

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND

vs.

Criminal Trial 07-1664X

KEITH A. WASHINGTON,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Trial on the Merits)

Volume II of IX

Upper Marlboro, Maryland

Tuesday, February 12, 2008

BEFORE:

HONORABLE MICHAEL P. WHALEN, Associate Judge

APPEARANCES:

For the State of Maryland:

WILLIAM D. MOOMAU, ESQUIRE
JOSEPH L. WRIGHT, ESQUIRE
RAEMARIE ZANZUCCHI, ESQUIRE

For the Defendant:

VINCENT H. COHEN, JR., ESQUIRE
MICHAEL STARR, ESQUIRE

Cindy S. Davis, RPR
Official Court Reporter
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Upper Marlboro, Maryland 20773

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P R O C E E D I N G S

1
2 THE DEPUTY CLERK: Criminal trial 07-1664X, State
3 of Maryland versus Keith Washington.

4 MR. WRIGHT: Joseph Wright for the State.

5 MR. MOOMAU: William Moomau for the State, Your
6 Honor. Good morning.

7 MS. ZANZUCCHI: Raemarie Zanzucchi on behalf of the
8 State.

9 MR. COHEN: Good morning, Your Honor. Vincent H.
10 Cohen, Jr., on behalf of Keith Washington.

11 MR. STARR: And good morning. Michael Starr, also
12 on behalf of Mr. Washington. Mr. Washington is present.

13 THE COURT: I think we're going to have to take a
14 roll of the jury to see if anyone is missing.

15 THE DEPUTY CLERK: Juror number 2, juror number 3,
16 juror number 4, juror number 6, juror number 8.

17 THE COURT: Juror number 8. Go ahead.

18 THE DEPUTY CLERK: Juror number 14, juror number
19 16, juror number 17, juror number 18, juror number 19, juror
20 number 21, juror number 22.

21 THE COURT: Juror number 22.

22 THE DEPUTY CLERK: Juror number 23, juror number
23 25, juror number 27, juror number 32, juror number 33, juror
24 number 37, juror number 38, juror number 40, juror number 41,
25 juror number 44, juror number 48, juror number 49, juror

1 number 50, juror number 51, juror number 52, juror number 53.

2 THE COURT: Juror number 53.

3 THE DEPUTY CLERK: Juror number 55, juror number
4 57, juror number 59, juror number 63, juror number 66, juror
5 number 71.

6 THE COURT: Juror number 71.

7 THE DEPUTY CLERK: Juror number 72, juror number
8 73, juror number 77.

9 THE COURT: Juror number 77.

10 THE DEPUTY CLERK: Juror number 79, juror number
11 80, juror number 88, juror number 91, juror number 92, juror
12 number 94, juror number 95, juror number 96.

13 THE COURT: Did they respond, number 96?

14 THE DEPUTY CLERK: No.

15 THE COURT: Juror number 96.

16 THE DEPUTY CLERK: Juror number 97, juror number
17 98, juror number 100, juror number 101, juror number 102,
18 juror number 106.

19 THE COURT: Juror number 106.

20 THE DEPUTY CLERK: Juror number 107.

21 UNKNOWN JUROR: They sent her back out to her car.

22 THE COURT: The security people?

23 UNKNOWN JUROR: Yes.

24 THE COURT: Okay. Thank you.

25 THE DEPUTY CLERK: Juror number 109, juror number

1 110, juror number 111, juror number 112, juror number 114.

2 THE COURT: Juror number 114.

3 THE DEPUTY CLERK: Juror number 115, juror number
4 118, juror number 121, juror number 123, juror number 124,
5 juror number 125, juror number 130, juror number 131, juror
6 number 132, juror number 137, juror number 143.

7 THE COURT: Juror number 143.

8 THE DEPUTY CLERK: Juror number 146, juror number
9 147, juror number 148.

10 THE COURT: Juror number 148.

11 THE DEPUTY CLERK: Juror number 149, and juror
12 number 150.

13 THE COURT: Now, I saw two or three jurors come in
14 a little bit late. Would you please give me your numbers so
15 that we know that you're here.

16 JUROR NO. 8: Number 8.

17 THE COURT: Thank you. Somebody else came in late.

18 JUROR NO. 150: Oh, 150.

19 THE COURT: You came at the end. Okay. Counsel,
20 wish to approach the bench.

21 (Counsel approached the bench and the following
22 ensued.)

23 THE COURT: For the people who just came in, what
24 are your juror numbers, please?

25 JUROR NO. 22: Twenty-two.

1 THE COURT: Thank you.

2 JUROR NO. 107: 107.

3 THE COURT: Thank you.

4 JUROR NO. 106: 106.

5 THE COURT: Thank you.

6 JUROR NO. 148: 148.

7 THE COURT: Thank you.

8 THE COURT: Again, any time you wish,

9 Mr. Washington is invited to the bench to participate in
10 anything having to do with voir dire and jury selection at
11 anytime.

12 We already have two notes. First is from juror
13 number 80. It was delivered to our bailiff.

14 MR. COHEN: 8-0, Your Honor?

15 THE COURT: Yes. It says, "I am a single parent,
16 with two children ages 10 and 8. Both are at home today
17 under the supervision of the teenager. My ten-year old has
18 bronchitis, and the eight-year old has a scheduled CT scan
19 tomorrow morning at Children's Hospital for a tumorous
20 cancer."

21 The other is from juror number 101. It's somewhat
22 of a lengthy note. It says, "Your Honor, I am juror 101. I
23 have a back condition called" -- and I can't read it, but
24 it's a degenerative spinal nerve condition. "I am in
25 significant pain at this time, and I found sitting for

1 significant times yesterday only aggravates the condition. I
2 am currently in treatment and respectfully request to be" --
3 and I don't know what this word is, but I think it's excused
4 from this selection process, "in that I don't think I can
5 withstand the rigor of the selection process or the,"
6 something, "jury-seating conditions if selected.

7 So with regard to number 80, what would you
8 suggest, if anything?

9 MR. MOOMAU: Can I read that again, Your Honor?

10 THE COURT: Yes.

11 MR. STARR: Your Honor, another juror has arrived,
12 number 143.

13 THE COURT: For purposes of the record, apparently,
14 juror number 96 is now present. And what was the next
15 number?

16 MR. STARR: 143.

17 THE COURT: How were you notified of that?

18 THE DEPUTY CLERK: The bailiff just passed up a
19 note.

20 THE COURT: And 143 is present.

21 MR. MOOMAU: You said we have another note?

22 THE COURT: The one I read to you.

23 MR. COHEN: I'm sorry; 143 did show up, Your Honor?

24 THE COURT: Yes. Well, number one, what
25 suggestions do you have about juror number 80, if any?

1 MR. MOOMAU: I have no objection to that juror
2 being excused. The child is going in for some kind of cancer
3 examination.

4 MR. COHEN: No opposition, Your Honor.

5 THE COURT: Juror number 80, as a result of her
6 child being scheduled for an CT scan for a cancerous tumor,
7 has been excused for cause by agreement of the parties.

8 Juror 101. What I suggest that we should do at
9 this point, and you tell me if you think otherwise -- how
10 many jurors do we have to go?

11 THE DEPUTY CLERK: Seventy-three.

12 THE COURT: Adding up 30 peremptories, plus 12
13 more, which I believe are for the alternate

14 MR. MOOMAU: Thirty for --

15 THE COURT: It's 20 and 10 is 30, right?

16 MR. MOOMAU: It's not a life sentence.

17 THE COURT: What are the peremptories you're
18 saying?

19 MR. MOOMAU: It's not life, I thought. It should
20 be 10 and 5.

21 THE COURT: Well, 10 and 5, that makes -- I'm glad
22 you brought that up.

23 MR. MOOMAU: I looked yesterday.

24 MR. COHEN: The defense gets 10?

25 MR. MOOMAU: Yes.

1 THE COURT: Fifteen, plus 5, plus 12, 27. Well,
2 that makes it better.

3 What do you suggest, if anything, with juror number
4 101?

5 MR. MOOMAU: Yesterday was a hard day. It was a
6 hard day on us. Now, they sat most of the time.

7 MR. COHEN: I don't know if you want to do any voir
8 dire to see what the issues are, to see if there are any
9 accommodations that can be made.

10 THE COURT: Okay. Juror 101, would you please
11 approach the bench.

12 Did somebody else come in? Gentlemen, for your
13 records, juror number 114 and 71 are now here.

14 Sir, we received your note about your back pain.
15 What's the specific term for it?

16 JUROR NO. 101: Spondylolisthesis. It's a pinched
17 nerve on the L-5. I could barely get up this morning to get
18 down here.

19 THE COURT: How long have you had it?

20 JUROR NO. 101: The condition is getting worse, but
21 the last six months it's gotten progressively worse.

22 THE COURT: You're currently being treated for it?

23 JUROR NO. 101: I am.

24 THE COURT: Are you taking any medication?

25 JUROR NO. 101: Yes. Prednisone, a steroid. I'm

1 supposed to go back tomorrow for another one. It hasn't done
2 that good. It was a step down and it was doing all right.

3 THE COURT: Is there anything that we can do to
4 accommodate your back if we are able to work around this
5 problem to some extent?

6 JUROR NO. 101: I don't know.

7 THE COURT: What has your physician told you about
8 what you have to do to accommodate the pain or sitting or
9 standing?

10 JUROR NO. 101: As I was saying, he gave me, last
11 week, a step-down steroid, you know, from seven to six, six
12 to five, and I went down to one today. I was supposed to go
13 back tomorrow to see him. From sitting yesterday, I think I
14 aggravated it tremendously. So when I got up this morning, I
15 almost couldn't move, basically. So that's where I am right
16 now.

17 MR. MOOMAU: Do you have a doctor's appointment
18 tomorrow, sir?

19 JUROR NO. 101: Yes, I do.

20 MR. MOOMAU: What time is that?

21 JUROR NO. 101: I'm not sure. I think it's in the
22 morning, like ten o'clock or two o'clock. I'm not sure what
23 time it is, but it is tomorrow.

24 MR. MOOMAU: Do you think your pain would have been
25 aggravated or your condition would have been aggravated so

1 much yesterday if you could have sat in a padded chair during
2 the day?

3 JUROR NO. 101: That may have helped alleviate the
4 situation, certainly. But sitting on a wooden bench for five
5 hours was too much. It hit me hard when I got home. After
6 the two sessions of sitting on the bench, it was --

7 MR. MOOMAU: It was a long day.

8 MR. COHEN: Sir, if you were given regular breaks,
9 would that help if you were able to stand up at different
10 intervals throughout --

11 JUROR NO. 101: It possibly could. I just don't
12 want to be in a position where I'm a detriment to the State
13 or the defendant. I'm trying to do this. I'm just here to
14 do what I can.

15 THE COURT: I understand, sir. Let us talk about
16 it.

17 JUROR NO. 101: Okay, sure thing.

18 MR. MOOMAU: What I'm going to suggest, Your Honor.
19 I know he has a doctor's appointment tomorrow, but we worked
20 long and hard to get to the point we're at now. But what I
21 would suggest is that we let him sit in a padded chair,
22 either in the jury box or if we can get him a chair to sit
23 in. I think that would help.

24 MR. COHEN: We agree, Your Honor. There's also a
25 pad I saw in the media box. There's also a pad on the bench

1 in the media box.

2 THE COURT: Would you tell her to get a padded
3 chair for juror 101.

4 THE BAILIFF: I already put him in a padded chair.

5 THE COURT: If you wouldn't mind putting your
6 initials on this note.

7 So we are excusing number 80 and having 101 remain,
8 correct?

9 MR. COHEN: Correct. Did another juror come in,
10 Your Honor, while we were discussing --

11 THE COURT: They're going to tell me. Who else is
12 here? So 77 is here and 53.

13 MR. COHEN: Your Honor, is 96 present?

14 THE COURT: Ninety-six is present.

15 MR. MOOMAU: Your Honor, one thing I do want to
16 ask, and I didn't ask him, but I'm sure he'll come back up on
17 another question dealing with this issue. He has a doctor's
18 appointment.

19 THE COURT: You're talking about 101?

20 MR. MOOMAU: Yes. This is going into next week. I
21 wasn't thinking about that when I mentioned the chair, but I
22 do want to maybe think about that issue, to see if he could
23 reschedule or go in the evening or something.

24 THE COURT: We also have a juror that had the child
25 support hearing today. That juror is here. And is she going

1 to give us some paperwork on it? Do you want me to call that
2 juror up?

3 MR. MOOMAU: Yes.

4 MR. COHEN: That's fine, Your Honor.

5 THE COURT: Juror number 77.

6 (Juror number 77 approaches the bench and the
7 following ensued.)

8 THE COURT: Good morning. We remembered that you
9 have a court hearing today.

10 JUROR NO. 77: It's not until 1:30.

11 THE COURT: Do you have the paperwork with you?

12 JUROR NO. 77: Yes.

13 THE COURT: Do we have that so we can look at it,
14 so we know who to call?

15 JUROR NO. 77: Yes.

16 THE COURT: Why don't you go get that, please.

17 (Juror number 77 briefly leaves bench conference.)

18 THE COURT: There was also a student who was going
19 to bring us in names for us to contact for her professors, I
20 believe.

21 Thank you. We are going to make a copy of this.
22 Actually, we have two copies. This is different. I'm going
23 to need a copy of this, please. We need to find out who the
24 master is, call them and contact them for you.

25 JUROR NO. 77: Thank you.

1 THE COURT: The last one was a student.

2 MR. WRIGHT: Juror number 131.

3 THE COURT: Yes. Juror number 131. Juror number
4 131.

5 (Juror number 131 approaches the bench and the
6 following ensued.)

7 THE COURT: Juror number 131, we didn't forget.
8 Did you get me that contact information?

9 JUROR NO. 131: Yes. Do you want me to bring it
10 up?

11 THE COURT: Yes.

12 MR. MOOMAU: Which number had the child support
13 issue, Your Honor?

14 THE COURT: I believe it was number 77.

15 MR. MOOMAU: I would just be interested on that,
16 how long she's been waiting to get her hearing and when it
17 will be rescheduled to.

18 JUROR NO. 131: All the e-mails and phone numbers
19 are on that.

20 THE COURT: Can we borrow this? We're going to
21 give it back to you.

22 JUROR NO. 131: Sure, that's fine.

23 THE COURT: Can I write on this?

24 JUROR NO. 131: Sure.

25 THE COURT: Thank you. Do you want me to bring

1 that lady back up again and ask her about her child support
2 case or do you want to wait? We have until 1:30. Her
3 hearing isn't until 1:30 in the afternoon. So if we have to
4 bring her back before then --

5 MR. COHEN: The defense doesn't think it's
6 necessary, Your Honor, but we will defer to you.

7 MR. MOOMAU: I'll defer, Your Honor. Whatever you
8 want to do on that.

9 THE COURT: Let's revisit it sometime around 1:30.
10 Maybe at the break we can contact the master or judge or
11 whoever is handling it and see what the story is.

12 I'm assuming that now we have all the jurors here
13 that are remaining. I should start out by asking my
14 question, if they overheard anything last evening from any
15 news media account or what was portrayed in that, and then
16 proceed to go from that point to the remainder of the
17 questions.

18 You both wanted me to start with the -- other than
19 that, start with the question about the trial is anticipated
20 to take five to seven days.

21 MR. MOOMAU: I can see it going until Wednesday of
22 next week.

23 MR. COHEN: We prefer that to be asked --

24 THE COURT: You want me to do that up front; is
25 what I'm asking.

1 MR. MOOMAU: May as well. Then we'll know what
2 we're dealing with.

3 MR. WRIGHT: I think the language should be an
4 additional five to seven days.

5 THE COURT: Well, I'm going to say the trial will
6 take five to seven days, and let them judge whatever they
7 think that is.

8 MR. MOOMAU: You mean five to seven days
9 including -- as far as trial days, it will be Wednesday,
10 Thursday, Friday, Monday, Tuesday, Wednesday, at least,
11 right?

12 MR. STARR: We don't have to agree on the number of
13 days but at least through Wednesday.

14 MR. MOOMAU: Excluding Monday.

15 (Counsel returned to trial tables and the following
16 ensued.)

17 THE COURT: All right, ladies and gentlemen.
18 Welcome back. I'm sure you're very pleased to be here. But
19 I need to start off this morning by asking you if, at anytime
20 after you left Upper Marlboro and returned home for the
21 evening, if any of you, at any time during that period, heard
22 any news media account whatsoever of the case in which you
23 are in the process of being selected for a juror.

24 So if there are any members of this prospective
25 jury panel who heard anything or saw anything on television

1 about this case, or who may have been exposed to any
2 conversation about this case from any source, or who may have
3 read anything about this case, please stand.

4 Yes, sir, if you would approach the bench.

5 (Counsel approached the bench and the following
6 ensued.)

7 THE BAILIFF: Number 106.

8 THE COURT: Good morning. Yes, sir, you are juror
9 number 106?

10 JUROR NO. 106: Yes.

11 THE COURT: What is it that you heard or saw?

12 JUROR NO. 106: I did see some family members of
13 mine yesterday and walked into a table-talk. They were
14 talking at the table. And, initially, I did not know where
15 it was going or what they were talking about, you know, but
16 by the time I realized what was -- there was something said
17 that I think would have made me prejudicial in this case.

18 THE COURT: What was said?

19 JUROR NO. 106: It was, more or less, that they
20 were referring to the defendant, this case, the defendant,
21 where it was about three different situations that he's been,
22 you know --

23 THE COURT: And you -- three different matters that
24 you were made aware of that may or may not be --

25 JUROR NO. 106: You see why I do have such a

1 problem with it, because yesterday, when I came here, I was
2 open minded and I still am.

3 But my father, before he punished me, one of his
4 quotes were only a fool will never learn from his mistakes.
5 Last night I applied that quote to what I heard. I could not
6 just get over it.

7 THE COURT: What specifically did you hear, sir?

8 JUROR NO. 106: That the defendant, I mean, he had
9 shot somebody, then shot two more people, and then struggled
10 with a real estate agent after all of this.

11 THE COURT: And as a result of what you heard last
12 evening about this and other matters, from what you are
13 saying, you are saying that you could not sit as a juror
14 fairly and impartially and deliberate on this case; is that
15 what you're saying?

16 JUROR NO. 106: Yes, I do think so.

17 THE COURT: You think so what?

18 JUROR NO. 106: I think that I could not. Because
19 in my bringing up, this was one of my father's favorite
20 quotes before he punish me, only a fool will never learn from
21 his mistakes.

22 THE COURT: Thank you, sir. You can have a seat.

23 MR. WRIGHT: Cause.

24 MR. COHEN: Agree.

25 THE COURT: Now, do you want me to have him sit

1 until the end of the day -- I'm afraid that he may talk to
2 other jurors.

3 Then juror number 106 is excused for cause by
4 agreement of parties.

5 Juror number 106, you're free to go, sir. Thank
6 you.

7 THE DEPUTY CLERK: There's one in the restroom.
8 Also, you need to ask number 16 about the witness he might
9 know.

10 THE COURT: We had juror number 16 yesterday. He
11 said he might or might not know one of the witnesses.
12 Somebody was going to get the address for us.

13 MR. MOOMAU: Robert Baker.

14 MR. COHEN: We have it, Your Honor.

15 MR. MOOMAU: Your Honor, juror number 80, the one
16 who has the CT scan tomorrow for cancer, are we going to
17 excuse her now?

18 THE COURT: You want me to?

19 MR. COHEN: I think we should.

20 THE COURT: Juror number 80, you're excused, ma'am,
21 from jury service. Thank you very much for bringing that to
22 our attention. By agreement of the parties.

23 Juror number 16. Good morning, sir. How are you
24 this morning? We were reminded that you had indicated to us
25 that you may know one of the witnesses in this case whose

1 name is Robert Baker. I'm going to show you the address of
2 that particular person, and if you could tell us whether you
3 recognize that address and you think that may be the address
4 of the person you know.

5 JUROR NO. 16: No, I don't remember where he live
6 at.

7 THE COURT: You do not remember where he lives at?

8 JUROR NO. 16: I don't remember where he live at.

9 MR. COHEN: I can proffer to the Court that that's
10 about 70 or 80 miles outside of the District of Columbia.

11 THE COURT: How are you acquainted with Mr. Baker?

12 JUROR NO. 16: Well, when you said Robert Baker, I
13 knew him as Reggie Baker.

14 THE COURT: But how were you acquainted with him?

15 JUROR NO. 16: I knew him from a long time. I knew
16 him as Reggie but --

17 THE COURT: Did he live in this area?

18 JUROR NO. 16: Upper Marlboro. Yeah, I think he
19 did. I think he did.

20 THE COURT: And when I say this area, I mean did he
21 live in Maryland?

22 JUROR NO. 16: Right.

23 THE COURT: Did he live locally in Prince George's
24 County?

25 JUROR NO. 16: Not off-hand. Only because I know

1 he said he lived in Marlboro.

2 THE COURT: How long ago was this?

3 JUROR NO. 16: This was about two, three or four
4 years ago. I ain't seen him since.

5 THE COURT: How well did you know him?

6 JUROR NO. 16: I knew him good. He was close to
7 the family.

8 THE COURT: Did you learn or were you aware that he
9 may have moved out of Marlboro in the last three or four
10 years?

11 JUROR NO. 16: I ain't seen him since. I know he
12 lived here. I don't know what part.

13 MR. COHEN: I believe you described him as an
14 African-American male, correct?

15 JUROR NO. 16: Yes.

16 MR. COHEN: Okay. That's it.

17 THE COURT: Thank you.

18 (Juror number 16 returns to the panel.)

19 MR. COHEN: Your Honor, just for the record --
20 Court's indulgence. Your Honor, it's our belief that Robert
21 Baker is white. He's not African-American. If that helps
22 the Court.

23 MR. MOOMAU: Baker is a fairly common name.

24 MR. COHEN: It's not even the same first name.

25 MR. MOOMAU: I'm not going to move to strike based

1 on that.

2 THE COURT: Okay. I am going to ask one question
3 before I do the five to seven day trial, just so I don't
4 forget about it. You had asked me to ask "does any member of
5 the jury panel live or work near the area in which the
6 incident occurred?" Then I'll go into the five to seven day.
7 Then we'll give them one easy one.

8 MR. MOOMAU: Your Honor, we were speaking
9 yesterday, after we finished, and we had agreed amongst
10 ourselves -- of course, the Court has to approve it -- that
11 we would give openings tomorrow. That's what we would like.

12 THE COURT: That's fine with me. You have much
13 more to do than the Court. I'm just trying to --

14 MR. MOOMAU: Get through it. Thank you.

15 THE COURT: Alright, ladies and gentlemen. Again,
16 thank you very much for your patience. As you can see, this
17 is a very deliberative type of process, and we have to follow
18 all these things as best as we can, based on the number of
19 jurors that are anticipated for every case.

20 We're going to proceed again with the voir dire,
21 and we have a number of other questions to ask. We do not
22 believe that they will be as extensive as the first few that
23 we have asked already.

24 As I mentioned to you, Mr. Washington resides at
25 1513 Shellford Lane in Accokeek, Prince George's County,

1 Maryland. And my next question to you is, is there any
2 member of this prospective jury panel who may work or live
3 near the area in which this incident took place, which is
4 1513 Shellford Lane in Accokeek, Prince George's County,
5 Maryland? If there is a positive answer, if you would please
6 stand.

7 Your juror number, please, sir?

8 JUROR NO. 123: Number 123.

9 THE COURT: And how far away or how close are you
10 to that address, sir?

11 JUROR NO. 123: Approximately half a mile.

12 THE COURT: And that is a residence address or work
13 address of yours?

14 JUROR NO. 123: Residence.

15 THE COURT: Would the fact that you live near where
16 the incident is alleged to have taken place in any way impair
17 your ability to serve as a juror and render a fair and
18 impartial verdict in this case?

19 JUROR NO. 123: No, sir.

20 THE COURT: Thank you, sir. Your juror number,
21 sir?

22 JUROR NO. 112: Number 112.

23 THE COURT: And approximately how far away do you
24 believe that you either work or live with regard to the
25 address I just gave you?

1 JUROR NO. 112: Less than half a mile.

2 THE COURT: Less than a half mile. Is that a
3 residence?

4 JUROR NO. 112: Residence.

5 THE COURT: Would that fact in any way impair your
6 ability to serve as a juror and fairly and impartially
7 deliberate on this case based only on the evidence?

