7 A. Yes, sir.

8 Q. Were you there when that happened?

9 A. No, sir.

10 Q. Okay. Was there another vehicle there at the
11 residence?

12 A. Yes, sir.

13 Q. The house hadn't been ransacked in any way.

13P 14 A. No, sir.

15 Q. There were blood splatters on the drapes and the
16 walls, I believe you testified to.

17 A. Yes, sir.

18 Q. Those were clearly visible to you, weren't they?

19 A. Yes, sir.

20 Q. When Mr. Adams told you that it was his knife that
21 was used in this offense, did he describe that knife to you?

22 Did he tell you it was a lock-blade knife, do you
23 recall?

15P 24 A. No. No, sir.

25 Q. He didn't give you any description on it?

REDIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

A. No.

Q. Thank you, sir.

MR. JOHNSON: That's all I have.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q. Det. Trippel, before you talked with John Adams, did you even know about the murder of Donna Duncan Vick?

A. No, sir.

Q. Before you talked with him, did you even know about the car parked down in Lancaster?

A. No, sir.

Q. So if John Adams would have not come forward, you, yourself, would have had no knowledge about this murder, would you?

A. Absolutely not.

Q. Did John Adams ever mention the name "Maverick" during the course of your conversations?

A. Yes, sir.

MR. JOHNSON: Your Honor, we'll object to that as being hearsay.

THE COURT: Overruled.

BY MR. DAVIS:

Q. He told you about his knife being used in the murder. Where were you with John Adams at that time?

A. We were in my car.

REDIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

Q. Okay. Where? Still on Industrial, or down there --

A. No, sir. We were in the -- over off of Rolling Hills.

Q. Was that the only thing that John Adams said to you during the conversation?

A. No, sir.

MR. JOHNSON: Your Honor, we're going to object to any hearsay.

THE COURT: All right. In regards to that question, I'll overrule it.

BY MR. DAVIS:

Q. So the question Mr. Johnson asked you about whether he said his knife had been used, that certainly was not the only part of that conversation, was it?

A. That's right.

Q. Now I'd like to go to the remainder of that conversation that you had with him.

In addition to telling you, Det. Trippel, that his knife had been used during the murder, what else did he say during the course of that conversation?

MR. JOHNSON: Your Honor, we will object to this as being hearsay.

THE COURT: All right. Would y'all approach the bench for a minute?

(Off-the-record bench conference was had.)

DIRECT of DET. TRIPPEL by MR. DAVIS (HEARING)
DECEMBER 2, 1997
VOLUME 45

20P 1 THE COURT: Ladies and gentlemen of the jury,
2 I'm going to ask you to step back to the jury room for just a
3 few minutes.

4 (Jury not present.)

5 THE COURT: All right. Let the record reflect
6 we're outside the presence of the jury.

7 Mr. Davis, you may continue, if you would.

8 For the benefit of the Court, please narrow it
9 down to whether there were more than one conversation so that
10 we can narrow the scope of this as quickly as possible and get
11 to it.

12 MR. DAVIS: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. DAVIS:

15 Q. Det. Trippel, you were testifying that John Adams
16 made the statement about the knife used during a conversation
17 that you had with him in your car when you were in Lancaster,
18 correct?

21P 19 A. Yes, sir.

20 Q. Would you have more than -- was that a part of one
21 conversation that you had with him, or did you have additional
22 conversations with him there at Lancaster? Was this one
23 continuous conversation, I guess is what I'm getting at.

24 A. It was continuous conversation.

25 Q. All right. So what I'm trying to do is, I'm trying

DIRECT of DET. TRIPPEL by MR. DAVIS (HEARING)
DECEMBER 2, 1997
VOLUME 45

to make sure that the conversation in which this took place, --

MR. JOHNSON: Your Honor, rather than him leading the witness, can he just ask the witness what was said at the time the statement was made regarding John Adams as not being the knife that was used?

THE COURT: I think that's what he was trying to do, but --

MR. DAVIS: I'm trying ~

BY MR. DAVIS:

Q. What I want you to do is I want you to focus your attention on the conversation in which John Adams made the statement about the knife, and please tell the Court what else John Adams said during that particular conversation to you.