8 JUROR NO. 112: No, it wouldn't.

9 THE COURT: Thank you, sir. Your juror number,
10 please?

11 JUROR NO. 33: Number 33.

12 THE COURT: Sir, how far away would you say you are
13 from 1513.

14 JUROR NO. 33: Approximately five miles.

15 THE COURT: Is that a residence?

16 JUROR NO. 33: Yes, sir.

17 THE COURT: Would the fact that you live near the
18 place where the incident is alleged to have taken place in
19 any way impair your ability to serve as a juror in this case
20 and render a fair and impartial verdict based only on the
21 evidence?

22 JUROR NO. 33: No, sir.

23 THE COURT: Thank you very much, sir. The Court
24 sees no other affirmative responses to that question.

25 Now, ladies and gentlemen, this case may take

1 between five and seven days to try. Is there any member of
2 this prospective jury panel who has been excused during that
3 time period by the jury commissioner for Prince George's
4 County? The Court sees no affirmative response.

5 Ladies and gentlemen, I'm going to ask you a
6 question. I'm going to ask it to you twice. There are a
7 couple of different parts to it, and that's why I'm going to
8 ask it to you the first time without a response, and then the
9 second time, if anyone has a positive answer to it, please
10 stand, and we will again go through the process that we
11 followed yesterday, that you are now familiar with.

12 Has any member of this prospective jury panel, any
13 member of their immediate family or close personal friend
14 ever been employed by any federal, state or local law
15 enforcement agency, or by a firm or agency that represents or
16 provides services to persons charged with committing a crime,
17 or by any other institution connected to the criminal justice
18 system?

19 Again, has any member of this prospective jury
20 panel, member of their immediate family or close personal
21 friend ever been employed by any federal, state or local law
22 enforcement agency, or by any firm or agency that represents
23 or provides services to persons charged with committing a
24 crime, or any other institution connected to the criminal
25 justice system? If you have a yes answer, please stand.

1 Not meaning to point, we'll start on my left and,
2 yes, ma'am, first one. What's your juror number, please?

3 JUROR NO. 2: Number 2.

4 THE COURT: And what is your response to that
5 question, ma'am?

6 JUROR NO. 2: My cousin is a police officer for
7 Bowie.

8 THE COURT: Would your cousin's occupation in any
9 way impair your ability to serve as a juror in this case and
10 render a fair and impartial verdict?

11 JUROR NO. 2: No.

12 THE COURT: Thank you, ma'am. Yes, sir, your
13 number, please?

14 JUROR NO. 3: Juror number 3, sir.

15 THE COURT: Yes, sir.

16 JUROR NO. 3: About a year ago I served as a bail
17 enforcement agent for a security company.

18 THE COURT: Where is that located, please?

19 JUROR NO. 3: That's located in southern Maryland.

20 THE COURT: Would your occupation formerly in that
21 capacity in any way impair your ability to serve as a juror
22 in this case and render a fair and impartial verdict?

23 JUROR NO. 3: No, Your Honor.

24 THE COURT: Thank you. Yes, ma'am, your number,
25 please?

1 JUROR NO. 6: Number 6. I work for DHS, Department
2 of Homeland Security.

3 THE COURT: With the federal government or state?

4 JUROR NO. 6: Federal government.

5 THE COURT: Would your occupation in that capacity
6 in any way impair your ability to serve as a juror in this
7 case and render a fair and impartial verdict?

8 JUROR NO. 6: No, sir.

9 THE COURT: Thank you very much. Starting again
10 from my immediate left and hating to point, yes, ma'am, your
11 number?

12 JUROR NO. 17: Juror number 17. I was employed by
13 Laurel Police Department in Maryland in 1986 to 2006, police
14 officer, detective and corporal. And I currently work at the
15 Washington Suburban Sanitary Commission for two years.

16 THE COURT: Would your occupation formerly and
17 currently as a police officer --

18 JUROR NO. 17: I'm not police officer now. I'm a
19 civilian investigator.

20 THE COURT: Civilian investigator. Would those
21 occupations in any way impair your ability to serve as a
22 juror in this case and render a fair and impartial verdict
23 based only on the evidence?

24 JUROR NO. 17: No, it would not.

25 THE COURT: Thank you, ma'am. I appreciate it.

1 Yes, your juror number, please?

2 JUROR NO. 19: Juror number 19. I have two sons
3 that's police officers, one in the District of Columbia and
4 one in Seattle, Washington.

5 THE COURT: Would your sons' occupation in any way
6 impair your ability to serve as a juror in this case and
7 render a fair and impartial verdict?

8 JUROR NO. 19: No.

9 THE COURT: Thank you. Sir, your number, please?

10 JUROR NO. 23: Number 23. My daughter works as a
11 contract agent for the Court Services and Offender
12 Supervision Agency.

13 THE COURT: In which jurisdiction, sir?

14 JUROR NO. 23: In the District of Columbia.

15 THE COURT: Would her occupation in any way impair
16 your ability to serve as a juror in this case and render a
17 fair and impartial verdict?

18 JUROR NO. 23: No, sir, it would not.

19 THE COURT: Thank you, sir. Again, not meaning to
20 point, yes, ma'am, your number, please?

21 JUROR NO. 44: Forty-four.

22 THE COURT: I'm trying to start at the same spot.

23 JUROR NO. 51: Fifty-one.

24 THE COURT: And what is your response, please?

25 JUROR NO. 51: My cousin was chief of police in New

1 Jersey.

2 THE COURT: Would the former occupation of your
3 cousin as a police officer, police chief in New Jersey in any
4 way impair your ability to serve as a juror in this case and
5 render a fair and impartial verdict?

6 JUROR NO. 51: No.

7 THE COURT: Thank you. Yes, ma'am?

8 JUROR NO. 52: Number 52. Both my mother and my
9 sister were employed with the Cape Coral, Florida, police
10 department for many years.

11 THE COURT: Would that in any way impair your
12 ability to serve as a juror in this case and render a fair
13 and impartial verdict?

14 JUROR NO. 52: No, sir.

15 THE COURT: Thank you, ma'am. Yes, ma'am, now I am
16 pointing at you. I'm sorry.

17 JUROR NO. 44: Juror number 44.

18 THE COURT: Yes, ma'am.

19 JUROR NO. 44: I formerly worked for Homeland
20 Security, Customs and Border Protection, federal.

21 THE COURT: Would that fact in any way impair your
22 ability to serve as a juror in this case and render a fair
23 and impartial verdict?

24 JUROR NO. 44: No.

25 THE COURT: Thank you. Sir, right next.

1 JUROR NO. 48: Number 48. I was a Prince George's
2 County police officer.

3 THE COURT: For how long, sir.

4 JUROR NO. 48: Five months.

5 THE COURT: Would that fact in any way impair your
6 ability to serve as a juror in this case and render a fair
7 and impartial verdict?

8 JUROR NO. 48: No, sir.

9 THE COURT: Thank you. The very next row, and I
10 believe it's you, ma'am.

11 JUROR NO. 55: Number 55. My sister is presently
12 employed with the district government, the trial board for
13 the District of Columbia.

14 THE COURT: Would that fact in any way impair your
15 ability to serve as a juror in this case and render a fair
16 and impartial verdict?

17 JUROR NO. 55: No, sir.

18 THE COURT: Thank you, ma'am. Yes, sir?

19 JUROR NO. 57: I'm currently a corrections officer
20 and have been for 17 years.

21 THE COURT: Is this in Prince George's?

22 JUROR NO. 57: No, sir.

23 THE COURT: What location?

24 JUROR NO. 57: Calvert County.

25 THE COURT: Would that fact in any way impair your

1 ability to serve as a juror in this case and render a fair and
2 impartial verdict based only on the evidence?

3 JUROR NO. 57: No, sir.

4 (Court reporter indicates juror did not identify
5 juror number.)

6 THE COURT: What was your juror number, sir?

7 JUROR NO. 57: Fifty-seven.

8 THE COURT: Thank you. Yes, ma'am, I think -- when
9 you get old, your depth perception isn't very good and I
10 can't tell who --

11 JUROR NO. 79: I'm 79, juror 79. My husband was
12 formerly employed in the attorney general's office, in the
13 crime victims unit, in the State of Ohio. He has left that
14 position.

15 THE COURT: Would that fact in any way impair your
16 ability to serve as a juror in this case and render a fair
17 and impartial verdict?

18 JUROR NO. 79: No, it would not.

19 THE COURT: Thank you. Yes, ma'am.

20 JUROR NO. 77: I'm juror number 77. I'm currently
21 employed with pretrial services in Washington, D.C., and was
22 a probation parole officer.

23 THE COURT: Would that in any way impair your
24 ability to serve as a juror in this case and render a fair
25 and impartial verdict?

1 JUROR NO. 79: No, Your Honor.

2 THE COURT: Thank you, ma'am. Again, all the way
3 to my left. Yes, sir, your number, please?

4 JUROR NO. 63: Juror number 63. I'm currently
5 employed at TSA, a federal contractor, Department of Homeland
6 Security.

7 THE COURT: Would that fact in any way impair your
8 ability to serve as a juror in this case and render a fair
9 and impartial verdict?

10 JUROR NO. 63: No, sir.

11 THE COURT: Thank you. Yes, sir.

12 JUROR NO. 66: Number 66. I had various jobs
13 working with police and federal marshals in the
14 psychotherapies, and I worked in maximum security forensics
15 for several years. I also worked for Arlington County as a
16 crisis therapist, and I worked with police at that point. I
17 also have two best friends that are police and a cousin who
18 is police.

19 THE COURT: Would your occupations in any of those
20 capacities and your relationship with any of the police
21 officers with whom you interacted at the time in any way
22 impair your ability to serve as a juror in this case and
23 render a fair and impartial verdict based only on the
24 evidence?

25 JUROR NO. 66: I don't think so.

1 THE COURT: Thank you, sir. I appreciate it. All
2 the way -- I think it's the back row. Yes, ma'am, your
3 number?

4 JUROR NO. 88: Juror number 88. My husband is a
5 contractor for Homeland Security currently, and I have a
6 cousin in the State of Florida that works for the FBI.

7 THE COURT: Would that in any way impair your
8 ability to serve as a juror in this case and render a fair
9 and impartial verdict?

10 JUROR NO. 88: No, it wouldn't.

11 THE COURT: Thank you, ma'am. Yes, ma'am?

12 JUROR NO. 91: Juror number 91. I currently work
13 in a law firm in Washington, D.C.

14 THE COURT: What's the name of the law firm?

15 JUROR NO. 91: Beveridge and Diamond, P.C.

16 THE COURT: Do they do criminal work?

17 JUROR NO. 91: They do criminal work.

18 THE COURT: Would that fact in any way impair your
19 ability to serve as a juror in this case and render a fair
20 and impartial verdict?

21 JUROR NO. 91: No.

22 THE COURT: Thank you, ma'am. Yes, ma'am?

23 JUROR NO. 92: Juror number 92. I have a nephew
24 who was formerly a police officer in the District of
25 Columbia.

1 THE COURT: Would that fact in any way impair your
2 ability to serve as a juror in this case and render a fair
3 and impartial verdict?

4 JUROR NO. 92: No, sir.

5 THE COURT: Thank you, ma'am. Yes, ma'am?

6 JUROR NO. 107: Juror number 107. I'm a former
7 employee of the Department of Homeland Security, Customs and
8 Border Protection, and my mother's fiance is currently a D.C.
9 cop.

10 THE COURT: Would that fact in any way impair your
11 ability to serve as a juror in this case and render a fair
12 and impartial verdict?

13 JUROR NO. 107: No.

14 THE COURT: Thank you, ma'am. Yes, ma'am, at the
15 very end.

16 JUROR NO. 109: I'm 109. I was formerly employed
17 with the FBI and the U.S. Court of Appeals for the D.C.
18 Circuit, and I have a cousin who is a police detective in
19 Washington, D.C.

20 THE COURT: Would that fact in any way impair your
21 ability to serve as a juror in this case and render a fair
22 and impartial verdict?

23 JUROR NO. 109: No, sir.

24 THE COURT: Thank you very much, ma'am. I'll start
25 with you, sir. Your number, please?

1 JUROR NO. 115: I'm 115. My uncle is a D.C. police
2 officer.

3 THE COURT: Would that fact in any way impair your
4 ability to serve as a juror in this case and render a fair
5 and impartial verdict?

6 JUROR NO. 115: No.

7 THE COURT: Thank you. Yes, ma'am?

8 JUROR NO. 111: Number 111. My cousin is a state
9 trooper in the State of Indiana.

10 THE COURT: Would that fact in any way impair your
11 ability to serve as a juror in this case and render a fair
12 and impartial verdict?

13 JUROR NO. 111: No, sir.

14 THE COURT: Thank you. Yes, ma'am?

15 JUROR NO. 110: Number 110. My cousin used to be
16 chief of police for P. G. County, and his two son-in-laws are
17 also police and his three daughters also. One works for
18 vice.

19 THE COURT: Would that fact in any way impair your
20 ability to serve as a juror in this case and render a fair
21 and impartial verdict?

22 JUROR NO. 110: No, sir.

23 THE COURT: Thank you. Yes, ma'am?

24 JUROR NO. 118: Juror number 118. My cousin is a
25 retired policeman, and my sister is an ex-federal police.

1 THE COURT: Would that fact in any way impair your
2 ability to serve as a juror in this case and render a fair
3 and impartial verdict?

4 JUROR NO. 118: No, sir.

5 THE COURT: Thank you, ma'am. I guess it would be
6 you, sir.

7 JUROR NO. 146: My father is a retired DEA agent
8 and also worked for the Justice Department, and I work for
9 the Department of Defense.

10 THE COURT: Would that fact in any way impair your
11 ability to serve as a juror in this case and render a fair
12 and impartial verdict?

13 JUROR NO. 146: No.

14 MR. STARR: Juror number, Judge?

15 JUROR NO. 146: I'm 146.

16 MR. STARR: Thank you.

17 THE COURT: Yes, sir, your number, please?

18 JUROR NO. 149: Juror number 149. My father is a
19 retired FBI agent, and I have a cousin who works for the
20 State Department as a police officer, and I am currently
21 employed with the Internal Revenue Service.

22 THE COURT: Would that fact in any way impair your
23 ability to serve as a juror in this case and render a fair
24 and impartial verdict? I'm not just talking about the IRS
25 now.

1 JUROR NO. 149: No, Your Honor.

2 THE COURT: Thank you, sir. I appreciate it. Yes,
3 ma'am?

4 JUROR NO. 96: Juror number 96. My mother and my
5 uncle used to work for P. G. police.

6 THE COURT: In what capacity, ma'am?

7 JUROR NO. 96: Police officer.

8 THE COURT: Would that fact in any way impair your
9 ability to serve as a juror in this case and render a fair
10 and impartial verdict based only on the evidence?

11 JUROR NO. 96: No.

12 THE COURT: Thank you very much, ma'am. The Court
13 sees no other affirmative responses. The next question,
14 ladies and gentlemen, I'm going to take your response at the
15 bench.

16 Has any member of this prospective jury panel,
17 member of your immediate family or close, personal friend
18 ever made a formal or informal complaint against a police
19 officer? If so, please stand.

20 Counsel, if you would approach the bench, please.

21 (Counsel approached the bench and the following
22 ensued.)

23 THE BAILIFF: Number 146.

24 THE COURT: Good morning, sir. You're juror number
25 146?

1 JUROR NO. 146: Yes. Back in 1995, my best friend
2 was assaulted by the P. G. County Police Department.

3 THE COURT: And that individual made a complaint
4 that you are aware of?

5 JUROR NO. 146: Yeah, he sued them.

6 THE COURT: Do you recall what the outcome was?

7 JUROR NO. 146: They settled out of court. He got
8 a lump sum payment. I'm not sure about how much.

9 THE COURT: Do you believe the matter was fairly
10 and appropriately handled by either the investigating
11 authorities or court authorities in the matter?

12 JUROR NO. 146: I can't say it was handled the best
13 way, because I know the Court tries to put -- it was five of
14 them in the car, who all had the same story, but then
15 everybody tried to say that it happened before he met them,
16 and why he be driving down the street with a broken jaw.

17 THE COURT: I have to put it in the context of what
18 I can understand. Are you talking about --

19 JUROR NO. 146: I think it was unfair.

20 THE COURT: And why do you believe it was unfair?

21 JUROR NO. 146: Because just the way it went down.
22 He had five witnesses who saw it happened, and then the
23 officer tried to say that he had nothing to do with it and
24 that it happened -- when he pulled him over in the car, his
25 jaw was already broke. But why would you be driving your car

1 with five people in it if your jaw is broke?

2 THE COURT: Based on what you know about that
3 incident and what happened to your friend and all of the
4 considerations about it, could what you know or what your
5 experiences were with regard to what happened to your friend,
6 could that in any way impair your ability to serve as a juror
7 in this case and render a fair and impartial verdict based
8 only on the evidence?

9 JUROR NO. 146: No, I don't think so.

10 THE COURT: When you say you don't think so --

11 JUROR NO. 146: No.

12 THE COURT: Okay. Thank you, sir.

13 THE BAILIFF: And number 8.

14 THE COURT: Yes, sir, you are juror number 8?

15 JUROR NO. 8: Yes.

16 THE COURT: What was your response to that
17 question?

18 JUROR NO. 8: I wanted to respond in the
19 affirmative. I had a friend and myself, approximately four
20 to five years ago, get pulled over by the Montgomery County
21 Police Department in Takoma Park, Maryland. They pulled us
22 over for slow stopping -- I'm using their words -- at a stop
23 sign. When they pulled us out of the car, approximately five
24 to six police cars surrounded our car. Two police officers
25 came, pulled us out, frisked us down, and robbed us.

1 THE COURT: And did what?

2 JUROR NO. 8: They robbed us. They stole my
3 friend's wallet and they took \$20 out of my back pocket.

4 THE COURT: Did anyone ever report -- did you
5 report --

6 JUROR NO. 8: My friend did, because he lost his
7 wallet. I let it go because, truthfully, I didn't see
8 anything coming out of the situation.

9 THE COURT: Do you know what the outcome or what
10 happened as a result of your friend filing a complaint in
11 Montgomery County?

12 JUROR NO. 8: He said they strung him along; they'd
13 look into it. But, overall, I don't think he's gotten an
14 answer because he hasn't told me anything.

15 THE COURT: How long ago was this?

16 JUROR NO. 8: About four to five years ago.

17 THE COURT: Based on what happened to you and your
18 friend in that particular instance, could what happened to
19 you and your friend in any way impair your ability to serve
20 as a juror in this case and render a fair and impartial
21 verdict?

22 JUROR NO. 8: Honestly, I haven't had much faith in
23 any police department ever since that incident, because it
24 never happened before, and I don't know if any associates of
25 mine that it has happened to, honestly.

1 THE COURT: Again, looking at it in that light, how
2 would you respond to my question, could that in any way
3 impair your ability to serve as a juror in this case?

4 JUROR NO. 8: Maybe. I don't think so, honestly.

5 THE COURT: You do not think that you could be
6 impartial or you do not think --

7 JUROR NO. 8: I don't think I can be impaired.

8 THE COURT: I'm sorry?

9 JUROR NO. 8: I don't think I can have impaired
10 judgment in giving an honest verdict.

11 THE COURT: Correct me if I'm wrong. I'm not
12 trying to put words in your mouth. Are you telling us that
13 you may not be able to render a fair and impartial verdict
14 because of what happened to you?

15 JUROR NO. 8: I hope not. It's hard for me to give
16 a definite answer because I really --

17 THE COURT: Obviously, you know how important this
18 is to Mr. Washington, who has been charged with this, and you
19 know how important it is to the State. We appreciate you,
20 number one, coming up here and telling us.

21 JUROR NO. 8: Yes, sir.

22 THE COURT: What we're trying to do is put together
23 12 people who would not be influenced by anything that may
24 have happened to them in their own personal lives, that in
25 some way could shape the course of their thoughts.

1 JUROR NO. 8: I understood that.

2 THE COURT: So if you think of it in that light
3 when I ask you the question, we need an answer that --

4 JUROR NO. 8: Yes, sir.

5 THE COURT: And that is, could what happened to you
6 in any way impair your ability to serve as a juror in this
7 case and render a fair and impartial verdict?

8 JUROR NO. 8: Since I honestly believe there would
9 be a possibility, I would have to answer yes.

10 THE COURT: Number 1, thank you very much for
11 coming up and telling us that. We all appreciate it.

12 MR. COHEN: Just for the record, this was number 8?

13 MR. WRIGHT: Number 8.

14 MR. COHEN: Number 146, what was his answer to that
15 impartial question? The one that just came up.

16 MR. WRIGHT: He could be fair.

17 THE COURT: He could be fair. That's what I heard.
18 Did you hear anything else?

19 MR. WRIGHT: No.

20 THE COURT: With respect to number 8.

21 MR. COHEN: Move for cause.

22 THE COURT: Do you want me to let him go
23 immediately, or do you want me to hold him here for a while,
24 or do you think that may spur more people coming up?

25 MR. COHEN: I think the question has already been

1 asked and answered. I would probably let him go.

2 MR. MOOMAU: What was the question, Judge?

3 THE COURT: Do you want me to let him go now?

4 MR. WRIGHT: I would suggest no. Because then
5 everyone will realize they can get off.

6 THE COURT: Let's hold off for a little while, but
7 make a note to yourselves to bring that back. You may as
8 well stay up here.

9 The Court sees no other affirmative responses to
10 that question.

11 Does any member of this prospective jury panel hold
12 any general beliefs or opinions about the Prince George's
13 County Police Department or its officers? If so, please
14 stand. The Court sees no affirmative response.

15 Has any member of this prospective jury panel ever
16 had an experience, or know of any family member or close
17 personal friends who have had an experience, with a police
18 officer, where you believe the officer treated you or that
19 other individual unfairly or improperly, whether or not a
20 complaint was actually filed? Please stand.

21 THE BAILIFF: Number 8.

22 THE COURT: Yes, sir. Does this relate to the same
23 experience?

24 JUROR NO. 8: Yes, sir. I just wanted to make that
25 known.

1 THE COURT: I appreciate that. Not another
2 experience, but the same one?

3 JUROR NO. 8: The same one.

4 THE COURT: Thank you, sir. I appreciate it.

5 THE BAILIFF: Number 14.

6 THE COURT: Good morning, ma'am. Juror number 14?

7 JUROR NO. 14: Yes. My son worked in Bethesda at
8 the time, was mishandled by the Montgomery County police. He
9 had to show his I.D. and they had him on the ground. They
10 cuffed him. He was on the ground for like maybe 30 minutes.

11 THE COURT: Do you know why they stopped the car?

12 JUROR NO. 14: They said that he looked like
13 someone that they were looking for, but he was on his way to
14 the subway from work and it was at night, and he was treated
15 really bad and he's not a bad person. He's a minister.

16 THE COURT: Did they release him?

17 JUROR NO. 14: Of course, after about 30 minutes or
18 so, but it was devastating for him.

19 THE COURT: I can understand that. Did anyone file
20 a complaint? You're saying he did not file a complaint?

21 JUROR NO. 14: He did not. I called myself to
22 express my concern with the treatment, but he did not. And
23 at this time he was about 24. He just let it go.

24 THE COURT: Based on what happened to your son and
25 your experiences that you associated with that, could that

1 experience in any way impair your ability to serve as a juror
2 in this case and render a fair and impartial verdict?

3 JUROR NO. 14: No.

4 THE COURT: Thank you, ma'am. I appreciate it.

5 THE BAILIFF: Number 52.

6 THE COURT: Good morning. Number 52?

7 JUROR NO. 52: Yes. The incident occurred in June
8 of this summer, when my 16-year-old son, who only had his
9 driver's license for five days, fell asleep at four o'clock
10 in the afternoon and put the car in the ditch on 301. A
11 Prince George's County officer arrived at the scene and
12 accused my son of drinking, which was not the case.

13 My son explained that he had just finished driver's
14 ed, and they said that you get mesmerized sometimes, and you
15 can put yourself to sleep by looking at the car in front of
16 you. The officer explained to my son that the only thing
17 that mesmerizes him is a pair of good tits.

18 So I thought that was totally inappropriate to say
19 to my son. The state officer arrived on the scene. The
20 Prince George's County policeman sped off of the scene. I
21 never got his name, but I thought that was inappropriate.
22 And so I never reported the case.

23 THE COURT: Would that in any way impair your
24 ability to serve as a juror in this case --

25 JUROR NO. 52: No, it doesn't. I believe it was a

1 case that was totally isolated to one individual.

2 THE COURT: Thank you.

3 THE BAILIFF: Number 98.

4 THE COURT: Yes, sir, you're juror number 98?

5 JUROR NO. 98: Yes. This must be about ten years
6 ago. I was living in Bowie. My neighbor across the street,
7 African-American, a D.C. police officer, had a complaint
8 filed against him by a business owner for making a racially
9 insensitive remark. Six or seven P. G. police officers
10 approached him -- I was watching from our window to his
11 house. He was sitting in his car, unarmed, facing six to
12 seven white P. G. police officers, with their guns drawn
13 against an unarmed man.

14 I ended up testifying in his behalf in the D.C.
15 court about -- just as a character witness. He used to
16 babysit my son. And I also testified in P. G. County, here,
17 in his lawsuit against the P. G. County police for
18 unnecessary force.

19 THE COURT: Okay. Would what you saw and your
20 experiences with that situation in any way impair your
21 ability to serve as a juror in this case and render a fair
22 and impartial verdict?

23 JUROR NO. 98: I don't think so. I have complaints
24 about those particular officers --

25 THE COURT: I'm sorry?

1 JUROR NO. 98: Only those particular officers
2 involved, but not against any P. G. police as a whole.

3 THE COURT: Thank you, sir. Appreciate it.

4 THE BAILIFF: Number 107.

5 THE COURT: Yes, ma'am, you're juror number 107?

6 JUROR NO. 107: Yes. I have a group of friends
7 that were in an altercation in D.C., and they were -- there
8 was a brawl and they were, in my opinion, falsely arrested.

9 Both sides of the story weren't heard, and even
10 after the -- my friends consulted. They got stopped by a
11 cop. They also agreed that matters were not handled the way
12 they should have been handled.

13 THE COURT: Were you there and saw what the --

14 JUROR NO. 107: No.

15 THE COURT: This is what you heard from your
16 friends?

17 JUROR NO. 107: Yes.

18 THE COURT: Based on what you were made aware of
19 about that particular situation and what transpired, could
20 that in any way impair your ability to serve as a juror in
21 this case and render a fair and impartial verdict?

22 JUROR NO. 107: No.

23 THE COURT: Thank you very much.

24 THE BAILIFF: Number 131.

25 THE COURT: Good morning, ma'am. You are juror

1 number 131?

2 JUROR NO. 131: Yes. Well, I have two incidents.
3 One was my uncle. He was taken into custody, and his rights
4 were never read to him.

5 THE COURT: Was that in Prince George's County?

6 JUROR NO. 131: Yes. No, I'm sorry. Montgomery
7 County.

8 THE COURT: You said you have another incident as
9 well?

10 JUROR NO. 131: Yes. My best friend was pulled
11 over for a traffic violation, and she said that the police
12 were taunting her because she was crying. It was one police
13 officer.

14 THE COURT: Where was that; do you remember?

15 JUROR NO. 131: It was in P. G. County, Greenbelt,
16 Maryland.

17 THE COURT: Do you know what your uncle was taken
18 into custody for?

19 JUROR NO. 131: I believe it was assault charges.

20 THE COURT: And you indicated that, to the best of
21 your knowledge, no officer read him his rights?

22 JUROR NO. 131: Right.

23 THE COURT: That was what you were told by your
24 uncle or --

25 JUROR NO. 131: Well, supposedly, the police

1 officer said that he wouldn't understand English anyway, so
2 they never gave him -- didn't read him his rights.

3 THE COURT: Would either one of those experiences
4 in any way impair your ability to serve as a juror in this
5 case and render a fair and impartial verdict?

6 JUROR NO. 131: No, sir.

7 THE COURT: Thank you, ma'am. I appreciate it.

8 THE BAILIFF: Number 146.

9 THE COURT: Juror number 146?

10 JUROR NO. 146: Yes. The first one was my cousin.
11 That was one. And then I told you yesterday about I had a
12 possession with intent charge.

13 THE COURT: Yes.

14 JUROR NO. 146: I didn't have anything on me. I
15 was in a car with a friend, who had like three or four bags
16 on him. He told the police that it was his, but the lady
17 said I need the arrest, so everybody in the car had to go.
18 But I didn't have anything on me. He told me the drugs were
19 his. I had to come to court for nothing. She threw it out
20 as soon as I got here.

21 THE COURT: Was that in District Court or Circuit
22 Court.

23 JUROR NO. 146: Yes. My lawyer was Mooney.

24 THE COURT: Tom Mooney?

25 JUROR NO. 146: Yes, sir.

1 THE COURT: Based on your experience in that
2 setting, could that in any way impair your ability to serve
3 as a juror in this case and render a fair and impartial
4 verdict?

5 JUROR NO. 146: No.

6 THE COURT: Thank you very much.

7 THE BAILIFF: And number 147.

8 THE COURT: Juror number 147.

9 JUROR NO. 147: Yes. I believe in '93 I, again,
10 was charged with three counts of attempted murder. I believe
11 the detective at the time was a Detective Holloway. I will
12 never forget that name.

13 I was charged and I was treated in a way that I
14 felt that was real unjust. I was never formally given any
15 apology. I never was even contacted by Prince George's
16 County police based on all the anguish that it caused my
17 family, with the split up of my mom and dad. It cost a lot.
18 It changed our life tremendously. It was such a huge case.

19 I never got past the way that I seen in the future
20 the way a lot of police officers went about situations when
21 they were called upon. I felt a lot of arrogance with P. G.,
22 Prince George's County police officers, and, in a sense, I
23 still feel that way in some of the things as an adult now.

24 I still get the respect as if sometimes I'm like a
25 kid. I'm a homeowner, I'm a taxpayer, and I've called them

1 numerous times in my area. I get this arrogant attitude. I
2 believe that's one of the reasons why it may be hard for me
3 to kind of, like, look at them at this time a lit different.

4 THE COURT: All right, sir. So my question to you
5 is -- number one, we appreciate very much you coming up.

6 JUROR NO. 147: Thank you.

7 THE COURT: My question to you then would be, in
8 light of what you said, could your experiences in the setting
9 that you described for us in any way impair your ability to
10 serve as a juror in this case and render a fair and impartial
11 verdict?

12 JUROR NO. 147: Yes.

13 THE COURT: Thank you very much, sir. Appreciate
14 it.

15 MR. COHEN: Cause, Your Honor.

16 THE COURT: Any agreement?

17 MR. WRIGHT: Yes, Your Honor.

18 THE COURT: Juror 147 is stricken for cause by
19 agreement.

20 Do you want me to ask the next question, weigh the
21 testimony of a police officer? May as well stay here. We'll
22 call them up.

23 The Court sees no other affirmative responses for
24 that question.

25 Ladies and gentlemen of the jury, is there any

1 member of this prospective jury panel who is more likely or
2 less likely to believe a witness because that witness is a
3 law enforcement officer? I'll read it again.

4 Is there any member of this prospective jury panel
5 who is more likely or less likely to believe a witness
6 because that witness is a law enforcement officer? The Court
7 sees no affirmative response.

8 At the conclusion of this case, ladies and
9 gentlemen, the Court will give you instructions as to the law
10 in this case. These instructions will be binding upon you.
11 Will any of you have difficulty in adhering to and following
12 the Court's instructions and return a fair and impartial
13 verdict based solely on the evidence presented in this case?
14 The Court sees no affirmative response.

15 Has any member of this prospective jury panel
16 served on a grand jury or served as a juror in another trial
17 in either a criminal or a civil case? If so, please stand.

18 I don't think we need to take these answers at the
19 bench; do you?

20 (Counsel returned to trial tables and the following
21 ensued.)

22 THE COURT: Juror number -- I think it's 3. Is it
23 3?

24 JUROR NO. 3: Yes. I believe it was a civil case,
25 in a traffic incident.

1 THE COURT: And you served as a juror in Prince
2 George's County?

3 JUROR NO. 3: Yes, sir.

4 THE COURT: Would that fact of prior jury service
5 in a civil case involving a traffic accident in any way
6 impair your ability to serve as a juror in this case?

7 JUROR NO. 3: No, Your Honor.

8 THE COURT: Thank you. Your juror number, ma'am?

9 JUROR NO. 6: Number 6. I served in D.C. on a
10 grand jury.

11 THE COURT: How long ago was that, please?

12 JUROR NO. 6: Maybe seven, eight years ago.

13 THE COURT: Would the fact of your prior service as
14 a grand juror in the District of Columbia in any way impair
15 your ability to serve as a juror in this case and render a
16 fair and impartial verdict?

17 JUROR NO. 6: No, it would not.

18 THE COURT: Thank you very much, ma'am. Yes, sir,
19 please.

20 JUROR NO. 32: Number 32. I served in a civil
21 trial right here in Upper Marlboro.

22 THE COURT: How long ago was that, sir?

23 JUROR NO. 32: About seven years ago, I guess.

24 THE COURT: Do you remember the nature of the civil
25 trial?

1 JUROR NO. 32: It was an employer suing an employee
2 for some school loans that he didn't repay.

3 THE COURT: Would your prior service in a civil
4 case in the Circuit Court for Prince George's County in any
5 way impair your ability to serve as a juror in this case and
6 render a fair and impartial verdict?

7 JUROR NO. 32: No, Your Honor.

8 THE COURT: Thank you very much, sir. Yes, ma'am?

9 JUROR NO. 52: Number 52. About six years ago I
10 served right here in this courtroom. The case was attempted
11 murder.

12 THE COURT: What was the outcome in that case,
13 please?

14 JUROR NO. 52: He was guilty.

15 THE COURT: Would your prior service in a criminal
16 case in Prince George's County in any way impair your ability
17 to serve as a juror in this case and render a fair and
18 impartial verdict?

19 JUROR NO. 52: No, sir, not at all.

20 THE COURT: Thank you very much, ma'am. Yes, sir,
21 I believe that's number 66?

22 JUROR NO. 66: Yes. I served in D.C. It was a
23 weapons charge.

24 THE COURT: Do you remember the outcome in that
25 case, sir, and how long ago it may have been?

1 JUROR NO. 66: Probably 17 years ago, and I believe
2 it was not guilty.

3 THE COURT: Would your prior service in a criminal
4 case as a juror in the District of Columbia in any way impair
5 your ability to serve as a juror in this case and render a
6 fair and impartial verdict?

7 JUROR NO. 66: It would not.

8 THE COURT: Thank you, sir. Yes, sir, your number?

9 JUROR NO. 71: Number 71. It was a theft ring
10 trial.

11 THE COURT: In what jurisdiction, sir?

12 JUROR NO. 71: Prince George's County.

13 THE COURT: And you served as a juror in that case?

14 JUROR NO. 71: Yes.

15 THE COURT: Do you remember what the outcome was?

16 JUROR NO. 71: It was guilty.

17 THE COURT: Would your prior service in a criminal
18 case in Prince George's County in any way impair your ability
19 to serve as a juror in this case and render a fair and
20 impartial verdict?

21 JUROR NO. 71: No, sir.

22 THE COURT: Thank you very much, sir. Yes, ma'am?

23 JUROR NO. 79: Number 79. I served in Ohio in 2000
24 on two civil cases.

25 THE COURT: In Prince George's County?

1 JUROR NO. 79: No; in Ohio.

2 THE COURT: Do you recall the nature of those civil
3 cases?

4 JUROR NO. 79: One was a medical malpractice, and
5 we found for the person bringing the complaint. The other
6 was a traffic infraction, and we found for the defendant.

7 THE COURT: Would your prior experience as a juror
8 in those civil cases in any way impair your ability to serve
9 as a juror in this case and render a fair and impartial
10 verdict?

11 JUROR NO. 79: No, sir.

12 THE COURT: Thank you very much, ma'am. Yes,
13 ma'am?

14 JUROR NO. 92: Juror number 92. I served as a
15 juror on a criminal case in Prince George's County about five
16 years ago.

17 THE COURT: Do you recall what the charge and what
18 the outcome was?

19 JUROR NO. 92: Felony murder and found guilty.

20 THE COURT: Would your prior service in a criminal
21 case in Prince George's County in any way impair your ability
22 to serve as a juror in this case and render a fair and
23 impartial verdict?

24 JUROR NO. 92: No, sir.

25 THE COURT: Thank you very much, ma'am. Yes,

1 ma'am?

2 JUROR NO. 94: Juror number 94. A civil case in
3 Prince George's County over ten years ago. It was a money
4 issue. They were found guilty. I was an alternate.

5 THE COURT: Would your prior service in that civil
6 action in this jurisdiction in any way impair your ability to
7 serve as a juror in a criminal case?

8 JUROR NO. 94: No.

9 THE COURT: Thank you very much, ma'am. Yes,
10 ma'am?

11 JUROR NO. 109: Number 109. Criminal, Prince
12 George's County. It was petty theft but, since he left the
13 store without the item, it was dismissed.

14 THE COURT: It was dismissed or found not guilty by
15 the jury, or how did you --

16 JUROR NO. 109: Well, as he was walking through the
17 store, he was stuffing things in his jacket.

18 THE COURT: No, that's okay. I mean, did the jury
19 come back and find him not guilty?

20 JUROR NO. 109: No. The judge --

21 THE COURT: Dismissed it before it actually reached
22 the jury.

23 JUROR NO. 109: Yes.

24 THE COURT: Would that fact of your prior jury
25 service in any way impair your ability to serve as a juror in

1 this case and render a fair and impartial verdict?

2 JUROR NO. 109: No, Your Honor.

3 THE COURT: Thank you. Yes, ma'am?

4 JUROR NO. 118: Juror number 118. It was a civil
5 case in Prince George's County about two ten years ago, an
6 automobile accident.

7 THE COURT: Would that prior jury service in that
8 civil case in any way impair your ability to serve as a juror
9 in this case and render a fair and impartial verdict?

10 JUROR NO. 118: No.

11 THE COURT: Thank you, ma'am.

12 JUROR NO. 124: Juror number 124. A civil case in
13 Prince George's County, auto accident. That was three years
14 ago.

15 THE COURT: Would that fact in any way impair your
16 ability to serve as a juror in this case and render a fair
17 and impartial verdict?

18 JUROR NO. 124: No, sir.

19 THE COURT: Thank you, ma'am. Yes, ma'am?

20 JUROR NO. 125: Number 125. I served in two civil
21 and one criminal.

22 THE COURT: In Prince George's County?

23 JUROR NO. 125: Yes.

24 THE COURT: Do you remember the nature of the
25 criminal case?

1 JUROR NO. 125: Assault, kidnapping, rape.

2 THE COURT: How long ago was that?

3 JUROR NO. 125: About ten years ago.

4 THE COURT: And do you recall what the outcome was?

5 JUROR NO. 125: Guilty.

6 THE COURT: And the nature of the two civil cases,
7 please?

8 JUROR NO. 125: One was seeking more compensation
9 for disabilities, and the other one was two shoppers were --
10 someone had fallen.

11 THE COURT: Would the fact of your prior jury
12 service in either that criminal case or those civil cases in
13 any way impair your ability to serve as a juror in this case
14 and render a fair and impartial verdict?

15 JUROR NO. 125: No, sir.

16 THE COURT: Thank you, ma'am. Yes, sir?

17 JUROR NO. 143: In 2005, a civil case. It was
18 traffic and was guilty.

19 THE COURT: What was your juror number, sir?

20 JUROR NO. 143: Number 143.

21 THE COURT: Would your prior service in that civil
22 case in any way impair your ability to serve as a juror in
23 this case and render a fair and impartial verdict?

24 JUROR NO. 143: No, it would not.

25 THE COURT: Thank you very much, sir. Yes, ma'am?

1 JUROR NO. 130: Juror number 130. An automobile
2 accident and he was found guilty.

3 THE COURT: In Prince George's County?

4 JUROR NO. 130: Yes.

5 THE COURT: And would that fact in any way impair
6 your ability to serve as a juror in this case and render a
7 fair and impartial verdict?

8 JUROR NO. 130: No, sir.

9 THE COURT: Thank you, ma'am. Yes, ma'am, all the
10 way in the back.

11 JUROR NO. 53: Juror number 53. A civil case,
12 Prince George's County, automobile.

13 THE COURT: Would that fact in any way impair your
14 ability to serve as a juror in this case and render a fair
15 and impartial verdict?

16 JUROR NO. 53: No.

17 THE COURT: Thank you very much, ma'am. The Court
18 sees no other affirmative response to that question.

19 Are any members of this prospective jury panel,
20 members of your immediate family or close personal friends
21 lawyers? Yes, ma'am?

22 JUROR NO. 18: Juror number 18. A friend of the
23 family is a member of -- has her own law firm, family law.

24 THE COURT: Do you remember in what jurisdiction?

25 JUROR NO. 18: Prince George's County.

1 THE COURT: Would that fact in any way impair your
2 ability to serve as a juror in this case and render a fair
3 and impartial verdict?

4 JUROR NO. 18: No.

5 THE COURT: Thank you very much, ma'am. Yes, sir?

6 JUROR NO. 25: Juror number 25. I have a
7 brother-in-law that's an attorney.

8 THE COURT: And in this jurisdiction, sir?

9 JUROR NO. 25: Calvert County, sir.

10 THE COURT: Does he undertake any criminal
11 practice; do you know?

12 JUROR NO. 25: No, sir.

13 THE COURT: Would that fact in any way impair your
14 ability to serve as a juror in this case and render a fair
15 and impartial verdict?

16 JUROR NO. 25: No, Your Honor.

17 THE COURT: Thank you very much, sir. Yes, sir?

18 JUROR NO. 32: Number 32. My brother.

19 THE COURT: In this jurisdiction?

20 JUROR NO. 32: No. He lives in Mannsville, Texas.

21 THE COURT: Would the fact of the occupation of
22 your brother in any way impair your ability to serve as a
23 juror on this case and render a fair and impartial verdict?

24 JUROR NO. 32: No, it does not.

25 THE COURT: Thank you. Yes, ma'am?

1 JUROR NO. 50: Juror number 50. Relatives,
2 immigration lawyers.

3 THE COURT: Would that fact in any way impair your
4 ability to serve as a juror on this case and render a fair
5 and impartial verdict?

6 JUROR NO. 50: No, Your Honor.

7 THE COURT: Thank you very much ma'am. Yes, ma'am?

8 JUROR NO. 51: Number 51. A close friend of my
9 mother is a lawyer in Prince George's County. It wasn't
10 criminal, but I'm not sure what it is.

11 THE COURT: Would that fact in any way impair your
12 ability to serve as a juror on this case and render a fair
13 and impartial verdict?

14 JUROR NO. 51: No.

15 THE COURT: Juror number 66, yes, sir?

16 JUROR NO. 66: Yes, I have eight friends who are
17 lawyers.

18 THE COURT: Do any of them practice any criminal
19 law?

20 JUROR NO. 66: Yes.

21 THE COURT: In this jurisdiction, sir, if you know?

22 JUROR NO. 66: Three of them are in the D.C. metro
23 area.

24 THE COURT: Would that fact in any way impair your
25 ability to serve as a juror in this case and render a fair

1 and impartial verdict?

2 JUROR NO. 66: No, it wouldn't.

3 THE COURT: Thank you. Yes, sir?

4 JUROR NO. 98: I have several friends --

5 THE COURT: Your number?

6 JUROR NO. 98: Number 98. I have several friends
7 who are lawyers, including my best friend.

8 THE COURT: Any of them practice criminal law in
9 this jurisdiction?

10 JUROR NO. 98: No.

11 THE COURT: Would that fact in any way impair your
12 ability to serve as a juror in this case and render a fair
13 and impartial verdict?

14 JUROR NO. 98: No.

15 THE COURT: Thank you. Yes, ma'am.

16 JUROR NO. 100: Juror number 100. I have a friend
17 previously employed with the state's attorney general's
18 office.

19 THE COURT: In Maryland?

20 JUROR NO. 100: Yes.

21 THE COURT: Do you know whether they were in any
22 criminal section of the attorney general's office?

23 JUROR NO. 100: I'm not sure.

24 THE COURT: Would that fact in any way impair your
25 ability to serve as a juror in this case and render a fair

1 and impartial verdict?

2 JUROR NO. 100: No, it would not.

3 THE COURT: Thank you very much, ma'am. Yes,
4 ma'am?

5 JUROR NO. 111: Number 111. We have a family
6 friend who is a lawyer, but I'm not certain as to what type
7 of law she practices.

8 THE COURT: In this jurisdiction?

9 JUROR NO. 111: Yes.

10 THE COURT: Would that fact in any way impair your
11 ability to serve as a juror in this case and render a fair
12 and impartial verdict?

13 JUROR NO. 111: No, sir.

14 THE COURT: Thank you, ma'am. Yes, ma'am?

15 JUROR NO. 118: Number 118. My sister is an
16 attorney, and she is licensed to practice in the State of
17 Maryland and the District of Columbia.

18 THE COURT: Does she perform any criminal work?

19 JUROR NO. 118: No, she does not.

20 THE COURT: Would that fact in any way impair your
21 ability to serve as a juror in this case and render a fair
22 and impartial verdict?

23 JUROR NO. 118: No, sir.

24 THE COURT: Thank you very much, ma'am. Yes, sir?

25 JUROR NO. 149: Number 149. FBI agent father,

1 retired attorney before he was an FBI agent. I have a
2 personal friend who is a civil attorney for the City of
3 Alexandria.

4 THE COURT: Would that fact in any way impair your
5 ability, sir, to serve as a juror in this case and render a
6 fair and impartial verdict?

7 JUROR NO. 149: No, sir.

8 THE COURT: Thank you very much. I see no other
9 affirmative responses to that question.

10 Is there any member of this jury panel who has such
11 strong feelings about guns that you would be unable to render
12 a fair and impartial verdict based solely on the evidence
13 presented in this case? If you have a yes or affirmative
14 answer, please stand. The Court sees no affirmative response
15 to that question.

16 Does any member of the prospective jury panel have
17 such strong feelings about homicide that you would be unable
18 to render a fair and impartial verdict in this case based
19 solely on the evidence presented? The Court sees no
20 affirmative response to that question.

21 Is there any member of this prospective jury panel
22 who has ever worked for any advocacy group, law firm,
23 political campaign, shelter, neighborhood organization, or
24 any other organization that focuses some or all of its work
25 on issues relating to gun control, gun violence, violence

1 among youths, or crime reduction?

2 If you'd like me to read it again, I will. Has any
3 member of this prospective jury panel ever worked for any
4 advocacy group, law firm, political campaign, shelter,
5 neighborhood organization, or any other organization that
6 focuses some or all of its work on issues relating to gun
7 control, gun violence, violence among youths, or crime
8 reduction? Yes, ma'am, juror number?

9 JUROR NO. 17: Juror number 17. Laurel Police
10 Department. Did do some advocacy work. They had a
11 community-based program as part of the department's
12 activities, issuing gun locks, going out into neighborhoods
13 and helping victims of crime, that court of thing.

14 THE COURT: Would your work in that area, as a
15 member of the Laurel City Police Department, in any way
16 impair your ability to serve as a juror in this case and
17 render a fair and impartial verdict?

18 JUROR NO. 17: No, it would not.

19 THE COURT: Thank you very much, ma'am. Yes, sir,
20 juror number 66.

21 JUROR NO. 66: In my capacity as a therapist over
22 20 years, about a quarter of my caseload was identified by
23 Juvenile Justice Department.

24 THE COURT: And you participated in any number of
25 programs, I'm sure, involved in assisting juveniles; is that

1 correct?

2 JUROR NO. 66: That's correct.

3 THE COURT: Would that in any way impair your
4 ability to serve as a juror in this case and render a fair
5 and impartial verdict based only on the evidence?

6 JUROR NO. 66: It would not.

7 THE COURT: Thank you very much, sir. The Court
8 sees no other affirmative response to that particular
9 question.

10 If Mr. Washington were to testify in this case,
11 would any of you be less likely to believe his testimony
12 simply because he is the defendant? The Court sees no
13 affirmative response.

14 Would any members of this prospective jury panel
15 tend to view the testimony of witnesses called by the defense
16 with more skepticism than those called by the State merely
17 because they are called by the defense? The Court sees no
18 affirmative response to that question.

19 Does any member of this prospective jury panel,
20 because of religious, moral or philosophical reasons, have
21 difficulty sitting in judgment on another person accused of a
22 crime? The Court sees no affirmative response to that
23 question.

24 Is there any juror who has either a seeing or
25 hearing disability or another physical condition that might

1 impair your ability to focus on the evidence in this case if
2 you were chosen to sit in this case? And that's juror number
3 101, correct?

4 JUROR NO. 101: Right.

5 THE COURT: Yes, sir, we are aware of that. Thank
6 you. And your number, sir?

7 JUROR NO. 121: Number 121.

8 THE COURT: Yes, we're aware of that, sir. Thank
9 you. The Court sees no other affirmative response to that
10 question.