A. We -- after we found the car, I went back into our car where John Adams was, and, again, we wanted to get more detail what he knew about this murder. -

When we first met at the liquor store, he just said he had witnessed a murder and that the guy named Maverick had done the murder; a car was taken. We just didn't really get -- we didn't really get that probative with him. Fine, let's go find the car.

So we found the car, and once we found the car, we thought, well, maybe there was a little bit more to this. So I went back to the car and started questioning him a little

DIRECT of DET. TRIPPEL by MR. DAVIS (HEARING)
DECEMBER 2, 1997
VOLUME 45

1 bit more about the murder itself; what did he see.

23P 2 He said that he thought maybe days earlier, probably
3 two days earlier, the complainant and Maverick had picked him
4 up off the streets while he was panhandling down off
5 Industrial. He took him home to her home, and where she made
6 them lunch. And during the course of making lunch and eating,
7 Maverick told John Adams that he was going to rob the lady,
8 and John Adams said he took my knife. He said I didn't
9 believe him, but he and the lady went back into the bedroom.

10 He said while he was eating lunch, he heard Miss Vick
11 scream and said, Maverick, what are you doing, or why are you
12 doing this?

13 He said he got up from the kitchen table, went into
14 the bedroom, and that's when he saw Maverick stabbing
15 Mrs. Vick on her bed. He said that the knife broke; that
16 Maverick went into the kitchen, got another knife, went back
17 into the bedroom, and continued to stab her.

18 After he had finished killing Miss Vick, Maverick
19 told him to grab some of the property, which would be the TV,
20 some video equipment. I mean, some computer equipment, and
21 load it up into her Chrysler. Together, they loaded up the
22 property, put it in the Chrysler, and they left the scene.

24P 23 Q. And that concludes the conversation that you had with
24 him at that time in Lancaster; is that correct?

25 A. Yes.

DECEMBER 2, 19 97

VOLUME 45

MR. DAVIS: Your Honor, that would be the conversation that I would intend to offer in front of this jury, and, again, just looking at Rule 107 there, I think it's clear that the intent of that Rule is to allow the other side to certainly go in to complete that conversation so that a false impression would not be left with this jury.

And as it is right now, we just have a statement that -- that John Adams' knife was used. Now, as we listen to the remainder of the conversation, we find that, yes, it was, but it was used by the defendant. So I think clearly under Rule 107, that we're allowed to go to complete that conversation so that a false impression is not left with this jury.

THE COURT: Any response, Mr. Johnson?

MR. JOHNSON: Your Honor, can we have a minute to make our response?

THE COURT: You may.

MR. JOHNSON: Could we go off the record?

(Off-the-record bench conference was had.)

THE COURT: Mr. Johnson, do you have your response prepared?

MR. JOHNSON: Yes, Your Honor.

Your Honor, first we would point out that the testimony that the State is trying to elicit at this point is hearsay, and it's hearsay against the penal interest of

DECEMBER 2, 1997

VOLUME 45

another, not the declarant, and that -- that testimony is clearly not admissible, Your Honor.

Now, under the -- under Rule 107, the --

THE COURT: 107.

MR. JOHNSON: Yeah. Under Rule 107, Your Honor, it talks about in terms of optional completeness when it is a situation that may -- that may ultimately leave a false impression with the jury.

Now, clearly the State knows that the testimony in this case is going to be that this knife was Mr. Adams' knife, and that Mr. Adams is the one that led them to the knife, and I'm sure the State, before they can ever get this knife into the record, is going to have to prove up that Mr. Adams led them to this knife in question and told them that it was his knife. So there is not -- there is not going to be any false impression left with the jury. So we would object on the grounds that, basically, the exception against hearsay will trunk and overrule this -- the rule on optional completeness in this situation.

THE COURT: All right. Having reviewed the statement previously -- previously elicited, and the context in which it was elicited, as well as Rule 107, Article 8 of the Texas Rules of Criminal Evidence, and the annotations contained in each, I'll overrule your objection.