11 Does any member of the prospective jury panel hold
12 any beliefs concerning the administration of justice in this
13 county that would cause you to hesitate in your ability to
14 deliver a fair and impartial verdict based solely on the
15 evidence to be presented in this case? The Court sees no
16 affirmative response to that question.

17 Is there any other reason whatsoever, that we did
18 not ask, why you would think that you could not sit as a
19 juror in this case and render a fair and impartial verdict
20 based only on the evidence to be presented? The Court sees
21 no affirmative response to that question.

22 Is there any member of this prospective jury panel
23 who is not a resident of Prince George's County? The Court
24 sees no affirmative response.

25 Is there any member of this prospective jury panel

1 who is not a citizen of the United States? The Court sees no
2 affirmative response.

3 Would counsel like to approach the bench?

4 (Counsel approached the bench and the following
5 ensued.)

6 THE COURT: Is the State satisfied with the voir
7 dire as requested?

8 MR. MOOMAU: Yes. I was shocked about the one
9 about the five to seven days, but I'm satisfied.

10 THE COURT: Is the defense satisfied with the voir
11 dire as given?

12 MR. COHEN: We are, Your Honor. The five to seven
13 days, the excused by the juror's office, is that language
14 commonplace in terms of --

15 THE COURT: I have used that language because --
16 well, that's the language that I use and other judges use
17 because, if they had anything that was going to take place
18 within a period of time and they had let the jury
19 commissioner know that, the jury commissioner would make a
20 decision and then refer them to us to determine, and they
21 didn't do that in this situation.

22 MR. COHEN: I see.

23 THE COURT: I don't know if all judges do that.

24 MR. COHEN: We're fine.

25 MR. MOOMAU: Because there were some notes on here

1 about some things.

2 MR. COHEN: In the comments section.

3 THE COURT: Yes. Then if we have no other matter
4 with respect to voir dire, why don't we start the process of
5 selection.

6 MR. COHEN: Your Honor, if you could repeat what
7 you said about the 12 peremptories that you said earlier. If
8 you could give us a quick overview of how this Court likes to
9 do peremptories. I believe you said there's an extra 12.

10 THE COURT: No, no, no. In this matter, because
11 the sentence is less than life, you would receive ten
12 peremptory challenges; the State would receive five. We're
13 choosing four alternates. So that in that, for each
14 alternate, you would have two challenges; the State would
15 only have one.

16 We do it in alternating fashion. The State,
17 initially, 12 to 15 will be called to the rail, so that you
18 can see them when their numbers come up, and the strikes will
19 alternate back and forth. And I'll tell you whose turn it
20 is. But, as you can see, I had to change my numbers.

21 MR. MOOMAU: I am right on that.

22 THE COURT: You were. I didn't think of that
23 because -- I'm going to look at it once again to make sure,
24 but I believe --

25 MR. STARR: How, logistically, do we exercise the

1 strikes? Is there a form or --

2 THE COURT: No. Do it orally. We keep track and
3 you keep track. In other words, many people say "with
4 respect, the juror is challenged" or "the juror is stricken,"
5 however you want to do it. But it's done orally.

6 Most times, if it was a case under 20 years, you
7 could do it on paper, but it's not.

8 MR. STARR: And do we do it orally at the bench,
9 or do we do it at the tables?

10 THE COURT: Right, sitting where you are.

11 MR. STARR: And they'll continue to be seated where
12 they're seated for that process?

13 THE COURT: Yes. Once a juror is seated, you would
14 have the ability, before they are sworn, to challenge them,
15 even if they are in the box.

16 In other words, if you have challenges remaining
17 from your ten, and the State had originally sworn a juror,
18 Maryland law permits you, even though you've done that, if
19 you have any challenges remaining, to challenge them from the
20 box before the jury is sworn. So you can exercise them from
21 the bench; you can hold off, and exercise them when they're
22 actually put in the box.

23 In other words, if the State were to say swear the
24 juror -- you or the State were to say swear the juror, and
25 you would say on that occasion swear the juror and they're

1 put in the box, as long as you have a strike remaining at the
2 end, you can challenge them from sitting in the box.

3 MR. STARR: I see. They're called up one by one.

4 THE COURT: Yes. We put 12 to 15 at the rail in
5 front of you. They're each called one by one, give their
6 juror number, challenge, back and forth, alternating.

7 MR. STARR: And then we go back and forth for the
8 first five, and then after that --

9 THE COURT: First five?

10 MR. COHEN: I got it.

11 THE COURT: It would be alternating strike every
12 single time for the first 12. And assuming that you don't
13 challenge anyone from the box, then it would be two and one,
14 alternating for the alternates.

15 So I would ask you after each phase. Say that
16 there are 12 jurors in that box that you've both indicated
17 you wish sworn, then I would say is the State satisfied with
18 that jury. If they were to say one moment, Your Honor, look
19 at their notes and say I have the ability to challenge
20 anyone, if they have any remaining strikes.

21 If they say the State is satisfied with that jury,
22 I would look to you and say are you satisfied. Then you
23 could exercise whatever challenges you have remaining or say
24 I'm satisfied.

25 So, if you're satisfied with the 12 we're seating,

1 then we go to the alternates, alternating back and forth in
2 the same process.

3 MR. COHEN: Your Honor, are there going to be 16
4 total, Your Honor?

5 THE COURT: I think, in this case, it's good to
6 have four alternates.

7 MR. COHEN: We agree.

8 THE COURT: So what we will do is we will call
9 them, put them up at the rail. She'll call them each
10 individually by number. They'll acknowledge who they are.
11 The State starts, and then it goes back and forth.

12 (Counsel returned to trial tables and the following
13 ensued.)

14 THE COURT: I apologize. Would you gentlemen like
15 to approach the bench again.

16 (Counsel approached the bench and the following
17 ensued.)

18 THE COURT: One of the jurors, number 79, just
19 remembered something with regard to his employment, where he
20 would work and know lawyers. Does anyone have any problem
21 with that or wish me to call him to the bench to ask him to
22 answer any further questions?

23 MR. MOOMAU: Nothing from the State, Your Honor.

24 MR. COHEN: No, Your Honor.

25 THE COURT: Would you sign that, Mr. Moomau, so we

1 can file it in the case. There's no objection.

2 Also, I'm going to excuse juror number 8 now and
3 number 147. They're the two that we, by agreement, were
4 stricken for cause.

5 MR. MOOMAU: I never did ask the question and we
6 never did -- did everyone show back up?

7 THE COURT: Yes, every single one. Now, some of
8 them were late but, when they came in, we checked them off.

9 MR. COHEN: Your Honor, you had made a suggestion
10 or said that you would be amenable to having some jurors
11 moved to the back if we thought it was appropriate in terms
12 of the pool. I know there is one gentleman that keeps
13 talking about --

14 THE COURT: That's what I was going to bring up
15 now. Thank you.

16 MR. MOOMAU: The guy with the back problems.

17 THE COURT: Juror 101 and juror 120, I believe.
18 That person with the vacation is struck then. We had the
19 lady with the support hearing, number 77. Let me just go
20 through all the names.

21 We have the back problem, we have the diabetes and
22 other difficulties. That's number 101 and number 121. We
23 have the elections judge, 118. And the other gentleman has a
24 prostate problem. That's juror 121. And he has diabetes. I
25 believe that's all my notes with regard to that. So it's

1 101, 121 and 118.

2 MR. WRIGHT: Your Honor, the State is inclined, as
3 to the elections judge, since that is a today job, she
4 probably is not going to be able to do anything today. The
5 State would request to leave her at her current space.

6 MR. MOOMAU: Yes.

7 THE COURT: The only thing I wanted to mention to
8 you, to bring up, is that she seemed a little bit upset or
9 irritated to some extent by asking me several times if I was
10 going to excuse her. So you have to make a determination
11 amongst you. Because it's no cause on whether you want that
12 person on the jury.

13 So the only thing I'm suggesting -- and you do not
14 have to agree with me -- is that we put her at the bottom of
15 the list, along with juror number 101 and 121.

16 MR. COHEN: Your Honor, as to all of the three
17 jurors that you've named, we would suggest that we move them
18 to the back of the pool for the physical ailments they
19 stated, as well as with 118. If she is released, she could
20 maybe make the polls by seven this evening, and she did seem
21 a little adamant about wanting to leave. So we would ask
22 that all three be put at the back.

23 THE COURT: It doesn't mean all three would come up
24 during the process. But if there's agreement, there's
25 agreement. If there isn't, there isn't.

1 MR. WRIGHT: The State's only understanding is that
2 the election judge, they should have had the training and
3 they were getting paid from 6:30 or 5:00 this morning.

4 THE COURT: I'm sorry. Go ahead.

5 MR. MOOMAU: The lady with the child support
6 issue --

7 THE COURT: That's 77.

8 MR. MOOMAU: I didn't really see the need to put
9 her in the back.

10 THE COURT: I don't have her on there. I'm just
11 saying, if you want to do that, if you want to consider it.
12 If you don't, that's fine. The only three I'm talking about
13 are 101, who has the back problem, number 121, who has
14 diabetes and prostate --

15 MR. WRIGHT: The State consents to moving those two
16 to the back.

17 THE COURT: There was another one who had back
18 problems, who was excused for other reasons. Number 140, I
19 believe it was.

20 MR. MOOMAU: Number 101 is the guy who came up here
21 first thing this morning?

22 THE COURT: Yes.

23 MR. MOOMAU: Yes, that's no problem.

24 THE COURT: So if we could put, by agreement, juror
25 101 and 121 at the bottom of the list, and juror 118 stay in

1 the position that she currently is in. File this with the
2 case.

3 Ready to proceed? Let me excuse number 8 and
4 number 147.

5 Juror number 8 and juror number 147, you're excused
6 from jury service. Thank you very much. We appreciate it,
7 and if you could go back to the main jury lounge and give
8 them back your number. I don't believe there is anything
9 else going on, but I can't promise you that. Thank you both,
10 again, very much.

11 MR. WRIGHT: Your Honor, this is a thought among
12 the attorneys. The five to seven day response, or lack
13 thereof, was a little troubling. Can we ask a general
14 catchall question, which some judges do give; that is, is
15 there any reason why you cannot serve on this jury for the
16 next five to seven days?

17 THE COURT: With all due respect, we've received a
18 number of notes, which we've filed in this case, from jurors
19 who expressed any number of reasons about difficulties they
20 would have in serving. And at the end we asked them a
21 question, is there any other reason whatsoever why you could
22 not sit on this jury and serve the period of time. They've
23 been told that it's five to seven days. No one, unlike all
24 of the other situations when they're passing up notes, has
25 ever responded in that fashion about the time.

1 So is that what you want me to do?

2 MR. COHEN: Court's indulgence.

3 MR. WRIGHT: We're fine, Your Honor.

4 MR. COHEN: Just from the defense, Your Honor. It
5 just seems odd that none of the jurors responded to the
6 question. Again, we're not making any opinion or statement
7 about the way it was phrased, but it just seemed odd that
8 there was no response about the five to seven days.

9 Our concern is that, once they're seated, they
10 realize that they'll be here for five to seven days, and then
11 we have a problem similar to the 118, Your Honor.

12 THE COURT: I'll ask the question, but I'm telling
13 you. Is that what you want me to do? I'll do it.

14 MR. COHEN: Can I confer with --

15 MR. WRIGHT: The State is fine.

16 THE COURT: No. What is it that you want me to
17 ask?

18 MR. WRIGHT: We'll defer to the defense.

19 THE COURT: I mean just tell me what you want me to
20 ask.

21 MR. MOOMAU: They asked a ton of questions. I mean
22 more so and brought more things up --

23 THE COURT: If the defense would like me to ask a
24 question, if there is anyone for any reason who believes that
25 they cannot sit as a juror for five to seven days, I'll ask

1 it.

2 MR. COHEN: I think we would like that done, Your
3 Honor.

4 (Counsel returned to trial tables and the following
5 ensued.)

6 THE COURT: As you may recall, ladies and
7 gentlemen, I asked you a question or at least relayed to you
8 the fact that this case may take five to seven days to try.
9 Did you all hear that?

10 THE JURY: Yes.

11 THE COURT: Is there any member of this prospective
12 jury panel who believes for any reason that they will not be
13 able to sit for five to seven days during trial?

14 Counsel, approach the bench. We'll do it one at a
15 time at the bench.

16 THE BAILIFF: Number 16.

17 THE COURT: Yes, sir, juror number 16?

18 JUROR NO. 16: Yes.

19 THE COURT: Why do you believe that?

20 JUROR NO. 16: Because I have -- this whole week, I
21 have bills to pay. I have a meeting to go to on Thursday.
22 And then I have to go out to Fairfax to get my money to pay
23 my bills. That's, like, early in morning, so I can't
24 really -- this whole week I got to take care of bills. They
25 ain't little bills. They're big bills. I've got mortgage,

1 tax.

2 THE COURT: I don't know if we're going to be able
3 to help you.

4 JUROR NO. 16: Well, you know, I'm behind in bills.
5 I was late yesterday for one.

6 THE COURT: I know, sir, but this is an obligation
7 that's required, and I'm not sure we can help you. But I'm
8 just telling you that up front.

9 JUROR NO. 16: Well, Your Honor, I can't be behind
10 on my mortgage.

11 THE COURT: Thank you.

12 THE BAILIFF: Number 14.

13 THE COURT: Yes, ma'am, juror number 14?

14 JUROR NO. 14: Was your question concerning if I'm
15 able to set in and would my job interfere with --

16 THE COURT: My question is, is there any reason
17 that you believe that you could not sit for five to seven
18 days in trial?

19 JUROR NO. 14: Well, I mean I can set. But I still
20 work. After I leave here, I would still have to do that.

21 THE COURT: All right, ma'am. Thank you. I
22 appreciate it.

23 THE BAILIFF: Number 17.

24 THE COURT: Juror number 17, yes, ma'am.

25 JUROR NO. 17: My concern is I have no problem

1 sitting on a jury for five to seven days but, with this
2 particular week, I'm going out of state on Saturday. I
3 already have my reservations and everything. It's a long
4 weekend for the holiday weekend. That's my concern.

5 THE COURT: Thank you. Appreciate it.

6 THE BAILIFF: Number 19.

7 THE COURT: You are juror --

8 JUROR NO. 19: I have rheumatoid arthritis --

9 THE COURT: You are juror number 19?

10 JUROR NO. 19: Number 19.

11 THE COURT: Yes, ma'am.

12 JUROR NO. 19: I have rheumatoid arthritis, and I
13 don't know whether I can -- some days I have good days; some
14 days I have bad. To make it down here for -- what is it?
15 Seven days?

16 THE COURT: Five to seven days, ma'am.

17 JUROR NO. 19: Five to seven days all depend if I'm
18 acting up that morning or whatever.

19 THE COURT: All right, ma'am. Thank you. I
20 appreciate it.

21 THE BAILIFF: Number 55.

22 THE COURT: Yes, ma'am, juror number 55?

23 JUROR NO. 55: Yes, I am. I'm self-employed. I
24 have a government contract where I transport school children.
25 That's my only reason.

1 THE COURT: Thank you very much, ma'am.

2 THE BAILIFF: Number 72.

3 THE COURT: Juror number 72. Yes, sir?

4 JUROR NO. 72: Yeah, I work in a body shop with
5 paint. We work on Army trucks. I have to attend the job.

6 Only two people can work on the back at the same time.

7 THE COURT: Thank you, sir. I appreciate it.

8 THE BAILIFF: Number 96.

9 THE COURT: Yes, ma'am, you're juror number 96?

10 JUROR NO. 96: Yes. I'm eight months pregnant, and
11 I feel uncomfortable for that long. And I also have medical
12 appointments.

13 THE COURT: When is that, ma'am?

14 JUROR NO. 96: Well, I had one yesterday, but I'm
15 have to reschedule it after.

16 THE COURT: Thank you.

17 THE BAILIFF: Number 112.

18 THE COURT: Good morning, sir. Juror number 112?

19 JUROR NO. 112: Yes. I'm a clinical research
20 nurse, and I work at the National Institution [sic] of
21 Health, and I started that job less than five months, and I
22 have several patients that we're doing clinical trials on,
23 and I really would like to be able to be there, you know,
24 with the clinical trial study that we're doing.

25 THE COURT: Thank you. I can't promise you

1 anything.

2 THE BAILIFF: Number 125.

3 THE COURT: Yes, ma'am, juror number 125?

4 JUROR NO. 125: Yes, I am. I have no problem with
5 five to seven but, on the 22nd, I have plane tickets for
6 vacation. It would depend on when the five to seven started.

7 MR. WRIGHT: Can we ask a follow-up question as to
8 when is her plane leaving?

9 THE COURT: The 22nd.

10 MR. WRIGHT: The plane is leaving on the 22nd?

11 JUROR NO. 125: Yes.

12 THE COURT: Thank you.

13 THE BAILIFF: Number 131.

14 THE COURT: Juror number 131, yes, ma'am?

15 JUROR NO. 131: Well, my main concern is school,
16 and I participate in a lot of organizations on campus and so
17 on.

18 THE COURT: Thank you, ma'am.

19 THE BAILIFF: Number 101.

20 THE COURT: Yes, sir, juror number 101?

21 JUROR NO. 101: Yes, sir.

22 THE COURT: And that's the matter you told us about
23 earlier?

24 JUROR NO. 101: Yes, sir.

25 THE COURT: We're trying to figure out what to do

1 about that.

2 JUROR NO. 101: Okay then.

3 THE BAILIFF: Number 146.

4 THE COURT: Juror number 146?

5 JUROR NO. 146: Yes, sir. I work nights at the
6 Pentagon, four on, three off. So, like, last night I had to
7 leave here at five, go to work at six, get off at six this
8 morning, go home, take a shower, and come here. I can't do
9 that seven days in a row.

10 THE COURT: All right, sir. Thank you.

11 THE BAILIFF: Number 121.

12 THE COURT: Juror number 121, yes, sir, we are
13 aware of both the prostate and the diabetes.

14 JUROR NO. 121: Yes, prostate cancer. I had
15 radiation --

16 THE COURT: You're having radiation treatment now?

17 JUROR NO. 121: No, I already had, but the side
18 effect is I have to go to frequent urination, bowel movement,
19 plus --

20 THE COURT: Thank you.

21 THE BAILIFF: Number 130.

22 THE COURT: Gentlemen, on this one he has prostate
23 cancer that he has just undergone radiation treatment for. I
24 did know he had a prostate problem, but I didn't know it was
25 that.

1 Yes, ma'am, you're number?

2 JUROR NO. 130: Number 130. I just started a new
3 job, and I got promoted to supervisor, and I run my own
4 store, and they can't find nobody else to cover my position.

5 THE COURT: Alright, ma'am. Thank you. I
6 appreciate it.

7 THE BAILIFF: Number 110.

8 THE COURT: Yes, ma'am, number 110?

9 JUROR NO. 110: Yes. I fell last year and broke my
10 wrist and hurt my back. I was taking therapy, and I'm
11 waiting for social security, because I can't go back to work
12 yet.

13 THE COURT: Thank you, ma'am. I appreciate it.

14 THE BAILIFF: And number 111.

15 THE COURT: Yes, ma'am, juror number 111?

16 JUROR NO. 111: Yes. I have a 10:30 hearing on the
17 26th for child support.

18 THE COURT: Thank you, ma'am. I appreciate it.

19 MR. COHEN: Ten minutes, Your Honor. That's all it
20 took. Just thought I would put that on the record.

21 THE COURT: I don't know about juror number 121.
22 We put him at the bottom of the list.

23 MR. WRIGHT: The State is fine with excusing him.

24 THE COURT: Well, I'm just throwing it out there.
25 I don't know what you may want or not want to do.

1 MR. COHEN: We have no opposition to number 121.

2 THE COURT: Number 121, by agreement of the
3 parties, is stricken for cause.

4 Do you want to keep 101 at the bottom? He's the
5 one with the back problem.

6 MR. COHEN: Yes.

7 MR. WRIGHT: Your Honor, if I may. I have a
8 question. We didn't discuss this on the scheduling
9 conference, but juror number 125 made mention of it. She's
10 catching a plane out on the 22nd. That is listed as judicial
11 conference. We will sit, if we make it to the 22nd, although
12 I understand none of us are planning to go --

13 THE COURT: The 22nd? There will be nobody in the
14 courthouse.

15 MR. WRIGHT: So we will not sit on that day, if we
16 get that far.

17 THE COURT: It's possible, but I can't answer that.
18 I would have to go talk to Judge Missouri. He'll be back
19 Wednesday. I can make the decision now in his absence, but
20 he will be back Wednesday. I would prefer to wait.

21 MR. WRIGHT: Juror number 125 stated she had plans
22 to leave for vacation. I guess we may have had a follow-up
23 question as to when she would be coming back into the area
24 itself. We did not ask the question.

25 THE COURT: What are you asking me to do?

1 MR. WRIGHT: To ask number 125 when is she coming
2 back.

3 MR. MOOMAU: She said just a long weekend.

4 THE COURT: If we start getting -- you have another
5 number with another vacation on the 25th. You want me to
6 bring both those people back up here?

7 MR. WRIGHT: No. I guess the State would caution
8 in terms of scheduling. There is a chance, I feel, that we
9 could go -- at least a jury could go until the 22nd. I just
10 want to be safe. If she is one of the jurors, the fact
11 that --

12 MR. COHEN: We defer to the State, Your Honor.

13 THE COURT: You'll have to make up your mind when
14 we call them all up.

15 (Counsel returned to trial tables and the following
16 ensued.)

17 THE COURT: Juror number 121, you are excused from
18 service, sir. We would ask you please return to the jury
19 lounge and give them your number. And, sir, would you tell
20 them about that condition, please.

21 JUROR NO. 121: Yes.

22 THE COURT: Thank you. Okay.

23 THE DEPUTY CLERK: Ladies and gentlemen, when I
24 call your number, please stand and answer by saying "here"
25 and approach the railing. The next time I call your number,

1 please raise your hand to be identified. If you are
2 selected, please have a seat in the jury box. If you are
3 challenged, please have a seat in the courtroom.

4 (Jurors indicate difficulty hearing.)

5 THE COURT: Would you repeat that whole thing
6 again.

7 THE DEPUTY CLERK: When I call your number, please
8 stand and answer by saying "here" and approach the railing.
9 The next time I call your number, please raise your hand to
10 be identified. If you are selected, please have a seat in
11 the jury box. If you are challenged, please have a seat in
12 the courtroom.

13 THE COURT: If you are challenged, please take a
14 seat in the back row of the back aisle on the left part of
15 this room. If you're challenged, which means if you are
16 challenged by one side or the other, just return to the back
17 row, if you wouldn't mind. That way we can keep track of
18 things. Thank you.

19 THE DEPUTY CLERK: Juror number 2.

20 JUROR NO. 2: Here.

21 THE DEPUTY CLERK: Juror number 3.

22 JUROR NO. 3: Here.

23 THE DEPUTY CLERK: Juror number 4.

24 JUROR NO. 4: Here.

25 THE DEPUTY CLERK: Juror number 6.

1 JUROR NO. 6: Here.

2 THE DEPUTY CLERK: Juror number 14.

3 JUROR NO. 14: Here.

4 THE DEPUTY CLERK: Juror number 16.

5 JUROR NO. 16: Here.

6 THE DEPUTY CLERK: Juror number 17.

7 JUROR NO. 17: Here.

8 THE DEPUTY CLERK: Juror number 18.

9 JUROR NO. 18: Here.

10 THE DEPUTY CLERK: Juror number 19.

11 JUROR NO. 19: Here.

12 THE DEPUTY CLERK: Juror number 21.

13 JUROR NO. 21: Here.

14 THE DEPUTY CLERK: Juror number 22.

15 JUROR NO. 22: Here.

16 THE DEPUTY CLERK: And juror number 23.

17 JUROR NO. 23: Here.

18 THE DEPUTY CLERK: Juror number 2.

19 THE COURT: When your number is called now, would
20 you please raise your hand. Thank you. State.

21 MR. WRIGHT: Please seat.

22 MR. COHEN: Court's indulgence. Please seat.

23 THE DEPUTY CLERK: Juror number 3.

24 THE COURT: Defense.

25 MR. COHEN: Please seat.

1 MR. WRIGHT: Please seat.
2 THE DEPUTY CLERK: Juror number 4.
3 THE COURT: State.
4 MR. WRIGHT: Please seat.
5 MR. COHEN: Please seat.
6 THE DEPUTY CLERK: Juror number 6.
7 THE COURT: Defense.
8 MR. COHEN: Please seat.
9 MR. WRIGHT: Please seat.
10 THE DEPUTY CLERK: Juror number 14.
11 THE COURT: State.
12 MR. WRIGHT: Please seat.
13 MR. COHEN: Challenge.
14 THE DEPUTY CLERK: Juror number 16.
15 THE COURT: Defense.
16 MR. COHEN: Please seat.
17 MR. WRIGHT: Please seat.
18 THE COURT: That was number?
19 THE DEPUTY CLERK: Sixteen. Juror number 17.
20 THE COURT: State.
21 MR. WRIGHT: Please seat.
22 MR. COHEN: Challenge.
23 THE DEPUTY CLERK: Juror number 18.
24 THE COURT: Defense.
25 MR. COHEN: Please seat.

1 MR. WRIGHT: Court's indulgence. Please seat.

2 THE DEPUTY CLERK: Juror number 19.

3 THE COURT: State.

4 MR. WRIGHT: Please seat.

5 MR. COHEN: Please seat.

6 THE DEPUTY CLERK: Juror number 21.

7 THE COURT: Defense.

8 MR. COHEN: Challenge.

9 THE DEPUTY CLERK: Juror number 22.

10 THE COURT: State.

11 MR. WRIGHT: Please seat.

12 MR. COHEN: Please seat.

13 THE DEPUTY CLERK: Juror number 23.

14 THE COURT: Defense.

15 MR. COHEN: Please seat.

16 MR. WRIGHT: Please thank and excuse.

17 THE DEPUTY CLERK: Ladies and gentlemen of the

18 jury, again, as we call your number, please answer by saying

19 "here" for the record and approach the railing.

20 Juror number 25.

21 JUROR NO. 25: Here.

22 THE DEPUTY CLERK: Juror number 27.

23 JUROR NO. 27: Here.

24 THE DEPUTY CLERK: Juror number 32.

25 JUROR NO. 32: Here.

1 THE DEPUTY CLERK: Juror number 33.

2 JUROR NO. 33: Here.

3 THE DEPUTY CLERK: Juror number 37.

4 JUROR NO. 37: Here.

5 THE DEPUTY CLERK: Juror number 38.

6 JUROR NO. 38: Here.

7 THE DEPUTY CLERK: Juror number 40.

8 JUROR NO. 40: Here.

9 THE DEPUTY CLERK: Juror number 41.

10 JUROR NO. 41: Here.

11 THE DEPUTY CLERK: Juror number 44.

12 JUROR NO. 44: Here.

13 THE DEPUTY CLERK: As I call your number this time,
14 please raise your hand to be identified. If sworn, please
15 have a seat in the jury box. If challenged, please have a
16 seat in the courtroom in the back row.

17 Juror number 25.

18 THE COURT: State.

19 MR. WRIGHT: Please seat.

20 MR. COHEN: Please seat.

21 THE DEPUTY CLERK: Juror number 27.

22 THE COURT: Defense.

23 MR. COHEN: Please seat.

24 MR. WRIGHT: Please seat.

25 THE DEPUTY CLERK: Juror number 32.

1 THE COURT: State.

2 MR. WRIGHT: Please seat.

3 MR. COHEN: Please excuse.

4 THE DEPUTY CLERK: Juror number 33.

5 THE COURT: Defense.

6 MR. COHEN: Please excuse.

7 THE DEPUTY CLERK: Juror number 37.

8 THE COURT: State.

9 MR. WRIGHT: Please seat.

10 MR. COHEN: Please seat.

11 THE DEPUTY CLERK: Juror number 38.

12 THE COURT: Defense.

13 MR. COHEN: Please excuse.

14 THE DEPUTY CLERK: Juror number 40.

15 THE COURT: State.

16 MR. WRIGHT: Court's indulgence. Please seat.

17 MR. COHEN: Please seat.

18 THE COURT: Is the State satisfied with the jury as
19 comprised?

20 MR. MOOMAU: Court's indulgence, please.

21 MR. WRIGHT: Court's indulgence.

22 MR. WRIGHT: Your Honor, if we may strike juror
23 number 18.

24 THE COURT: Eighteen?

25 MR. WRIGHT: Yes, Your Honor.

1 THE DEPUTY CLERK: Juror number 41.

2 THE COURT: Defense.

3 MR. COHEN: Please excuse.

4 THE DEPUTY CLERK: Juror number 44.

5 THE COURT: State.

6 MR. WRIGHT: Please seat.

7 MR. COHEN: Please seat.

8 MR. WRIGHT: Can we call six more numbers?

9 THE COURT: Well, we're going to have to wait a
10 minute. Is the defense satisfied with the jury as comprised?

11 MR. COHEN: One moment, please. Your Honor, may we
12 approach for a moment?

13 THE COURT: Certainly.

14 (Counsel approached the bench and the following
15 ensued.)

16 MR. STARR: I'm sorry, Judge. I just -- I wasn't
17 looking at one point and I got a little confused. I'm just
18 trying to figure out who is it that is in seat number 6,
19 because I got confused at that point. Second to the right,
20 in front. She's the older African-American woman with the
21 black jacket on.

22 THE COURT: She's the one that has arthritis. If
23 it's the lady with the black jacket on and the maroon shirt,
24 she's the one that has arthritis. That is juror number 19.

25 MR. COHEN: Your Honor, just two questions. The

1 alternate strikes, it would start once we're okay with the
2 jurors in the box?

3 THE COURT: Depending on what he's going to do,
4 yes. If both sides agree to the 12 and are satisfied, then
5 it would start the same thing. You would have two challenges
6 to call each alternate up -- I mean, we'd call a number of
7 jurors up, but then, again, it starts with the State. They
8 would have an opportunity to swear or seat, and then it would
9 switch to you.

10 The only difference is they only get one challenge;
11 you get two for each specific alternate. They don't carry
12 over.

13 And, yes, we'll be alternating back and forth, just
14 like we've done it on this main setting.

15 MR. COHEN: Okay, I understand.

16 (Counsel returned to trial tables and the following
17 ensued.)

18 MR. COHEN: Your Honor, the defense is fine with
19 the jury as seated.

20 MR. WRIGHT: Your Honor, we still have another
21 strike remaining. Juror number 40.

22 THE DEPUTY CLERK: Ladies and gentlemen, again, as
23 I call your number, please answer by saying "here" and
24 approach the railing.

25 Juror number 48.

1 JUROR NO. 48: Here.

2 THE DEPUTY CLERK: Juror number 49.

3 JUROR NO. 49: Here.

4 THE DEPUTY CLERK: Juror number 50.

5 JUROR NO. 50: Here.

6 THE DEPUTY CLERK: Juror number 51.

7 JUROR NO. 51: Here.

8 THE DEPUTY CLERK: Juror number 52.

9 JUROR NO. 52: Here.

10 THE DEPUTY CLERK: And juror number 53.

11 JUROR NO. 53: Here.

12 THE DEPUTY CLERK: The next time that your number
13 is called, please raise your hand to be identified. If you
14 are selected, please have a seat in the jury box. If you are
15 challenged, please have a seat in the back of the courtroom.

16 Juror number 48.

17 THE COURT: State.

18 MR. WRIGHT: Please excuse.

19 THE DEPUTY CLERK: Juror number 49.

20 THE COURT: Defense.

21 MR. COHEN: Please excuse.

22 THE DEPUTY CLERK: Juror number 50.

23 THE COURT: State.

24 MR. WRIGHT: Please seat.

25 MR. COHEN: Please seat.

1 THE COURT: Is the State satisfied with the jury as
2 comprised?

3 MR. WRIGHT: Court's brief indulgence. The State
4 is satisfied.

5 THE COURT: Is the defense satisfied with the jury
6 as comprised?

7 MR. COHEN: The defense is satisfied, Your Honor.

8 THE COURT: We will now proceed to the alternates.
9 The challenges, beginning with the State, will be one for the
10 State, two for the defense, for each.

11 THE DEPUTY CLERK: Number 51.

12 THE COURT: State.

13 MR. WRIGHT: Your Honor, if we can call about six
14 more numbers --

15 THE COURT: We're not doing that now. We're
16 proceeding right now as we are.

17 MR. WRIGHT: Please seat.

18 MR. COHEN: Please seat.

19 THE DEPUTY CLERK: Juror number 52.

20 THE COURT: Defense.

21 MR. COHEN: Please excuse.

22 THE DEPUTY CLERK: Juror number 53.

23 THE COURT: State.

24 MR. WRIGHT: Please seat.

25 MR. COHEN: Please seat.

1 THE COURT: Is the State satisfied with alternate
2 number 1?

3 MR. WRIGHT: Yes, Your Honor.

4 THE COURT: Is the defense satisfied with alternate
5 number 1?

6 MR. COHEN: Yes, Your Honor.

7 THE COURT: Then we'll proceed to alternate number
8 2.

9 MR. WRIGHT: Your Honor, I may be mistaken. I
10 believe we just did alternate number 2.

11 THE COURT: Okay. Are both sides satisfied with
12 alternate number 1 and alternate number 2?

13 MR. WRIGHT: Yes, Your Honor.

14 MR. COHEN: Yes, Your Honor.

15 THE COURT: Okay.

16 THE DEPUTY CLERK: As I call your number, please
17 approach the railing. Number 55.

18 JUROR NO. 55: Here.

19 THE DEPUTY CLERK: Number 57.

20 JUROR NO. 57: Here.

21 THE DEPUTY CLERK: Number 59.

22 JUROR NO. 59: Here.

23 THE DEPUTY CLERK: Number 63.

24 JUROR NO. 63: Here.

25 THE DEPUTY CLERK: And number 66.

1 JUROR NO. 66: Here.

2 THE DEPUTY CLERK: Number 55.

3 THE COURT: Defense.

4 MR. COHEN: Please seat.

5 MR. WRIGHT: Please seat.

6 THE COURT: Is the State satisfied with alternate
7 number 3?

8 MR. WRIGHT: Yes, Your Honor.

9 THE COURT: Is the defense satisfied with alternate
10 number 3?

11 MR. COHEN: Yes, Your Honor.

12 THE COURT: Proceed to alternate number 4.

13 THE DEPUTY CLERK: Number 57.

14 THE COURT: State.

15 MR. WRIGHT: Please excuse.

16 THE DEPUTY CLERK: Number 59.

17 THE COURT: Defense.

18 MR. COHEN: Please seat.

19 MR. WRIGHT: Please seat.

20 THE COURT: Is the defense satisfied with alternate
21 number 4?

22 MR. COHEN: Yes, Your Honor.

23 THE COURT: Is the State satisfied with alternate
24 number 4?

25 MR. WRIGHT: Yes, Your Honor.

1 THE COURT: We have a jury. Ladies and gentlemen,
2 those of who you who were not selected, we want to thank you
3 very much. You spent two day with a great deal of patience.
4 We really appreciate it. As you can see, we have a very
5 deliberative process which is very important to the
6 proceedings, and we thank you all very much.

7 If you would please return to jurors' lounge. I
8 don't believe they have any more work for you, but I don't
9 know that to be the case.

10 Would you gentlemen like to approach the bench for
11 a moment?

12 (Counsel approached the bench and the following
13 ensued.)

14 THE COURT: Just administrative matters. My
15 understanding is that you do not want to start until
16 tomorrow; is that correct?

17 MR. COHEN: Correct.

18 MR. MOOMAU: Yes.

19 THE COURT: I'm not going to swear the jury now,
20 just out of an abundance of caution.

21 MR. MOOMAU: I agree.

22 THE COURT: I'm going to excuse them to go home for
23 the day. What time do you believe would be best to have them
24 here in the morning? If I tell them to get here by 8:30,
25 then we can proceed at nine. Is that reasonable?

1 MR. COHEN: That's fine, Your Honor.

2 MR. MOOMAU: That's fine.

3 THE COURT: Are there any matters that we can do
4 today?

5 MR. MOOMAU: Oh, yes.

6 THE COURT: What would they be?

7 MR. MOOMAU: We're going to deal with the issue of
8 Robert White and the registration. I told him to come here
9 at two o'clock.

10 THE COURT: That's okay.

11 MR. MOOMAU: There's going to be some other
12 outstanding motions.

13 MR. COHEN: The toxicology report is one --

14 THE COURT: Well, I don't think I can make a
15 determination unless I hear something about some testimony
16 about what's -- I mean, all I have is your motions. You're
17 asking it to be excluded because of the fact, I guess, a
18 chain of custody; is that correct? And you're asking for it
19 to be excluded because you don't believe it's relevant to
20 some extent.

21 MR. MOOMAU: Well, not really that. I made a
22 motion that it be excluded just simply because of the
23 language that's written on it. Now, I have to admit -- maybe
24 we want to wait and talk about this outside the presence of
25 the jury?

1 THE COURT: Okay. I'll excuse them then.

2 (Counsel returned to trial tables and the following
3 ensued.)

4 THE COURT: Ladies and gentlemen of the jury,
5 because of some administrative matters that we have to take
6 care of prior to you actually hearing any testimony, it
7 probably will take us the rest of the day to accomplish that
8 purpose. So we felt that your time would be wasted here this
9 afternoon, and we are going to excuse you for the rest of the
10 day.

11 We are going to ask you to return tomorrow morning
12 by 8:30, at which time we are going to proceed with the
13 trial. We felt uncomfortable about keeping you here, away
14 from your homes and other matters, while we dealt with these
15 issues.

16 So I have to admonish you, once again, that you are
17 not permitted to speak to anybody, under any circumstances,
18 about this case, any of the questions that we may have asked
19 you at the bench, any of your responses.

20 And for those of you who indicated to us that you
21 heard some accounts of this matter through any of the news
22 media, you're not permitted to speak to any anyone about what
23 you may have heard. You're not to speak to each other about
24 anything that you may have heard. You're not permitted to
25 expose yourself, hear any television, radio accounts of

1 anything about this trial, as well as the print media,
2 newspapers, etc. You cannot expose yourself to any of that
3 content, understanding you're not permitted to conduct any of
4 your own independent investigation by driving to the location
5 of where the incident is alleged to have taken place. You
6 are not permitted to go on the internet to associate or make
7 yourself aware of any issue relating to this case whatsoever,
8 in any form or any fashion.

9 We're asking you to do that out of an abundance of
10 caution, for the best purposes of everyone during the course
11 of this trial, as you can well imagine.

12 Given those admonitions, we thank you very much for
13 your participation up to this point.

14 Now, Sheila, we had a problem this morning. Where
15 are they supposed to report at 8:30 in the morning?

16 THE BAILIFF: The main jury lounge.

17 THE COURT: We are contacting the main jury lounge.
18 I know they sent you into the courtroom today. That's not
19 going to happen tomorrow. You need to report to the main
20 jury lounge by 8:30, and then they will do what they do every
21 morning and make you as comfortable as they possibly can, and
22 we will have you in this courtroom as promptly as we possibly
23 can shortly thereafter.

24 Thank you very much.

25 (The jury retired at 11:50 a.m.)

MOTIONS IN LIMINE

1
2 THE COURT: What issues do we need to address that
3 we can begin this afternoon?

4 MR. STARR: Your Honor, we were talking about the
5 issue of the toxicology report while we were at the bench and
6 the State's motion to exclude it. Now, as I understand it,
7 the State does not contest that the toxicology of Robert
8 White is relevant.

9 When he was taken to the hospital after the
10 shooting, he was given a urine screening and it was positive
11 for cocaine. We want to admit that, Your Honor. The State's
12 only basis is that there is some stock language on the report
13 that says that the hospital is not intending it to be used in
14 court.

15 But the treating physician, who is going to testify
16 for the State, Dr. Khan, has indicated that it's a medically
17 reliable test, it was germane to Mr. White's medical
18 treatment, and that it was relied on, and that that's the
19 type of report that the hospital relies on in treating
20 patients.

21 In addition to the clear factual relevance of
22 whether or not there was cocaine in this man's system --

23 THE COURT: What is the clear factual relevance
24 that you're alleging?

25 MR. STARR: The factual relevance we allege, Your

1 Honor, is that there was cocaine, based on what this test
2 says, in Robert White's system at the time of the incident.
3 That, Your Honor, goes to several different things.

4 One, his behavior, whether his behavior would have
5 been influenced by cocaine; whether, Your Honor, he was able
6 to accurately perceive and recall the events, given that
7 there was cocaine in his system; and, Your Honor, the
8 additional issue that we raised in our motion is that, when
9 confronted with the positive cocaine test in the grand jury
10 or when asked about whether he had used cocaine, Mr. White
11 said that he hadn't used cocaine and, indeed, denied that he
12 has ever used it in his life, which we think is inconsistent
13 with the test and is a false statement in the grand jury.

14 THE COURT: Mr. State's Attorney.

15 MR. MOOMAU: Yes, Your Honor. Your Honor, I did
16 concede that it was medically germane. I informed defense
17 counsel about that and I talked to Dr. Khan about that. He
18 did say, in this particular case, they would have done
19 whatever they were going to do at the hospital anyway because
20 of the condition he was in when he was brought in there.

21 My objection, however, Your Honor, was that there
22 was no follow-up confirmation test done. That's the words
23 that are written on top of the actual test, it's not for
24 legal purposes, and because of chain of custody and because
25 it wasn't confirmed. I don't see how we can rely on it if it

1 says, on its face, that it can't be used for legal purposes.

2 Also, the testimony would be -- and I think the
3 defense put it in one of their memos -- is that the test
4 would show use within two to three days of January 24th.
5 There's really no testimony or no evidence, medical or
6 otherwise, that he was using at that particular time on the
7 24th; particularly, that he was under the influence when this
8 incident took place.

9 THE COURT: Well, let's separate the two for a
10 moment. What is your argument with respect to the grand jury
11 testimony of Mr. White relating to his use or lack of use of
12 cocaine as an issue of credibility?

13 MR. MOOMAU: Mr. White said and he still says that
14 he didn't use cocaine.

15 THE COURT: Okay.

16 MR. MOOMAU: The test found -- the screening test
17 showed there was cocaine in his system. However, going with
18 my first argument about whether it's reliable, whether it can
19 be used for legal purposes, I don't think it's a reliable
20 measurement and, for that reason, shouldn't be allowed in
21 this legal proceeding.

22 THE COURT: Now, this toxicology report, as I
23 understand it, and correct me if I'm wrong, was relied upon
24 by state doctors in giving their treatment or renditions of
25 their treatment to the State, correct?

1 MR. MOOMAU: Well, to the patient.

2 THE COURT: Is that document going to be used in
3 any way to form any opinions of the doctors that you intend
4 to call?

5 MR. MOOMAU: None.

6 MR. STARR: Actually, Your Honor, the toxicology
7 report is contained in the same medical records that the
8 doctor is going to rely on. He relied on the medical
9 records, that we received from the State that contain these
10 toxicology reports, when he was testifying about Brandon
11 Clark at the last hearing at which he did testify, and the
12 State has stipulated to the authenticity of those records.
13 The authenticity is not in dispute.

14 So the records are authentic, the test is medically
15 germane, it's relied on by the doctor, and the doctor says
16 it's reliable.

17 In response to Mr. Moomau's argument about the
18 facts of the case and the window of two to three days, first
19 of all, that doesn't address the credibility issue because he
20 says in the grand jury he's never used cocaine, ever. That
21 is clearly inconsistent with the test.

22 The other issue, Your Honor, is that we do have a
23 witness who was turned over, I presume as a Brady witness,
24 who was a prior customer on the route of Mr. White and
25 Mr. Clark that day. When he was interviewed by the State, he

1 said that he believed Mr. White was behaving as though he was
2 intoxicated or high.

3 MR. MOOMAU: Your Honor, we did turn that
4 information over. We are going to be making a motion in
5 limine for that opinion.

6 I think that witness needs to testify outside of
7 the jury, first, before it can be found whether there's an
8 adequate foundation for him to state that the person was
9 high, that he was on drugs or intoxicated. The statement
10 says he was just staring. He wasn't stumbling; he wasn't
11 threatening; he was just staring.

12 But we can settle that with an in-camera hearing.
13 We would like the Court to hear that before that evidence
14 would even get to the jury and before the defense can even
15 mention that to the jury.

16 MR. STARR: Our position, Your Honor, is that
17 intoxication is an admissible lay opinion based on someone
18 who had contact with the person and observed him.

19 MR. MOOMAU: Maybe intoxication. Perhaps. I'm not
20 even conceding that, because we have some cases on it.
21 However, drug use is not, we don't believe. They have to lay
22 a foundation for that.

23 THE COURT: Well, foundation would have to be laid
24 before there is any testimony on whether it's alcohol and/or
25 controlled dangerous substances and whether somebody would be

1 able to render that opinion as a lay witness. So I agree to
2 that extent.

3 What would be issue number two that you wish to
4 proceed on this afternoon?

5 MR. MOOMAU: Well, I'm not sure what order we will
6 proceed. There is an issue about Robert White and the
7 registration. We need to resolve that. I instructed him to
8 be here at two o'clock. We might be able to get him here a
9 little earlier.

10 THE COURT: What else can we do today?

11 MR. COHEN: Your Honor, the remaining outstanding
12 motions had to do with our motion to exclude a live photo of
13 the decedent, and there was a motion made to exclude hearsay.
14 The State had enumerated --

15 THE COURT: Well, that I'm not going to be able to
16 do until I hear testimony and foundations for that. And that
17 will probably have to be done out of the presence of the jury
18 at some point, but I don't think we're close to it today.

19 MR. STARR: And there was an issue that we wanted
20 to raise with the Court that we've discussed. We made a
21 motion that the Court -- and I don't think this was a subject
22 of a written opinion, but I recall the Court stating that --
23 I'm talking about the motion regarding Robert White's grand
24 jury testimony, and we filed a motion saying there were two
25 false statements, provably false statements that he had made

1 in the grand jury.

2 One was when he said his prior sexual conviction
3 was an attempt rather than an assault with intent to --

4 THE COURT: I believe I did address that.

5 MR. STARR: I think you have addressed it. I'm
6 raising an issue that pertains to it, a tangential issue.

7 The others had to deal with -- and I believe the
8 Court said this is what we were entitled to use. The fact
9 that Mr. White did not state his first degree burglary
10 conviction, and then was asked whether he had stated them
11 all, and he had -- and that one had not been stated. The
12 Court had indicated that we would be allowed to present that.

13 What I want to make the Court aware of, because
14 we've made vigorous efforts in this case to not say or do
15 anything explosive in front of the jury that is going to
16 surprise the Court, in the questioning that is the subject of
17 that particular area of impeachment, he is asked, Mr. White
18 is asked to list or -- some of it is leading but, basically,
19 a list of his prior convictions is stated, and the false
20 statement is that he didn't include the conviction -- one of
21 the convictions the Court deemed admissible, the first degree
22 burglary from 1995.

23 On that list is his conviction -- or the sex
24 conviction is discussed. So it's discussed in that portion
25 of the grand jury testimony that we understand the Court to

1 have deemed admissible.

2 THE COURT: To have deemed?

3 MR. STARR: Admissible as relative to his
4 credibility because its indicative of prior false statement
5 in the grand jury.

6 THE COURT: I did not rule -- no, my ruling was
7 that the burglary false statement was admissible but not
8 the --

9 MR. STARR: Yes, that's what I'm saying. The
10 burglary false statement arises through omission. In effect,
11 it happens this way: His prior convictions are listed
12 without the burglary, and then he testifies under oath that
13 that list is exhaustive. Not using that language, but one
14 way or another he testifies that that's an exhaustive list.
15 On the list are his priors, which include the sexual
16 conviction.

17 So I want to bring that to the Court's attention
18 because I want to have leave in advance to state what was
19 stated in the grand jury, which is the list of the
20 convictions that he does have.

21 THE COURT: About his prior record?

22 MR. STARR: Correct.

23 THE COURT: I'm not quite sure I understand what
24 you mean by that, because I've already made rulings on all of
25 his prior convictions of whether or not they are admissible

1 and gave you a definitive list of those convictions that I
2 found to be admissible and a definitive list of those
3 convictions I didn't find to be admissible as lacking
4 relevance to the issue of credibility.

5 MR. STARR: I agree with that. For purposes of
6 impeachment of credibility with prior conviction, I
7 understand the Court's stated three convictions that are
8 admissible. I'm not asking the Court to revisit that ruling.

9 THE COURT: What possible setting are you putting
10 before me about having leave to read the entire list given to
11 the grand jury?

12 MR. STARR: Because it is the subject of the false
13 testimony that I understand the Court -- or that the Court
14 indicated we are allowed to elicit. The testimony is a list
15 of his convictions. That's what it is.

16 We wouldn't object, obviously, to a jury
17 instruction saying that that's the only way in which they
18 could consider it, but it's separate and apart from the
19 previous ruling about the prior convictions that are relevant
20 to impeachment.