MR. JOHNSON: Would you give us a running and

DECEMBER 2, 1997

VOLUME 45

continuing objection to that testimony, Your Honor?

THE COURT: I will. All right.

MR. JOHNSON: Your Honor, will you limit it to -- will you limit what he testifies to what he's already testified was the conversation?

THE COURT: I'm going to make that clear at this time.

Mr. Davis, I think you're well-aware that the conversation -- it is apparent to the Court that the conversation was broken up and was not actually one continuous conversation at the time Mr. Adams was met till the end of that day; that there were several, so, obviously, the completion of this conversation would be limited specifically to the testimony that he previously elicited from this witness.

MR. DAVIS: If I could just talk --

THE COURT: On re -- recross, we'll see what happens

MR. DAVIS: If I could just speak with the witness

(Conferring with witness)

(Off-the-record bench conference was had.)

THE COURT: All right. Detective, you can go ahead and have a seat.

Mr. Brauchle, you may go ahead.

REDIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

MR. BRAUCHLE: Your Honor, we'd also object to these statements as being in violation of Articles 38.22 and 38.23 of the Penal Code; therefore, not admissible against our client.

THE COURT: All right. Those are overruled.
Jan.

(Jury panel present.)

THE COURT: All right. You may be seated.
Mr. Davis, you may continue.

REDIRECT EXAMINATION - CONTINUING

BY MR. DAVIS:

Q. Det. Trippel, I want to ask you about the conversation that you had with John Adams in which he stated that the knife had been used in the murder of Donna Vick.

A. Yes, sir.

Q. First, can you tell the members of the jury, where did that conversation took take place?

A. It took place inside my vehicle on 200 Rolling Hills after we found the complainant's vehicle.

Q. Now, if you would, would you please relate to the members of the jury the complete conversation that you had with John Adams while you were in the car there in Lancaster.

A. After we contacted Lancaster Police Department and we asked DeSoto to check on Mrs. Vick, I had a conversation with John Adams. I wanted to know what he knew about this murder,

REDIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

what he had seen, and he told me that several days earlier, while he was on the street panhandling, the defendant in this case, Maverick, and Mrs. Vick, were riding in her white Chrysler New Yorker.

He stated that they picked him up and took him back to her home. While at home, Mrs. Vick had fixed Maverick and John Adams some lunch, and while Maverick and John Adams were eating, Maverick told John Adams that he was going to rob Mrs. Vick, and he took the knife belonging to John Adams.

John Adams said he didn't believe him, but when Mrs. Vick went into the bedroom, Maverick followed her into the bedroom. He said that while he was eating, he heard Miss Vick yelling, saying, Maverick, why are you doing this? John Adams said he got up and went into the bedroom, and when he went into the bedroom, he saw Maverick stabbing Mrs. Vick on the bed.

Of course, this is -- this -- he didn't know what to think of that, but after Maverick was stabbing her, the knife broke; and that Maverick went back into the kitchen and got a kitchen knife.

He went back into the bedroom and continued to stab Mrs. Vick, where he killed her.

John Adams then said that Maverick told him to get her property and that they took her TV, computer equipment, loaded it up in a white Chrysler New Yorker, and then they --

REDIRECT of DET. TRIPPEL by MR. DAVIS
DECEMBER 2, 1997
VOLUME 45

they left the scene.

Q. Thank you, Detective.

MR. DAVIS: I'll pass the witness, Your Honor.

THE COURT: Mr. Johnson?

MR. JOHNSON: That's all we have, Your Honor.

THE COURT: Det. Trippel, you may step down.

Ladies and gentlemen of the jury, I've been informed that the next witness is going to be a long witness.

We'll go ahead and conclude for the day at this time. If y'all will be back about ten minutes till 9:00, we'll start back up at 9:00 in the morning. Appreciate it. And before you leave, please, just -- any of the maps or exhibits that you have, just leave them either on the front rail there, or in your seat. The bailiffs will pick them up later.

Thank you.

THE COURT: This is off the record.

(Off-the-record bench conference was had.)

(Court and jury recessed.)

(Continued in Volume 46.)