21 This is relevant only to the issue of the false
22 statement made in the grand jury, where, through omission, he
23 represented that he did not have this first degree burglary
24 conviction, and that is what the Court has indicated we would
25 be allowed to elicit.

1 I'm just talking about, mechanically, it happens in
2 the grand jury through a list of his prior convictions. One
3 is affirmatively omitted, and then that omission is the
4 subject of the false testimony, and the Court granted that
5 portion of our motion.

6 THE COURT: So I guess, as I understand it, you
7 wish to prove your point in front of the jury by showing them
8 a complete list because of the omission of the burglary part.
9 Is my understanding correct?

10 MR. WRIGHT: Yes.

11 MR. STARR: Correct.

12 THE COURT: And that would be your only purpose?

13 MR. STARR: Correct. This is only dealing with
14 that one motion. Now, I'm not going back to the other motion
15 on which the Court has ruled.

16 MR. MOOMAU: Your Honor, the State opposes that.
17 First, the burglary conviction, Mr. Wright never asked him
18 about that from the grand jury. That was left out. We
19 didn't have a complete --

20 THE COURT: I understand that part.

21 MR. MOOMAU: And that's admissible.

22 THE COURT: I'm asking you to address the part
23 about the list.

24 MR. MOOMAU: The list includes offenses he wasn't
25 even convicted of.

1 THE COURT: I'm just asking you to address the
2 issue.

3 MR. MOOMAU: We object to the list, Your Honor. It
4 doesn't go to his credibility. Because he left the one out,
5 that should be the only one he should be limited to, and he
6 wasn't even asked about that by the state's attorney who was
7 doing the questioning.

8 THE COURT: Well, I can rule on that one. As I
9 understand it, my written opinion related to the entire
10 breadth of his criminal convictions, and it excluded a number
11 based on what I believed to be some remote in time, under the
12 Maryland statute, for being relevant to the issue of
13 credibility; others because I didn't believe -- and they are
14 fully delineated in the opinion -- that I did not believe to
15 be relevant to the issue of credibility because they lacked
16 that onus of stealth or deceit or covert activity and were
17 purely violent, which our courts have said, for the most
18 part, are not relevant to the issue of credibility; and
19 others that were, as I outlined, admissible as to the issue
20 of relevance, and that was a grand larceny, grand receiving,
21 burglary, if I recall, and there may have been one other that
22 I don't recall, because I don't have that before me.

23 And I agreed with the defense that, as a result of
24 the grand jury testimony that Mr. White provided and that the
25 questions he was asked as a result, that he omitted on a

1 general question to him, "is that all you have been convicted
2 of," burglary. Because of that, I believe that's relevant to
3 the issue of credibility of his testimony in terms of the
4 grand jury testimony provided.

5 But I don't believe that list -- and I don't know
6 of any list -- that you're referring to in front of the grand
7 jury would in any way be -- well, I believe that that would
8 certainly be highly prejudicial, after my earlier rulings,
9 and would outweigh any probative benefit of it because I
10 excluded the second crime that you're referring to as a
11 result of the interpretation of the comments between the
12 assistant state's attorney, who was handling the questioning
13 in front of the grand jury, and Mr. White's responses, which
14 I put specifically in that motion.

15 So if there's no other reason than what you're
16 saying, then providing that list in support of or in addition
17 to that which I'm permitting you to do, without any other
18 legal theory behind it, I'm denying that.

19 MR. STARR: What I would say, Your Honor, just so
20 our argument is clear and the record is clear, is that that
21 detracts from any force that the impeachment by omission
22 through the grand jury would have. To not be able to show
23 what he said and what he omitted and from what it was omitted
24 detracts from the force of that, and it forces us to contort
25 the cross-examination in a way that prevents us from

1 effectively presenting something that the Court has deemed
2 relevant to credibility.

3 THE COURT: I believe that I've provided you with
4 the right to cross-examine as to the burglary in front of the
5 grand jury and prevented you from addressing the other crime
6 in front of the grand jury because of the way it was
7 presented to Mr. White and the way his response to that
8 question was.

9 He never denied being convicted of either a sexual
10 or an attempted offense. He is not a lawyer, and he
11 indicated on three separate occasions that he was, in fact,
12 convicted of some form of sexual offense, but he had not the
13 knowledge of exactly the terminology of what it was. And
14 that's why I'm precluding you from using that as a false
15 statement made to the grand jury.

16 And no list is going to be supportive of that or
17 detrimental to that, that I can understand, and I believe
18 that that would be used as a guise to get the entire list in
19 that I have precluded a number of offenses from any jury
20 having the opportunity to view.

21 MR. STARR: And what I would say, Judge, is that we
22 would not, based on the Court's ruling, argue -- because the
23 Court has said we can't -- that --

24 THE COURT: The law says you can't; not the Court.

25 MR. STARR: As interpreted by the Court.

1 THE COURT: Thank you.

2 MR. STARR: We would not be arguing that the false
3 statement, which we maintain it is a false statement, but we
4 understand the Court's ruling against us, where he said he
5 was convicted of an attempt rather than a sexual assault.
6 That is an entirely separate issue and we lost that. So we
7 would not make that argument.

8 And if I haven't said it, I would say to the Court
9 that if allowed to utilize the questions and answers, as they
10 were stated in the grand jury, that's all we want. We're not
11 trying to spin it or anything. It's a false statement and it
12 is what it is. We just want to say what really was said to
13 the jury.

14 THE COURT: What do you mean when you refer to as a
15 list?

16 MR. STARR: I can present the Court with the
17 testimony.

18 THE COURT: I know the testimony. I've read the
19 transcript because you've permitted me to do that. A list of
20 what are you talking about?

21 MR. STARR: It happens like this --

22 THE COURT: Are you talking about a list of
23 offenses that he provided by some form of written list?

24 MR. STARR: No, it's not a list. It's question and
25 answer, one question, one answer, repetitively, going

1 through --

2 THE COURT: So you wish to be able to provide,
3 verbatim, that list of questions and answers?

4 MR. STARR: Yes, just what was said in the grand
5 jury; that's all. We don't want to introduce -- and if I
6 misled the Court, that's my fault. We're not trying to
7 introduce a list. We just want to introduce what the actual
8 questions and answers were in the grand jury so that we can
9 show the omission. That's all I'm saying.

10 I raise it with the Court because the questions and
11 answers reference some of the convictions that the Court made
12 a separate ruling on.

13 THE COURT: Well, again, I believe that you have
14 the right to cross-examine on the issue of any inconsistent
15 statement, if it were to take place, using the grand jury
16 transcript.

17 But for purposes of impeachment, you can only ask
18 your question and receive an appropriate response. You're
19 not able to recite, verbatim, the question and answer in
20 front of the grand jury.

21 MR. STARR: That is the manner in which -- that's
22 the truth of how the false statement came out, Your Honor.
23 That's all we're trying to do.

24 THE COURT: Mr. Starr, you know how to impeach a
25 witness; don't you?

1 MR. STARR: I believe so.

2 THE COURT: And you know what the case law says
3 about the questions you need to ask -- and I know you do --
4 to ask a question that is permissible as an impeachment
5 offense. And you find me a case that says -- and if you do,
6 I'd certainly consider it. You find me a specific case that
7 said you will be able to do what you are asking, in terms of
8 the kind of questions that you would ask with respect to an
9 impeachable offense.

10 Since that may be an issue, that's probably why I
11 cannot resolve it without hearing testimony. So, again, that
12 may be something that we're going to have to do outside the
13 presence of the jury during the trial.

14 I've made a ruling in writing about what crimes you
15 are able to ask in both contexts. It doesn't include a list
16 of the questions. Show me a case where you're permitted to
17 do that, and I'll read it.

18 What other outstanding issues?

19 MR. MOOMAU: Your Honor, as far as the toxicology,
20 I never really got to respond to the last thing they said. I
21 did admit that the records were authentic. We have an
22 agreement as to that. They are certified and they are
23 authentic. That's part of it.

24 But as far as reliability and even whether it's
25 medically germane, it's medically germane in general, but on

1 that particular night when they brought him in there, they
2 were going to do what they could do to save his life, and
3 that really didn't have anything to do with it. That's it.

4 THE COURT: Well, let me think about it, look at it
5 again, and what time do you wish to proceed this afternoon?

6 MR. MOOMAU: Two o'clock.

7 THE COURT: Two o'clock is fine. Thank you.

8 (At 12:15 p.m. a luncheon recess was taken.)

9 -oOo-

10 **AFTERNOON SESSION**

11 2:00 p.m.

12 THE DEPUTY CLERK: Criminal trial 07-1446X, State
13 of Maryland versus Keith A. Washington.

14 MR. MOOMAU: Good afternoon, Your Honor. William
15 Moomau for the State.

16 MR. WRIGHT: Joseph Wright on behalf of the State.

17 MR. COHEN: Vincent H. Cohen, Jr., on behalf of
18 Keith Washington.

19 MR. STARR: And Michael Starr for Mr. Washington.
20 Mr. Washington is present.

21 THE COURT: Thank you. Are we ready to proceed?

22 **MOTIONS IN LIMINE (Continued)**

23 MR. MOOMAU: Yes, Your Honor, we are ready to
24 proceed. We would like to address the Court just briefly on
25 the toxicology issue. Mr. Wright is going to handle that.

1 THE COURT: Okay.

2 MR. WRIGHT: I have brought copies for Your Honor
3 of the toxicology report, because I'm going to refer to it,
4 if I may bring it to you. I also made copies for the
5 defense.

6 What I have presented to Your Honor and defense,
7 the first page is a copy of the toxicology report. The
8 second page is a copy of Mr. White's testimony regarding the
9 toxicology report. As to the medical records, the toxicology
10 report, as far as the cocaine, the State has four essential
11 arguments.

12 First, if you look at the toxicology report itself,
13 it states that it is not for legal use. That is in the
14 second paragraph, and I'll quote for the record: "Statement:
15 This is a screening test which is not intended for legal
16 purposes. No chain of custody has been documented.
17 Confirmation has not been done by a second method."

18 On its face the report says it's not for legal use
19 and, on its face, it says that confirmation is necessary.
20 The State would compare this to preliminary breath tests
21 taking in DUI's, DWI's, or even in terms of field tests that
22 are utilized in drug cases. Without an actual test, this is
23 not -- this should not be for legal use, as the report states
24 on its face.

25 The second argument the State has involves the fact

1 that we have no actual test. We have no test, no readings,
2 no findings of cocaine in the system. There is no result.

3 Argument number 3 deals with due process --

4 THE COURT: What do you mean there is no result?

5 MR. WRIGHT: I.e., if there was an actual cocaine
6 test, we would have results of how much cocaine was in the
7 system; as to the blood, the dissemination in the blood, to
8 some type of milliliters. But there is no actual test. All
9 we have is a general, vanilla statement that cocaine may have
10 been found, and that this bald statement may not and does, in
11 fact, require confirmation.

12 THE COURT: What part of that report are you
13 looking at that tells you?

14 MR. WRIGHT: The report itself has, under it, PCP,
15 negative. And that's in the second paragraph, where it says
16 "urine TDM I." U PCP, negative; U Benzo -- I assume that
17 stands for some type of benzocaine -- negative; U cocaine,
18 positive; U Amphet -- which I assume means amphetamines --
19 negative; U THC, which is referring to marijuana, negative; U
20 Opiates, negative; U Barb, which I assume stands for
21 barbiturates, negative; U Methadone, negative. And then it
22 says this is not for legal purposes; no chain of custody has
23 been documented.

24 That's what I'm dealing with, no chain of custody
25 has been documented; i.e., we do not know who took the test,

1 are there actual tests results, and confirmation has not been
2 done by a second, i.e., parenthetical, which is not there,
3 more reliable or reliable method itself.

4 THE COURT: Well, since I don't understand what
5 this says, who does?

6 MR. WRIGHT: And that leads me to State's argument
7 number 3, if I may, Your Honor. The victim has denied use,
8 and that is on page 3 and 4 of this.

9 The State has no ability to further inquire as to
10 the findings. The victim has said I do not have cocaine in
11 my system, and it cannot be fought because there is no actual
12 test for him to fight. There is no chain of custody to
13 determine who took it, whether the test is accurate or not
14 accurate. There is nothing. And that goes under due process
15 for the State and the victim because he has said I do not
16 know, I do not use cocaine, it is not in my system.

17 We've all seen quite a few reports. This report,
18 which also falls under my next argument, is hearsay, hearsay
19 which falls under no exception. This is not -- it's just
20 hearsay, and it's something that we cannot confirm, we cannot
21 verify, there's no results. There's nothing here. There is
22 no actual test.

23 THE COURT: Do I have the entire legible copy of
24 this report?

25 MR. WRIGHT: Yes, you do, Your Honor.

1 THE COURT: When you were saying that there was
2 some notation of "U" to all of these things, what are you --

3 MR. WRIGHT: Say that again.

4 THE COURT: Did you say some of these indications
5 were "U PCP"?

6 MR. WRIGHT: Yes. If you look on the first page,
7 the second paragraph, straight across, all of the different
8 drugs I mentioned have a "U" in front of them, the letter
9 "U." The State understands that means urine. It's called
10 urine TDM I. I can approach and show you what I mean, if you
11 wish.

12 THE COURT: Well, that's okay. What about the
13 indications beneath?

14 MR. WRIGHT: Say that again.

15 THE COURT: The representations beneath that
16 horizontal line that runs perpendicular, what is that?

17 MR. WRIGHT: Are you referring to the negatives,
18 the words that say negative?

19 THE COURT: Yes, because it has, apparently,
20 similar listings for everything again, without -- I'm just
21 asking you, what is that?

22 MR. WRIGHT: I guess, Your Honor, we're both
23 essentially looking at this document and guessing what does
24 it mean because it is not an actual test. That's a part of
25 the State's concern. I'm assuming you're talking about where

1 the words "negative" show up.

2 THE COURT: Yes.

3 MR. WRIGHT: The State can only assume, without any
4 chain of custody or actual test, that this means that they
5 checked for eight different controlled dangerous substances,
6 and they found seven of them negative. That's just an
7 assumption that we have to make in reading this; however,
8 that is not an assumption the State is comfortable relying
9 upon because we have no confirmation.

10 This is the full report. Of all the hospital
11 records submitted in this matter, this is the only page with
12 a disclaimer which says "not for legal use; confirmation is
13 necessary."

14 THE COURT: Okay.

15 MR. WRIGHT: Those are the State's four main
16 arguments.

17 MR. STARR: Thank you, Your Honor. First, I
18 sincerely don't understand what the State is saying when they
19 say there is no test and there is no result. The man's urine
20 was tested for the presence of the drugs listed, and the
21 tests show that it was positive for cocaine.

22 Now, Mr. Wright says we don't know quantity. That
23 is also inaccurate because we see a listing here of the cut
24 off values that are used to interpret the tests, meaning --

25 THE COURT: The perpendicular underneath the --

1 MR. STARR: Correct, the list there. It says
2 cocaine, cut off value, 300 nanograms per milliliter. If
3 there is more than that, then you're positive. That's how
4 the tests are done. So we do have a value, and we do have a
5 test result that's clearly positive.

6 Also, what we have here is records -- first of all,
7 the State says it's not reliable, but their doctor says it is
8 and that it was given during the course of his medical
9 treatment. They're going to call this doctor, and he's going
10 to testify from these records as an expert, and they're going
11 to now ask the Court to pick and choose, well, he can rely on
12 these parts of the records because they're reliable during
13 the course of his medical treatment, but he can't rely on the
14 other parts of the records that document his medical
15 treatment.

16 The only reason this test was done is because this
17 man was taken to the hospital after he was shot and they did
18 this test and it reveals what it reveals. So we have a test
19 that the doctors rely on, that they say is reliable, that
20 it's contained in the medical records that we know are
21 authentic, because the parties agree and stipulate they're
22 authentic. It has a cut off value and it is positive.
23 That's what it is.

24 There is no other way to characterize it then this
25 man's urine tested positive for cocaine on January 24, 2007,

1 while he was being treated by the hospital, and the treating
2 physician says the test is reliable. That's where we are.
3 That's where we are.

4 So to say that because there's some language on the
5 form, which, frankly, the doctor is already coming in.

6 And also, Your Honor, I should say that we've
7 consulted with our own expert about this issue. He says the
8 testimony is reliable. He's qualified to interpret the
9 results, and he's familiar with this particular method of
10 testing. He agrees with the State's doctor: It's a reliable
11 test; it's a test that's relied on in the course of medical
12 treatment by hospitals under these circumstances.

13 To say that, because this language is on the form,
14 that we now have to pretend that it is something other than
15 it is, I think, Your Honor, is taking us to a dangerous
16 place. What I mean is this: The language that's printed on
17 the form is only designed to prevent hospitals from being
18 dragged in in every DUI or --

19 THE COURT: I'm not interested in what's printed on
20 the form.

21 MR. STARR: Well, if the Court is not interested in
22 that, then I think where we are is we have a reliable test
23 that the State's doctor says is reliable. We know why it was
24 given. It was given as part of the medical treatment. The
25 defense expert agrees that it's a reliable test. It's in the

1 records that they agree to be authentic. We know that
2 there's a cut off value. We know the circumstances under
3 which it was administered. And it's part of the medical
4 records that the State is going to rely on and that their
5 expert witness is going to rely on during their case in chief
6 at trial.

7 THE COURT: Go ahead, Mr. Wright.

8 MR. WRIGHT: Thank you, Your Honor. I guess
9 counsel essentially read into the form as to the cut off
10 values. That's one of the concerns the State has. When you
11 look at the form, you have to take it on its face as to what
12 it says. It does say cut off value 300 NG/ML. How can you
13 read more into that statement? I guess what counsel is
14 saying is, obviously, assumably, clearly, that means there
15 was more in the system than the cut off value; however, we
16 can not make that important leap of faith.

17 Number two, the doctor did not give the testimony.
18 And that's one of the things that the form also tells you.
19 The chain of custody has not been established.

20 With that, the State will submit.

21 MR. STARR: The only thing I say in response to
22 that is that Dr. Khan's name is on the form as the admitting
23 doctor and the doctor that ordered the test. So this is part
24 of his medical treatment of this man and, frankly, that's not
25 contested.

1 The reason that the State doesn't want the test to
2 come in is because of what it says; it's positive.

3 MR. WRIGHT: I do have one other thing. I
4 apologize.

5 THE COURT: That's alright.

6 MR. WRIGHT: There's an asterisk beside the word
7 "POS," meaning positive. It is not clear why that asterisk
8 is on the test.

9 When I look down there at the bottom of the form,
10 it's a little unclear whether asterisk equals abnormal. I
11 don't know if that's the same asterisk they're referring to
12 or not because I really cannot read more into the test.

13 THE COURT: At this moment in time I have no
14 testimony in front of me. I have legal argument in front of
15 me. But it seems to me that there are two separate issues in
16 this matter because the defense is asking for the admission
17 of the toxicology report on two separate issues.

18 One, they believe that they have a right to
19 cross-examine the witness as to his ability to perceive the
20 events of the night in question, much like alcohol, similar
21 situation would and could involve drugs. And there are a
22 number of legal decisions indicating that that's an
23 appropriate mechanism for cross-examination, if there is some
24 eliciting of information that way, and they have a right to
25 cross-examine upon that issue with respect to the witness's

1 ability to perceive the events in question.

2 They are also asking for the admissibility of the
3 toxicology report for other uses because the victim, again,
4 in the transcript before the grand jury, indicated that he
5 did not use cocaine, period. And so they wish to have that
6 available for their use and cross-examination, which is a
7 separate issue, legally.

8 As to the first issue, and that is the ability to
9 cross-examine a witness as to their opportunity to observe
10 and the mechanisms they had at the time to observe, or
11 whether they were able to make those observations based on
12 alcohol or drugs, I believe that they properly can question
13 the witness.

14 But, at the same time, if they intend to introduce
15 or attempt to introduce the toxicology report, because the
16 toxicology report, in and of itself, is meaningless as to the
17 extent of the drug in an individual's system that may or may
18 not impair their ability to perceive the events in question,
19 they're going to need the testimony of a toxicologist to
20 interpret that for us. Because it would not be relevant
21 unless it would measure what it was in the system, and
22 somebody would be able to provide that expert testimony of
23 what that would actually mean for a jury in terms of that
24 witness's ability to perceive the events.

25 However, the report, as I see it as to the second

1 legal question, and that is the ability to impeach,
2 potentially, one's credibility as a result of a denial before
3 a grand jury session that he used the drug in question, and
4 since that report has been stipulated to as authenticated by
5 the State, that, as to that issue, they would be able to use
6 and that report should be admitted for that purpose on
7 whether or not the defendant was being credible in his denial
8 for the use or lack thereof of cocaine.

9 And the Court so rules.

10 MR. COHEN: Your Honor, what my co-counsel said --
11 so there's no alarms or any things in front of the Court at
12 the last minute, I think it behooves us to bring up our
13 intent on bringing up the fact that Mr. White did deny using
14 cocaine. We intend to do that in our opening statement. We
15 wanted to alert the Court to that, given the Court's most
16 recent ruling.

17 MR. MOOMAU: I understand that, Your Honor. Just
18 so I understand it, when they're questioning Mr. White, they
19 could ask him, which I'm sure they will --

20 THE COURT: On their cross-examination as to his
21 ability to perceive the events in question, if that's what
22 your asking me?

23 MR. MOOMAU: Well, no. We're getting to the grand
24 jury testimony. They could ask him, well, isn't it true that
25 there was a toxicology test done at the hospital, and your

1 urine tested positive for cocaine.

2 THE COURT: Correct.

3 MR. MOOMAU: But, without expert testimony, the
4 report itself wouldn't come in.

5 THE COURT: No. I believe that that toxicology
6 report can come in on the issue of the denial of the victim
7 that he used cocaine. And we can look at the document and,
8 accordingly, make it a positive test without any other
9 amplification.

10 But they cannot use that document as an impeachment
11 tool for his ability to perceive without the expert testimony
12 of a toxicologist to tell the jury what the amount was in the
13 bloodstream and what effect that would have on a witness's
14 ability to perceive the events in question.

15 MR. MOOMAU: Understand.

16 MR. COHEN: Understood, Your Honor.

17 MR. MOOMAU: Your Honor, at some point we may be
18 crafting an instruction to present to the Court as to the
19 weight or consideration to be given to that language in the
20 report because of that language on it.

21 THE COURT: Well, I'll consider anything that
22 anybody has by way of input for any instruction.

23 What's the next issue?

24 MR. MOOMAU: We have the issue involving Mr. White.
25 Can we approach on this?

1 THE COURT: Certainly.

2 (Counsel approached the bench and the following
3 ensued.)

4 MR. MOOMAU: He's here. Now, I don't know if you
5 want me to testify or -- because I am representing me, the
6 prosecutor, one of the prosecutors. The State hasn't made
7 him any offers. I've put that in memos.

8 Now, if I have to testify, I mean, I will, but I
9 don't know if that would be necessary unless they're willing
10 to accept that proffer. It's a two-part test, whether the
11 State has made and extended any offers and, two, whether or
12 not he's expecting anything.

13 MR. STARR: I guess what I would say is this.
14 Mr. Moomau says -- and he's exactly right. The issue is --
15 the bias issue is what's in the mind of the witness.

16 If an issue comes up during the examination of
17 Mr. White, where he says, well, Mr. Moomau said this or
18 didn't say this, we may have to find out what Mr. Moomau says
19 about it. I'm not saying that we would require sworn
20 testimony. We may be able to just accept his
21 representations, but I would want to see what it is before
22 committing.

23 MR. MOOMAU: Do you want me to wait outside?

24 MR. STARR: I mean, I think there is potential for
25 him to be a witness, but I'm trying to avoid that, if it can

1 be done. So as of right now, I can't say for certain that we
2 wouldn't get there.

3 MR. MOOMAU: I mean, I had a witness when I spoke
4 to him, when I talked to him. That's one issue.

5 Another issue is if he is questioned about, in
6 fact, whether or not he was registered in Maryland, this and
7 that -- and that brings up another issue.

8 I'm not sure what he's being investigated for, if
9 he is. I referred it on to the county officer that does
10 that. So if he's investigating looking into that, and White
11 is asked questions about whether he was, in fact, or wasn't
12 registered, he has a fifth amendment privilege there.

13 To me, that isn't even an issue of this proceeding.
14 The issue ought to be whether he is expecting anything.

15 MR. STARR: Well, I think, Your Honor, we were
16 going to raise that issue with you, the fifth amendment
17 privilege, as well.

18 Because what we have is his grand jury testimony,
19 which is before the Court, and at some point we should
20 probably just make it part of the record, since we've been
21 referring to it so much, and we would move to do that. But
22 he says three times in there that he had been working at this
23 job for three weeks, and lists another job that he had worked
24 at before he worked delivering furniture for Marlo, that we
25 believe is also in Maryland.

1 We know what the statute says. We don't need
2 testimony on that. It says 14 days, after you begin
3 employment, you have to register or it's a misdemeanor and
4 you can face three years in prison. We know that he's not
5 registered, and we know that he's a registrant under the
6 statute. So all the elements are met.

7 That leaves us in a position where I do think -- I
8 agree with Mr. Moomau that it's prudent to bring a potential
9 fifth amendment issue to the Court's attention.

10 MR. MOOMAU: I have no problem with his grand jury
11 testimony. He did say he was working here three weeks, I
12 think.

13 THE COURT: You want me to admit the grand jury
14 transcript?

15 MR. MOOMAU: For that particular issue. But,
16 really, Your Honor, it's not even an issue in this case
17 because -- that's not relevant to this particular issue
18 because whether he committed the crime or not is not part of
19 it; it's whether he is expecting anything.

20 MR. STARR: But, Your Honor, you know, we do -- our
21 right to conduct a biased cross-examination is not
22 contingent solely on accepting everything that Mr. White says
23 as true.

24 The situation that we're in is that what we know is
25 all of the elements of the crime are met. We know that the

1 State has referred it to the investigating agency and that,
2 if a decision is made to prosecute, it's going to be by the
3 same state's attorney's office that is sponsoring his
4 testimony. All of the elements of a biased
5 cross-examination are there.

6 The case law is very clear in Maryland, and we cite
7 some of it in our pleading, that what's relevant is the state
8 of mind of the witness, not necessarily whether there's an
9 express agreement, and that there can be bias in the absence
10 of an express agreement.

11 MR. MOOMAU: Say he was facing a charge, if he had
12 an active charge right now, that's not automatically coming
13 in. He has to be expecting some benefit or the Court has to
14 make that finding. That's the Ebb case that I cited in my
15 motion. When the State is not making an offer, and he
16 doesn't expect anything, even if it was a pending charge,
17 doesn't mean it comes in.

18 And in this particular case anyway, to think that
19 his -- he's a victim. I mean, he's not a third party getting
20 some deal. He's a shooting victim. He could file a lawsuit
21 on this thing, which is going to come in as far as
22 cross-examination. It's not like anyone is having to coax
23 him to testify or even offering him anything, and that will
24 be apparent from his testimony.

25 MR. STARR: That is entirely separate from whether

1 or not this incident uncovered an ongoing crime that he was
2 committing in this state that falls under the jurisdiction of
3 the state's attorney's office. It is entirely separate.

4 He may have other biases. I'm sure there is never
5 a witness that testifies that's here for one reason and one
6 reason alone, or there are often witnesses that are here for
7 a number of different reasons, some of them competing.

8 But this issue is that the shooting brought to
9 light the fact that he was working in this state for more
10 than 14 days without registering. And that's what happened.
11 I mean that's just true.

12 So where we are now is that there is an
13 investigation and a decision, a decision as to whether or not
14 the state's attorney's office is going to prosecute this man
15 is pending at the time that he takes the witness stand in
16 this case. Those are the facts.

17 So, you know, we can say that he may have some
18 other reason or some other combination of reasons, but this
19 exists as a bias. It exists, and every element of it is
20 present before Mr. White gets on the witness stand in this
21 hearing and after he gets on the witness stand in this
22 hearing, no matter what he says. Because we are not stuck,
23 Your Honor, with Mr. White's --

24 THE COURT: Hold up a minute. What do you mean no
25 matter what he says? The issue is whether or not he believes

1 that he has some arrangement with the state's attorney's
2 office about whether he's going to be charged or not or
3 whether he has been told that he has such an arrangement, and
4 you base it on the credibility of witnesses and the
5 presentation of evidence, etc. So it's not regardless of --

6 MR. STARR: I guess what I'm saying is this, and
7 I'll say it in response to the Court's comments. The issue
8 is not just whether he's been told that he has an arrangement
9 or whether there is a formal arrangement --

10 THE COURT: Or whether he believes he can expect
11 some leniency on that in his own mind; is that not correct?

12 MR. STARR: Correct; whether, in his mind, he has
13 some expectation, some motive --

14 THE COURT: Well, you're going to question him on
15 all that, correct, and that's what the ultimate issue is
16 going to be for me to determine, based on the testimony and
17 whatever evidence is presented, correct?

18 MR. STARR: I agree that you will make that
19 determination after the testimony. I'm not sure we
20 completely agree on how we view the issue. So I don't want
21 to be boxed in on the record on that.

22 THE COURT: I'm not trying to box you in. What do
23 you believe is the issue you wish me to determine?

24 MR. STARR: Whether or not we have a good faith
25 basis to conduct a biased cross-examination.

1 THE COURT: About?

2 MR. STARR: About a potential motive to curry favor
3 with the State based on their awareness and the pending
4 investigation of a crime committed by him that has come to
5 light.

6 THE COURT: In front of the jury?

7 MR. STARR: Oh, yes, I want to do it in front of
8 the jury, yes.

9 THE COURT: I understand that. And if I were to
10 make a finding that I didn't believe that that was the
11 setting as I understood the testimony or his understanding of
12 it, what are you saying? Have I framed the issue correctly?

13 MR. STARR: I think the issue is framed correctly.
14 I guess, if the Court makes a factual finding he is not
15 biassed and, as a matter of fact, has no such expectation or
16 motive, then I agree that we lose. I agree with that.

17 MR. COHEN: Court's indulgence for one moment.

18 MR. STARR: And, Your Honor, just to make sure that
19 what I'm saying is exactly clear on the issue about which I
20 take issue with the Court. The issue is not to be determined
21 by whether Mr. White acknowledges a bias. The circumstances
22 are present that give us a good faith basis to infer a bias
23 and to present that to a jury for their consideration.

24 It is proper for him to answer the questions
25 however he wants, but the circumstances create a clear,

1 justified inference of a bias. If he says, no, that doesn't
2 influence me at all, then that's for the jury to consider.
3 But that's not a question of admissibility; that's a question
4 of weight.

5 THE COURT: But you're equating it to the issue of
6 not registering, correct?

7 MR. STARR: Correct. Well, that's what the issue
8 is. I didn't create it that way. Those are the facts of
9 this man's background and the situation and what he said in
10 the grand jury. We have not -- that's just what it is. We
11 haven't manufactured that. That's what's been presented to
12 us as the true facts of the case.

13 THE COURT: I understand.

14 MR. MOOMAU: Your Honor, what he's saying is not
15 the law in this state. Based on their argument, anytime
16 somebody has a pending charge, then that can be used; that
17 witness can be cross-examined on that pending charge, even if
18 it bears no relation to the testimony that they don't expect
19 anything and they're not being offered anything, and that's
20 not the law. Just because they have what they say is a good
21 faith basis to ask a question about, that's not the rule and
22 that's not the standard. The standard is whether something
23 has been offered and whether there is an expectation.

24 THE COURT: Well, I'll hear the testimony and --

25 MR. COHEN: Just so the record is clear, Your

1 Honor, the defense had put the fifth amendment issue on the
2 record, correct?

3 THE COURT: You put the fifth amendment issue on
4 the record, and he should be advised of his fifth amendment
5 rights. Do you agree or not agree?

6 MR. MOOMAU: I agree. I just don't think it's
7 relevant that he would be asked questions about whether he
8 was registered or not.

9 THE COURT: You don't.

10 MR. MOOMAU: No.

11 THE COURT: Why?

12 MR. MOOMAU: I mean, he wasn't. He was registered
13 in D.C.; he was registered in South Carolina.

14 THE COURT: I understand that.

15 MR. MOOMAU: Whether he committed this particular
16 offense or not, I just don't see how that is relevant. Just
17 like if somebody is charged with a particular crime and you
18 have to have this same type of questioning, you don't go into
19 the facts of that crime, whether they committed it. The
20 question is whether they have any expectation as far as that
21 particular matter.

22 THE COURT: Well, how would you phrase it then?
23 What is it you're saying they would have or would not have
24 the ability to do with that?

25 MR. MOOMAU: Go into facts of were you registered

1 here; how long were you here? That would be for some
2 charging authority or the investigating officer.

3 THE COURT: Is there a stipulation that he's not
4 registered in the State of Maryland?

5 MR. MOOMAU: Yes. He wasn't when this happened and
6 he was working here and he was --

7 THE COURT: If the State is stipulating, for your
8 argument purposes, that he has not registered in the State of
9 Maryland, then I believe that then your question shouldn't
10 relate to whether or not he did because they're stipulating
11 that he did not, but you can elicit information from him
12 about the employment, how long, etc.

13 MR. MOOMAU: I mean, his residence was in D.C.

14 THE COURT: I'm just stating.

15 MR. STARR: So the one thing that the Court is
16 ruling that we're not going to ask him about, because it's
17 mooted by stipulation, is whether he actually registered in
18 Maryland.

19 THE COURT: Yes.

20 MR. MOOMAU: Because this isn't a trial on the --

21 THE COURT: I'm not saying it is. I'm just looking
22 at the fifth amendment issue.

23 MR. STARR: I think we can only go so far in kind
24 of arguing Mr. White's fifth amendment rights. The Court is
25 going to handle that the way it's going to handle it.

1 THE COURT: I don't know what you mean.

2 MR. STARR: I guess, as I understand the fifth
3 amendment issue, is whether he's going to be asked questions
4 that could incriminate him.

5 MR. COHEN: The answer is yes.

6 THE COURT: That could encompass more than just the
7 answer of whether he did or did not register.

8 MR. STARR: That's what we're saying.

9 THE COURT: Why don't you sit down with them and
10 see if you can write a stipulation on this. We'll recess for
11 that period.

12 (A brief recess was taken.)

13 THE DEPUTY CLERK: Criminal trial 07-1664X, State
14 of Maryland versus Keith Washington.

15 MR. MOOMAU: William Moomau for the State, Your
16 Honor.

17 MR. WRIGHT: Joseph Wright on behalf of the State.

18 MS. ZANZUCCHI: Raemarie Zanzucchi on behalf of the
19 State.

20 MR. COHEN: Vincent H. Cohen on behalf of
21 Mr. Washington.

22 MR. STARR: Michael Starr on behalf of
23 Mr. Washington, who is present.

24 MR. MOOMAU: As far as a stipulation, Your Honor, I
25 don't know if we have a stipulation, but what the State is

1 willing to represent is that Mr. White was registered in the
2 District of Columbia; he was not registered in Maryland; he
3 resided in the District of Columbia; and he was working in
4 Maryland as of January 24, 2007.

5 MR. STARR: Your Honor, we accept and we stipulate
6 to those facts. They don't, however, resolve the issue of
7 Mr. White's fifth amendment privilege, and our understanding
8 of the State's position is that they will not stipulate to
9 facts that would constitute the crime; specifically, the fact
10 that was at issue, that we discussed stipulating to was
11 whether he had worked in Maryland for more than 14 days. We
12 know he said three times in the grand jury that he had. But
13 that's why we don't have a stipulation that moots the fifth
14 amendment issue.

15 THE COURT: Okay.

16 MR. STARR: These questions, questions such as
17 whether he worked in Maryland for more than 14 days, are
18 relevant to his bias and relevant to his expectations and why
19 he would have them and how he would be motivated in giving
20 his testimony in this case.

21 So I think where we are is that he still has a
22 fifth amendment privilege, and he has to either waive it or
23 assert it.

24 MR. MOOMAU: Your Honor, my response to all that,
25 as far as how deep the questioning can go, I refer the Court

1 to the Court of Appeals case Ebb versus State. It's cited in
2 my memorandum there, 341 Md. 578, and it deals with this
3 issue. Particularly, in that case questioning was done about
4 a State's witness -- I think there were actually three of
5 them, dealing with pending charges that they had. It didn't
6 go into the details of those charges; just whether or not the
7 person was expecting a deal.

8 I object to any questioning about the details of
9 any particular offense, the specifics of it, because that's
10 not really what's at issue.

11 MR. STARR: Your Honor, we have case law to cite in
12 response to that. Specifically, Your Honor, one of the cases
13 is Ware versus State and we cited that, where a capital
14 murder conviction was reversed. What was at issue was state
15 witnesses pending motion for reconsideration of sentence in a
16 separate court, in the absence of any formal agreement
17 between the State and the witness. The cases are clear that
18 a formal agreement is not required; that the issue is the
19 state of mind of the witness and any expectation that the
20 witness may have.

21 Your Honor, additionally, there's the Marshall
22 case, which is 346 Md. 186 and 695 A 2nd 184. The cite of
23 Ware is 702 A 2nd 699 and 348 Md. 19.

24 In the Marshall case, a conviction was reversed
25 based on a denial of cross-examination in a similar instance,

1 a motive to curry favor with the State. The basis of the
2 reversal was that the defense wasn't allowed to get into the
3 actual details of the witness's bias and the witness's --
4 there was expressed agreement in that case, agreement with
5 the State. So the details do drive the bias --

6 THE COURT: Details of any agreement or any
7 expectation, or lack thereof, of any leniency. Not details
8 of what may or may not have taken place with regard to the
9 pending allegations or crime, correct, as I understand that
10 case?

11 MR. STARR: That's the holding of the case, Your
12 Honor, but the details -- when I say that, I mean that it is
13 the facts that would generate and speak to the strength of
14 the bias.

15 So based on that authority and, particularly, the
16 Ware case, Your Honor, in which there was no expressed
17 agreement, we do think that the bias law requires that we be
18 allowed to conduct a cross-examination and to talk about the
19 basis of it so that it can have probative force.

20 THE COURT: Well, I don't agree with that part of
21 it. What I believe is that you certainly have a right to
22 inquire of Mr. White, based on a stipulation made by the
23 State that, in fact, he had not registered in Maryland; he
24 had registered in South Carolina and the District of
25 Columbia; that he's a resident of the District of Columbia,

1 but he was working in Maryland; that given that stipulation,
2 that you would have the ability to inquire of him whether
3 there was any specificity of any agreement with he and the
4 State of Maryland about that particular setting, or whether
5 he had any expectation of leniency in any fashion as a result
6 of that particular setting.

7 But I don't believe that that would permit you to
8 go into specifically inquire of him the facts of any such
9 omission, since it's being, essentially, stipulated to. I
10 don't think there's a distinction between the probative force
11 and not the probative force if, in fact, there has been no
12 registration in Maryland.

13 So you're limited to facts surrounding his
14 expectation or lack thereof or however you wish to phrase it
15 in terms of any leniency or any specific expectations or
16 formal expectations that he may have with the State of
17 Maryland.

18 MR. STARR: I assume that that right to examine him
19 includes the right to inquire about the fact that he had been
20 working for more than 14 days in Maryland.

21 THE COURT: Is that stipulated to?

22 MR. MOOMAU: Your Honor, no, that's not stipulated
23 to. I don't see how I can stipulate that he did violate a
24 law of this state. I stipulate that he was working in
25 Maryland, he wasn't registered here and he was living in D.C.

1 MR. STARR: Well, it's odd because our only source,
2 as I understand it -- Mr. Moomau can correct me if I'm wrong,
3 but the source from which the State is drawing that
4 information is Mr. White's grand jury testimony where, in the
5 very same sentences, he says that he had been working in
6 Maryland for more than 14 days.

7 MR. MOOMAU: I can stipulate to what he's already
8 testified to. If you want to get that page of the transcript
9 and --

10 THE COURT: And we'll have that -- well, the whole
11 transcript is going to be admitted for purposes of this
12 proceeding anyway, as requested by the defense. I'll admit
13 that transcript, and that will be part of the measure of
14 evidence in this case.

15 So, again, based on that, you're limited in your
16 inquiry to those areas that I mentioned factually.

17 MR. COHEN: Court's indulgence for a moment.

18 MR. STARR: Your Honor, what is the Court's ruling
19 with regard to Mr. White's fifth amendment privilege?

20 THE COURT: That there is no inquiry necessary into
21 that because you're not going to get into the facts of that
22 specific setting. The State has stipulated that he hasn't
23 registered in Maryland. His grand jury transcript indicates
24 what it does about the length of time that he had been
25 working in Maryland, which is sufficient for your purposes,

1 meaning the 14 days.

2 Therefore, your inquiry is restricted to what he
3 believes, if he does, any arrangement with the State of
4 Maryland as a result of that setting and/or what he believes
5 or doesn't believe with return of any leniency in any
6 fashion, as portrayed in the Ebb case.

7 MR. STARR: Your Honor, as to his intent or
8 knowledge regarding the 14 day requirement --

9 THE COURT: Once again, meaning no disrespect. I'm
10 not trying to cut you off. We do not have to go into his
11 intent if, in fact, the State has stipulated, as it has, and
12 if, in fact, they are stipulating to his grand jury testimony
13 about that length of time.

14 So for purposes of this hearing, in terms of what
15 you wish to do, that's assumed legally for the purposes of
16 this hearing.

17 MR. MOOMAU: We're ready to proceed. Mr. White is
18 here. He does have his attorney with him. I think his
19 attorney would have the right to be here, and maybe if
20 Mr. White -- I don't know how that interaction is going to
21 work, but I just wanted to let the Court know that.

22 THE DEPUTY CLERK: Please state and spell your
23 first and last name for the record.

24 THE WITNESS: Robert White, R-o-b-e-r-t, W-h-i-t-e.

25 THE COURT: Mr. White, just take your time. You

1 may want to put your jacket down, sir. I think you have
2 something that is making a little noise for the microphone
3 there. If you wish to face forward, you can pull that
4 microphone over to the front, if you care to do that.

5 THE DEPUTY CLERK: That microphone doesn't work.

6 THE COURT: It doesn't work? Okay.

7 **DIRECT EXAMINATION**

8 BY MR. MOOMAU:

9 Q. Good afternoon, Mr. White.

10 A. Good afternoon.

11 Q. Mr. White, are you aware that there have been
12 allegations made that you committed a crime back on January
13 24, 2007, and before and maybe even after, by not registering
14 as a sexual offender in the State of Maryland?

15 A. Yes.

16 Q. At anytime have you asked anyone, a prosecuting
17 attorney, a police officer, or any law enforcement officer
18 that you not be charged with such a violation?

19 A. No.

20 Q. Has any prosecuting attorney, policeman or law
21 enforcement officer told you or represented to you that you
22 would not be charged for such a violation of the law?

23 A. No.

24 Q. Has any prosecuting attorney, policeman or law
25 enforcement officer made any promises to you at all that

1 relate in any way to your status being not registered as a
2 sexual offender in the State of Maryland?

3 A. No, sir.

4 Q. Do you expect that because you're a witness in this
5 case against Keith Washington, that because of any testimony
6 you give in that case, you will not be charged with being in
7 violation of the sexual offender registration statutes for
8 the State of Maryland?

9 A. No, sir.

10 Q. Do you believe or do you expect that, if you are
11 charged with such a violation, you would receive some
12 leniency in that case because you're testifying as a witness
13 for the State in this particular case?

14 A. No, sir.

15 MR. MOOMAU: Court's indulgence, please.

16 THE COURT: Certainly.

17 BY MR. MOOMAU:

18 Q. Do you expect that somehow your testimony in this
19 criminal action would somehow reflect favorably to your
20 behalf in this investigation or any investigation as to
21 whether or not you violated the sexual offender registry laws
22 for the State of Maryland?

23 A. No, sir.

24 Q. Has anyone, not even a law enforcement officer, not
25 a member of the state's attorney or law enforcement officer,

1 police officer, has anyone told you, hey, you know, if you
2 testify against Keith Washington, you won't be investigated
3 or prosecuted or charged for violating the sexual registry
4 laws for the State of Maryland?

5 A. No, sir.

6 MR. MOOMAU: Your Honor, that's all the questions I
7 have on direct.

8 THE COURT: Thank you.

9 **CROSS-EXAMINATION**

10 BY MR. STARR:

11 Q. Now, Mr. White, you have been made aware that,
12 currently, there's an investigation going on about whether or
13 not you're going to be charged with a crime for not
14 registering as a sex offender in the State of Maryland,
15 correct?

16 A. Correct.

17 Q. And you have been made aware, Mr. White, that that
18 crime that you could be charged with carries a penalty of up
19 to three years in prison, correct?

20 A. Correct.

21 Q. And you would agree with me that you do not want to
22 be charged with that crime, correct?

23 MR. MOOMAU: Objection.

24 THE COURT: Sustained.

25 BY MR. STARR:

1 Q. You do not want to serve those three years,
2 correct?

3 MR. MOOMAU: Objection.

4 THE COURT: Sustained.

5 BY MR. STARR:

6 Q. Now, Mr. White, you understand that if there's a
7 decision made to prosecute you, you could be prosecuted by
8 the state's attorney's office of Maryland for Prince George's
9 County, right?

10 MR. MOOMAU: Objection.

11 THE COURT: Overruled.

12 BY MR. STARR:

13 Q. Do you understand that?

14 A. Yes.

15 Q. And you understand that that's the same office that
16 these three prosecutors, Mr. Moomau, Mr. Wright and
17 Ms. Zanzucchi work for, correct?

18 A. Correct.

19 Q. And you understand that that's the same office that
20 is calling you as a witness in the trial against Keith
21 Washington, correct?

22 A. Correct.

23 Q. Now, Mr. Moomau -- have you had any conversations
24 with Mr. Moomau about this investigation of you for not
25 registering as a sex offender?

1 A. No, sir.

2 Q. Well, how were you made aware of it?

3 A. Could you repeat that again?

4 Q. You testified already that you were aware that
5 there's an ongoing investigation of you, correct?

6 A. Correct.

7 Q. How were you made aware of that fact?

8 A. Through the state's attorney's office.

9 Q. Who at the state's attorney's office told you that?

10 A. Mr. Moomau.

11 Q. So you did have a conversation with Mr. Moomau
12 about this investigation, correct?

13 A. Correct.

14 Q. During that conversation Mr. Moomau told you that
15 he had referred this issue of you not registering to some
16 authority for that person to investigate it, correct?

17 A. No.

18 Q. What did he tell you?

19 A. He just said that there could be charges brought
20 against me.

21 Q. I'm sorry. It could be what?

22 A. There could be charges brought against me.

23 Q. Anything else?

24 A. That's it.

25 Q. And during that conversation when Mr. Moomau told

1 you charges could be brought against you, he told you what
2 they could be for, correct?

3 A. Correct.

4 Q. Now, you've testified that you understand that it
5 would be the state's attorney's office, Mr. Moomau's office,
6 that could prosecute you, if a decision was made to prosecute
7 you, right? You understand that, correct?

8 THE COURT: He's answered that question before.

9 MR. STARR: I'm just orienting him.

10 BY MR. STARR:

11 Q. And you understand that the state's attorney's
12 office can make a decision to either prosecute you or not
13 prosecute you, correct?

14 MR. MOOMAU: Objection.

15 THE COURT: Want to approach the bench.

16 (Counsel approached the bench and the following
17 ensued.)

18 THE COURT: He's answered that question too. Where
19 are you going?

20 MR. STARR: I just was going to ask him whether he
21 wants -- whether he understands that they can also make
22 determinations as to plea agreements and sentencing and those
23 things. I just was orienting him. I wasn't trying to trick
24 him.

25 THE COURT: Okay.

1 (Counsel returned to trial tables and the following
2 ensued.)

3 BY MR. STARR:

4 Q. Now, Mr. White, understanding that if you are
5 prosecuted by the state's attorney's office, you also
6 understand that if a decision was made to charge you, the
7 state's attorney's office would be involved in things like
8 making plea offers, correct?

9 A. Correct.

10 Q. And you understand that they would be involved in
11 matters like making recommendations for what your sentence
12 would be if you were convicted, correct?

13 A. Correct.

14 Q. Now, you understand that, in this prosecution, the
15 state's attorney's office wants to see Mr. Washington found
16 guilty, correct?

17 MR. MOOMAU: Objection.

18 THE COURT: Sustained. You don't have to answer
19 that question, sir.

20 BY MR. STARR:

21 Q. You understand, Mr. White, that if the state's
22 attorney's office is pleased with your testimony, that they
23 have the power to consider that when they're making the types
24 of decisions that we've talked about, like charging decisions
25 and plea decisions and sentencing recommendations.

1 MR. MOOMAU: Objection.

2 THE COURT: Approach the bench, please.

3 (Counsel approached the bench and the following
4 ensued.)

5 THE COURT: Mr. Starr, I'd appreciate it if you
6 think a little bit more about the questions you're asking in
7 terms of using things like being pleased. You can ask him
8 general questions about if he's aware of the power the
9 state's attorney has to make decisions concerning
10 recommendations, sentencing considerations, charging
11 considerations, but, please, be fair in the use of your
12 terminology and words. Ask him if he understands those
13 things. That would be fine and I'm not going to limit you on
14 that.

15 MR. STARR: I'm not arguing with the Court, but I
16 just want to say that I'm just asking him about his
17 expectation and what he understands the playing field to be.

18 THE COURT: I understand that and I think that's
19 proper cross-examination, but the wording of it, if the State
20 were pleased, I don't think you have to phrase it that way.

21 MR. COHEN: I suggest altering the language here at
22 the bench so that he --

23 THE COURT: That's all. You have a proper line of
24 examination. It's the terms I'm talking about.

25 MR. STARR: Then I'm going to propose a question so

1 we can agree on it, if that's okay, because I don't want to
2 run afoul of what the Court has ruled.

3 I would like to ask him whether he understands that
4 if the State takes a favorable view of him --

5 THE COURT: That's fine.

6 MR. STARR: -- and that he understands that they
7 can consider his testimony in making that --

8 THE COURT: That's fine.

9 (Counsel returned to trial tables and the following
10 ensued.)

11 BY MR. STARR:

12 Q. You understand, Mr. White, that if the State takes
13 a favorable view of you, they could consider that in making
14 decisions like whether you will be charged with a crime,
15 correct?

16 A. Correct.

17 Q. And you understand that if the State takes a
18 favorable view of you, if you were charged with a crime, they
19 could consider that in making decisions like whether you
20 would receive a certain plea agreement or whether they would
21 make a certain sentencing recommendation, correct?

22 A. Correct.

23 Q. And you understand, Mr. White, that in considering
24 whether or not they take a favorable view of you, the State
25 can consider how they feel about the testimony you provide in

1 Mr. Washington's trial, correct?

2 A. They never talked about that.

3 Q. Well, I didn't ask you what was talked about. Do
4 you understand that?

5 A. Yes, I understand.

6 Q. So you understand that they can do that?

7 A. Yes.

8 Q. And, in fact, Mr. White, it is your hope that the
9 State will view you favorably and not charge you with a
10 crime, correct?

11 A. No.

12 Q. Well, are you hoping not to be charged with this
13 crime, for failing to register as a sex offender?

14 MR. MOOMAU: Objection.

15 THE COURT: Sustained.

16 MR. STARR: Can we approach?

17 THE COURT: Yes.

18 (Counsel approached the bench and the following
19 ensued.)

20 MR. STARR: I sincerely don't know why that's not a
21 permissible line of questioning.

22 THE COURT: Well, what he hopes and your
23 questioning to him about what he expects, if anything, or
24 what the State may have offered him, if anything, don't
25 relate.

1 MR. STARR: I think what he hopes, given the
2 playing field that's already been established, which is that
3 there's a pending investigation --

4 THE COURT: What he hopes is not relevant to what
5 he may or may not expect or to what the State may or may not
6 have offered him. Those things you haven't approached. The
7 question is does he expect leniency or has he been offered
8 some benefit or leniency, not what his hope is, at least in
9 this Court's view.

10 MR. STARR: I understand. I guess -- I hear what
11 the Court has said. I think that the Court, as you stated,
12 has to make a credibility determination about his testimony,
13 and in order to explore the credibility issue, if I'm only
14 allowed to ask kind of the ultimate conclusory questions,
15 without --

16 THE COURT: That's not what I'm saying. I'm saying
17 what he may hope doesn't appear to me to be relevant to the
18 issues that we're deciding or presumably to decide.

19 MR. STARR: One moment. And this is what I'm
20 saying, Your Honor, is my position. He has stated that he
21 understands that the State can consider his testimony in
22 making decisions about his fate in this context, whether he's
23 prosecuted for this offense and how that prosecution goes
24 thereafter, if it were to occur.

25 The other component of that, the other component of

1 bias is whether he wants that to happen. And it's not merely
2 whether he's been told it's going to happen, but whether he's
3 testifying with an expectation that it could happen or
4 testifying with a goal of trying to bring that about. It's
5 not just what has he been told. It's we know that he
6 understands that his testimony could be considered by the
7 State as they make decisions about him that, presumably, are
8 important to him.

9 And the other half of it is whether he, in fact,
10 wants that to be resolved favorably by the State.

11 THE COURT: Again, it's this Court's view, based on
12 my reading of the cases, that it's what he expects, if he
13 expects anything. Does he have an expectation of leniency
14 for what he's doing, not what he hopes, not what he wants,
15 and I don't believe what he hopes is the equal of what he
16 expects, if anything.

17 MR. STARR: I understand what the Court is saying,
18 and that may be what the Court ultimately has to assess.

19 What I'm saying is that, in a very common sense
20 way, what he wants, his motivations, are linked to a
21 credibility determination about whether he has an
22 expectation.

23 THE COURT: Well, I think this is a very limited
24 situation, and I'm going to permit you certain questions, but
25 I think what he hopes is not related to the issue that we

1 have to decide.

2 MR. STARR: I won't ask him about his hope again
3 since the Court has ruled I can't do it.

4 MR. COHEN: I'm giving you the correct spelling of
5 my name, Your Honor. I think the Court used the name Victor
6 at one point.

7 THE COURT: Did I actually say that? I said
8 Vincent; didn't I?

9 MR. COHEN: I thought I heard you say Victor at one
10 point.

11 THE COURT: I do know your name, and I apologize if
12 I said Victor.

13 MR. STARR: We're fine.

14 (Counsel returned to trial tables and the following
15 ensued.)

16 BY MR. STARR:

17 Q. Mr. White, it is your expectation that if the State
18 views your testimony, in a trial against Mr. Washington,
19 favorably, that they will consider that in the decisions they
20 make about whether or not to charge you with failing to
21 register in the State of Maryland as a sex offender, correct?

22 A. I don't know.

23 Q. And it is your expectation that if the State views
24 your testimony, in Mr. Washington's trial, favorably, and
25 they did decide, still, to prosecute you for failing to

1 register as a sex offender in Maryland, that they would
2 consider their favorable view of your testimony as to what
3 kind of plea offer you might receive and what kind of
4 sentencing recommendation they might make.

5 A. I don't know.

6 MR. MOOMAU: I would object to the form of the
7 question, Your Honor. It was compound.

8 THE COURT: Would you rephrase, please.

9 BY MR. STARR:

10 Q. It is your expectation, Mr. White, that if the
11 State views your testimony at Mr. Washington's trial as
12 favorable, that they might consider that when making
13 decisions, if you were prosecuted, about what kind of plea
14 offer you might receive.

15 A. I don't know.

16 Q. You're saying you do not know?

17 MR. MOOMAU: Object. Already answered.

18 THE COURT: He said he did not know.

19 BY MR. STARR:

20 Q. Well, I'm asking you what your expectation is. Are
21 you saying you do not know what your expectation is?

22 MR. MOOMAU: Objection.

23 THE COURT: Sustained. Rephrase the question,
24 please.

25 BY MR. STARR:

1 Q. What are you saying you expect?

2 A. I don't know what they going to do.

3 Q. My question to you is not what you know about what
4 they're going to do, but what your expectation is.

5 The question is, is it your expectation that if the
6 State views your testimony in the trial of Mr. Washington
7 favorably, that they would consider that in deciding whether
8 or not you'll get prosecuted for failing to register as a sex
9 offender?

10 A. I don't know.

11 Q. You don't know what your expectation is?

12 A. No.

13 Q. Have you thought about that?

14 A. No.

15 Q. Well, what do you think about that?

16 MR. MOOMAU: Objection.

17 THE COURT: Sustained. Rephrase, please.

18 BY MR. STARR:

19 Q. Do you want the State, if they view your testimony
20 favorably in Mr. Washington's trial, to consider that when
21 deciding whether or not to prosecute you for failing to
22 register as a sex offender?

23 MR. MOOMAU: Objection.

24 THE COURT: Sustained.

25 MR. STARR: No more questions.

1 MR. MOOMAU: No redirect, Your Honor.

2 THE COURT: Thank you, sir. You may step down.

3 MR. MOOMAU: Can we approach, Your Honor?

4 THE COURT: Certainly.

5 (Counsel approached the bench and the following
6 ensued.)

7 MR. MOOMAU: Your Honor, as far as the testimony
8 and what the State is going to submit about what his
9 expectation was, that's it -- or what his expectation is.

10 Now there's the other issue of what was offered, if
11 anything was offered to him on the State's side. He's given
12 testimony about that. I'm representing that I didn't make
13 any representations to him.

14 Now, I don't want to be caught in a crack with not
15 having to -- there being no record of the State saying or
16 testifying or introducing evidence that it has not made him
17 an offer. I have a witness that's going to say that, because
18 that particular person was there when I spoke to him about
19 that, or we can just accept my representation.

20 MR. STARR: It's not necessary to call a witness.
21 I'll accept Mr. Moomau's proffer that he hasn't made an
22 offer.

23 I would like a proffer, though, as to what
24 Mr. Moomau did say to Mr. White about this issue.

25 MR. MOOMAU: What I told Mr. White is basically

1 what he said on the stand, that there's been allegations made
2 that he was in violation of the State of Maryland Sexual
3 Offender Registry statute; that whether or not he was in
4 violation, I'm not making any representations, no deals; he
5 might be charged with that and, if he is charged with that,
6 it's not tied at all to his testimony; that whatever happens
7 there, happens, and it's not tied to, connected to his
8 testimony in any way. And that's what I told, no benefit, no
9 promises, nothing.

10 THE COURT: Okay. Is that sufficient?

11 MR. STARR: Yes.

12 MR. WRIGHT: Can we excuse Mr. White for the day?

13 MR. STARR: That's fine.

14 MR. COHEN: Will we be able to make arguments, Your
15 Honor?

16 THE COURT: Yes.

17 (Counsel returned to trial tables and the following
18 ensued.)

19 THE COURT: I think it is your motion.

20 MR. STARR: It is. Judge, I think that where we
21 are is Mr. White has testified that he is aware that there
22 can be prosecution of him in the issues being investigated,
23 whether or not he violated the Maryland Sexual Offender
24 Registration Act.

25 The transcript that's been admitted by stipulation

1 indicates that Mr. White says in the grand jury three times
2 that he had worked in Maryland for three weeks, and the
3 transcript lists another place of employment, Indian Head
4 Thrift, also located in Maryland.

5 The Court can take notice of the statute which
6 contains the requirement that after one begins employment in
7 Maryland, any sexual offender who is a registrant, which is a
8 term of art, which would include Mr. White, that is someone
9 who, by stipulation, we know is a registrant in South
10 Carolina and Washington, D.C., that that person must register
11 as a sex offender in Maryland, and we know that that did not
12 happen with regard to Mr. White. So the elements of the
13 offense are all present in the record.

14 And it's not just that the offense has been
15 committed and demonstrated to the Court, but it's that
16 Mr. White has testified that he's aware that the state's
17 attorney's office could be the body to issue the prosecution
18 in this case -- and the Court can take notice that they do
19 have jurisdiction -- and that he understands, as he
20 testified, that if the State takes a favorable view of his
21 testimony in Mr. Washington's trial, that that could be
22 considered by the State in making a decision as to whether or
23 not they are going to prosecute him and certain decisions
24 that are made thereafter when the prosecution is initiated.

25 Now, his answer, when he's asked what is his

1 expectation, is I don't know, and, frankly, Your Honor,
2 that's not a credible answer. It's not credible that he does
3 not know how he feels about this issue. It's not credible
4 that he does not know whether he expects anything.

5 If his answer had been no, I have no expectation
6 based on what I was told, then we would be in a very
7 different place. But he doesn't say that. When you ask him,
8 that's not what he says.

9 Frankly, I think that that takes that argument away
10 from the State. Because if Mr. White had said that, I think
11 that they would still have that argument, but they don't have
12 that argument because that's not what he says. He says he
13 doesn't know what his expectation is, which leaves us
14 basically nowhere, based on that evasive answer, in trying to
15 determine what the expectation is.

16 It's not a credible answer and, given the playing
17 field, which is that we know the crime has occurred, we know
18 that he knows he can be prosecuted by the State, and we know
19 that he knows it can be to his benefit if the State views his
20 testimony favorably, given that answer, I think, Your Honor,
21 that that creates more than enough for the defense to have
22 not just a good faith basis, but demonstrated a bias, at
23 least enough to ask questions.

24 He can answer the questions however he wants at
25 trial. He can say in front of the jury "I don't know what my

1 expectation is." That's fine; that's his right to do that.
2 But that's a credibility assessment for the jury about
3 whether or not Mr. White is telling the truth when he says he
4 doesn't know what his expectation is. He has not said that
5 he has no expectation. He clearly has not said that. He
6 says he doesn't know what his expectation is, and that is for
7 a jury to consider whether or not that is a truthful answer.

8 So all of the elements of him having a motive to
9 curry favor with the State are present and in the record
10 through stipulation, through the statute that the Court can
11 take notice of, and there is testimony in the grand jury.

12 His answers to the questions here today, when he
13 says he doesn't know what his expectation is, does nothing
14 but give rise to the clear inference, the most reasonable
15 inference is that he does have an expectation and he just
16 doesn't want to say it. If he didn't have one, it would be
17 very easy to say no, I don't have an expectation; I don't. I
18 think those two things are wholly unrelated. I have no
19 expectation. He can't say that. He doesn't say it.

20 That's why we brought him in here, to see if he
21 would say that, and he doesn't say it. The fact that he
22 doesn't say it, combined with everything else that I've
23 referenced, creates a clear bias that, under the sixth
24 amendment, the Maryland Declaration of Rights and the case
25 law that we've cited, entitles Mr. Washington to conduct a

1 biased cross-examination at trial and for the jury to
2 consider the weight of this evidence.

3 THE COURT: Thank you, Mr. Starr.

4 MR. MOOMAU: Your Honor, just to talk about the
5 cases for a second, the Ebb case stands for the same
6 proposition as here, no expectation. There was no
7 expectation of benefit by that witness in the Ebb case.
8 There is none here.

9 The Ware case they cited, that was a case where the
10 witness testified at trial -- I think that was a murder case.
11 If I'm wrong about that, then I'm wrong, but it doesn't
12 really matter. The state's witness testified at trial. That
13 state's witness had a pending reconsideration. At that
14 reconsideration, the prosecutor from the same office came and
15 testified for him, and then the Court said, well, we're going
16 to take the reconsideration under advisement until we see how
17 you testify in the case you're supposed to testify at. And
18 then the State didn't turn that over. It was Brady material.

19 That doesn't even come close to what we have here.
20 Here you have a witness who is a crime victim, who was shot,
21 who doesn't need, really, to be prodded or any motivation or
22 have any expectation of benefit to come in here and testify.

23 But he has, under questioning today, told the
24 defense, the State, as well as the Court, that he isn't
25 expecting anything. He isn't expecting any leniency if he's

1 charged with violating the Maryland registry laws. He isn't
2 expecting or doesn't have any thought that he would receive
3 leniency in prosecution or penalty if he's convicted if it.
4 It just hasn't been discussed. It hasn't been discussed;
5 there's been no offers made to him.

6 Based on Ebb, Your Honor, there is nothing. There
7 is no bias as far as this issue goes. The only bias is
8 because the defense is arguing it, but there is none there.

9 Thank you.

10 MR. STARR: Your Honor, in response to that, I
11 would say this. In the Ware case there was no expressed
12 agreement. My understanding of the facts of the Ware case is
13 not that the state's attorney went to the man's sentencing
14 and said if you testify favorably, these things are going to
15 happen, but the State had made it clear that there was no
16 agreement, as the State makes it clear here, that they
17 haven't extended an offer or made an agreement.

18 Now, Mr. Moomau says that Mr. White is a crime
19 victim, and I understand that's debatable, but what he's
20 essentially saying is, well, he has other motives, so the
21 defense doesn't get to cross-examine him about this one.
22 That's just not what the case law says.

23 He is the State's only eyewitness in this case.
24 His credibility is the main issue at trial and,
25 constitutionally, we are entitled to probe that credibility

1 for bias. And just because there's some other bias that may
2 or may not arguably cancel out this one, it has nothing to do
3 with the admissibility of this particular bias. There's no
4 case that says that.

5 So the fact is he does not say that he has no
6 expectation. He says he doesn't know what his expectation
7 is. That's where we are. And he says that he knows that if
8 the State takes a favorable view of his testimony, that can
9 be to his benefit. That's all there is.

10 And now we're just left with -- basically, what the
11 State is asking you to do is credit an answer to a question,
12 one that Mr. White never gave, but credit it, when his
13 credibility is at issue, and make this ruling based on it. I
14 would say that the Court cannot do that.

15 THE COURT: Okay. The exact nature of your motion
16 in this instance was a motion in limine concerning motion for
17 permission to elicit, on cross-examination, Robert's White's
18 failure to register as a sex offender in Maryland, that it be
19 admissible as a motive to falsify testimony in order to curry
20 favor with the State.

21 I've read the Ware case. I've read the Ebb case.
22 I've gone over other cases, as well, on this specific issue,
23 and I believe that, in this instance, the Ebb case is
24 dispositive.

25 My understanding of Mr. White's testimony and the

1 proffer made by the State at the bench, which was accepted by
2 the defense, was that no offer whatsoever was made by the
3 State to Mr. White in the instance of his failure to register
4 as a sex offender in the State of Maryland.

5 I heard Mr. White's testimony, and what he did say
6 was he did not know what the state's attorney's office was
7 planning and that he had not thought about it, didn't know
8 what to expect. To me, that is fairly clear that he was
9 saying that, again, no offer was made to him by the State,
10 and he had no expectation of what to think was going to
11 happen or any expectation of leniency on behalf of anything
12 that he did testify or otherwise in this case.

13 Secondly, if you look in evaluating the
14 probative value versus the prejudicial value of your ability
15 to do that in front of a jury, I believe any probative value
16 of that, in terms of what he said as to expectation, is far
17 outweighed by the prejudicial impact that it would have on a
18 jury.

19 I've made another ruling about the offense for
20 which he was convicted and for which he did not register in
21 Maryland, and I weighed that similarly; that in the State of
22 Maryland, based on my understanding of the current state of
23 the law, I did not believe that offense was relevant to the
24 issue of credibility, and I cited the cases and my reasons to
25 do so and, in fact, that the probative value of such a

1 conviction, when weighing all of the elements of it versus
2 the prejudicial impact that it would have on the jury, was
3 similarly situated.

4 And this, my compliments to you on your legal
5 acumen and your four-pronged attack on the purpose of the
6 sexual registration, but I feel that it falls short in this
7 instance and am going to deny your motion and not permit you
8 that cross-examination in this aspect in front of the jury.

9 MR. STARR: Your Honor, if we may make a proposal
10 without abandoning the request that we've made, I do want to
11 say something on the record and then make a proposal.

12 What I have to say is this: I think the prejudice
13 versus probative value, as it must be weighed by the Court,
14 is a danger of unfair prejudice. These facts are pointedly
15 true. I think the prejudice to Mr. White or prejudice to the
16 State based on these plainly true facts is something that I
17 don't see, and we disagree with the Court in that regard.

18 Having said that, we propose this. And, again,
19 this is without abandoning the argument contained in the
20 motion. Would the Court allow us to conduct a biased
21 cross-examination without referencing the sexual nature of
22 Mr. White's offense, by saying something like there is a
23 pending investigation right now; you know that if a decision
24 is made to prosecute you, you will be facing prosecution for
25 a crime that carries three years and that creates -- and then

1 make the ensuing argument that there is motive to curry favor
2 based on the playing field?

3 I think that sanitizing it in that way and coupling
4 it with a jury instruction, that they're only to consider it
5 for the limited purpose of assessing his credibility and
6 whether or not he's biased, addresses the Court's concern
7 and we offer that proposal.

8 THE COURT: I appreciate that. Again, I'm looking
9 at the testimony that I just heard. Hearing Mr. White's
10 testimony and hearing the State's proffer, which was accepted
11 by the defense, it does not appear to me to be an issue.
12 Because I've made the ruling that I don't believe, based on
13 what I heard, that the State made any offer whatsoever to
14 Mr. White, regardless of what the nature of the pending
15 investigation was or is, and that Mr. White, based on his
16 responses, has no expectation, doesn't know what the State
17 plans.

18 I feel that it would be inappropriate to permit
19 that to go forward for the same reasons I just gave to the
20 jury, because I believe that, number one, it would no longer
21 be relevant as to bias or motive; and, number two, that the
22 probative value would be far outweighed by the prejudicial
23 impact on the jury.

24 So with all due respect, in that light your request
25 is denied.

1 What's next? I'm not sure if there is anything,
2 but the way things are going.

3 MR. STARR: You want some more, Your Honor?

4 THE COURT: I know that by tomorrow morning you
5 will have more.

6 MR. STARR: There were a couple of issues, and I
7 don't know what the Court wants to --

8 THE COURT: Are these new issues?

9 MR. STARR: No.

10 THE COURT: These are old issues?

11 MR. STARR: These are old issues. I think the
12 Court had said you wanted to wait on them.

13 THE COURT: Oh, the issue of the hearsay setting?

14 MR. STARR: Correct.

15 THE COURT: I believe I can't offer any help on
16 that until I hear testimony and see what the foundations may
17 be for that, for the acceptance or denial of that kind of
18 testimony.

19 MR. COHEN: And I doubt this is necessary, Your
20 Honor, but in an abundance of caution, if the State could be
21 admonished not to reference that in opening.

22 MR. MOOMAU: We're not going to mention anything
23 that there's any outstanding rulings on. I expect the
24 defense to abide by it also.

25 THE COURT: I think that leaves the issue of a

1 photograph, if I'm not mistaken.

2 MR. STARR: Correct. We filed a motion on that for
3 the Court to consider.

4 MR. MOOMAU: It would be a photograph. Your Honor,
5 I refer the Court to State versus Broberg, a Court of Appeals
6 case.

7 THE COURT: 342 Md. 545?

8 MR. MOOMAU: Yes. We cite that case in support of
9 the Court exercising its discretion to allow us to introduce
10 the photograph. We believe the jury has the right, as well
11 as the victim. The victim laws allow the jury to see who the
12 deceased victim was, a face.

13 THE COURT: Can I see the photograph?

14 MR. MOOMAU: I don't have it here, Your Honor. I
15 can bring it first thing in the morning.

16 THE COURT: Let me hold off on a ruling then until
17 tomorrow morning.

18 MR. MOOMAU: I expected you to rule on that --
19 that's what I'm used to when it happens, but I can bring it
20 in the morning.

21 THE COURT: That's alright. So many motions were
22 filed in this, and you've brought it up a couple of times of
23 wanting me to do it in advance, but we can hold off until
24 tomorrow.

25 MR. COHEN: I will say the State has made that

1 available to the defense and we've seen that.

2 Your Honor, there are just some housekeeping
3 matters in terms of exhibits that we wanted to go over with
4 the State. So I don't think we need to do that with Your
5 Honor until after we show them to the State and get what
6 concerns they have and that sort of thing.

7 Other than that, I don't think there's much from
8 the defense.

9 THE COURT: The jury has been asked to come in
10 tomorrow at 8:30. Sheila is going to meet them in the jury
11 deliberation room. She's going to take them right down to
12 this jury deliberation room here. So they'll be in there by
13 8:30, which will give us about a half hour to go over
14 anything before that may become necessary, and we can
15 obviously delay the start of the opening statements if you
16 wish.

17 Any other matters I need to address with you today?

18 MR. COHEN: Not on behalf of the defense, Your
19 Honor.

20 MR. MOOMAU: Nothing from the State, Your Honor.

21 THE COURT: I want you to know that I'm turning off
22 my computer so that I don't get any faxes from either one of
23 you. And I'm closing my fax machine.

24 MR. COHEN: Will your e-mail be on, Your Honor?

25 THE COURT: Everything will be on. Hopefully, I

1 won't have to look at it.

2 MR. STARR: Hand delivery it is, Judge.

3 THE COURT: I figured that would be next.

4 (The trial was recessed at 4:00 p.m.)

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REPORTER'S CERTIFICATE

I, Cindy S. Davis, an Official Court Reporter for the Circuit Court for Prince George's County, Maryland, do hereby certify that I stenographically recorded the proceedings in State of Maryland versus Keith A. Washington, criminal trial 07-1664X, on February 12, 2008, before the Honorable Michael P. Whalen, Associate Judge.

I further certify that the page numbers 1 through 179 constitute an official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 7th day of May, 2008

Cindy S. Davis, RPR

Official Court Reporter