

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 III of IX

Upper Marlboro, Maryland

Wednesday, February 13, 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

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## P R O C E E D I N G S

(Jury not present upon reconvening.)

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

MR. MOOMAU: Good morning, Your Honor. William Moomau present for the state.

MS. ZANZUCCHI: Good morning, Your Honor. Raemarie Zanzucchi for the State.

MR. WRIGHT: Joseph Wright for the State.

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

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

THE COURT: Do you have the file?

MR. MOOMAU: I do, Your Honor. Do you want us to approach?

THE COURT: Please.

(Counsel approached the bench and the following ensued.)

MR. MOOMAU: That is the one I was going to use.

THE COURT: For purposes of the record, viewing a photograph of -- I believe it's Mr. Brandon Clark. It is just a full head shot. He's smiling, wearing glasses and I believe a hat of some sort, and no other distinguishing characteristics and no other people in the photograph.

1           Do you want to place your objections on the record?

2           MR. STARR: Yes, Your Honor. We object to the  
3 photograph as it being irrelevant and unfairly prejudicial  
4 because it shows a smiling Mr. Clark in an effort to arouse  
5 sympathy, and we think that that's inappropriate and it's a  
6 distraction from the issue, which is going to be  
7 self-defense. For that reason it should be excluded.

8           We don't contest Mr. Clark's death. We don't  
9 contest the fact that he was alive and then he was shot and  
10 then he died while he was in the hospital some days later.  
11 So for that reason it has no probative value, it's unfairly  
12 prejudicial and should be excluded.

13           THE COURT: Correct me if I'm wrong, but my  
14 understanding is that you're going to use this for purposes  
15 of identification.

16           MR. MOOMAU: Identification, and just so the jury  
17 can also -- well, Robert White will identify it as, also,  
18 will his mother. Other witnesses also. And just so the jury  
19 can see his face.

20           MR. STARR: Well, his identity is not a contested  
21 issue and won't be with any witness. And just so the jury  
22 can see his face is the problem that we have, which is that  
23 that's not -- the only purpose of having that happen is to  
24 arouse sympathy for the decedent and his family. And his  
25 mother is going to testify, and that's going to serve the

1 same purpose and compound the prejudice.

2 MR. MOOMAU: Just one other issue I want to bring  
3 up while we're talking at the bench.

4 THE COURT: Is it regarding this photograph?

5 MR. MOOMAU: It involves a photograph. They intend  
6 to bring a statue in here, pretty much 6'7", 300-some-odd  
7 pounds, just so the jury can see how big a man Brandon Clark  
8 was, so the jury can take it back in the jury room with them.  
9 Of course, we're going to object to that strenuously.

10 THE COURT: Let's not even get there yet. If and  
11 when that becomes a situation, we'll discuss it and go over  
12 it out of the presence of the jury.

13 Now, my understanding is, with regard to this  
14 photograph, other than for the purposes that you mentioned,  
15 you are not going to use it for comparative purposes to any  
16 autopsy photographs, this is how he was or this is --

17 MR. MOOMAU: Oh, no.

18 THE COURT: Well, I'm asking you.

19 MR. MOOMAU: No.

20 THE COURT: Well, my belief is that even though the  
21 issue may be stipulated to as to the identity, that in and of  
22 itself doesn't make the photograph inadmissible as a result  
23 of the stated purposes as stated by the State. Thinking  
24 about the identification issue and the fact that you're not  
25 contesting the issue of the identity, doesn't prevent the



1 State from eliciting that information as to identification  
2 from his mother or any other witnesses that may have some  
3 connection to the case and have some purpose for making such  
4 an identification.

5 That, in addition to this Court's view that it is a  
6 proper and reasonable setting in which an individual has been  
7 killed in that respect, to portray that person in a  
8 nonviolatory manner with a single photograph, without any  
9 other indicia of the situation, I believe is proper.

10 Second, I believe that the photograph is relevant  
11 for the purposes I've stated, and I don't believe, after my  
12 review of that photograph, that the probative value of it is  
13 outweighed by any prejudicial impact, and I don't believe it  
14 would have any prejudicial impact on the cause.

15 So that photograph will be admitted. Your  
16 objections are on the record. I'm referring to *Broberg*  
17 *versus State*, 342 Md. 544.

18 MR. STARR: Your Honor, the State's first witness,  
19 as we understand it, will be the decedent's mother, and we  
20 object to her hearing the opening statements before she  
21 testifies.

22 MR. MOOMAU: I agree. I told her.

23 THE COURT: So we're going to bring the jury in.  
24 Are there any other matters that I need to address?

25 MR. COHEN: No, not for the defense, Your Honor.

1 THE COURT: I'll bring them in. I'll give them a  
2 brief introductory rendition, which is about one minute.

3 MR. MOOMAU: Give me a chance just to escort Ms.  
4 Clark into the anteroom.

5 THE COURT: You want to do that before we bring the  
6 jury in?

7 MR. MOOMAU: Yes.

8 (Counsel returned to trial tables and the following  
9 ensued.)

10 MR. MOOMAU: We're ready, Your Honor.

11 (The jury entered the courtroom at 9:05 a.m.)

12 THE COURT: Good morning, ladies and gentlemen.  
13 How is everyone this morning? I want to thank you, despite  
14 the weather, for you getting here promptly this morning. We  
15 appreciate it very much.

16 Madam Clerk, would you swear the panel, please.

17 (Jury sworn.)

18 THE COURT: Would you like to approach the bench  
19 for a moment just before we start?

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

22 THE COURT: Does anyone want me to ask them any  
23 questions before we proceed?

24 MR. COHEN: I did notice, Your Honor, they're in  
25 different seats, if I remember correctly.

1 THE COURT: It doesn't really matter. I'm going to  
2 ask juror number 25 to serve as our jury foreman.

3 MR. MOOMAU: Is that juror going to switch seats?

4 THE COURT: It doesn't matter to me.

5 MR. COHEN: When you say juror, you mean  
6 foreperson?

7 THE COURT: Yes. Thank you.

8 (Counsel returned to trial tables and the following  
9 ensued.)

10 THE COURT: Juror number 25, sir, we're going to  
11 ask you to serve as our foreperson or foreman. Thank you.

12 Ladies and gentlemen, what I'm about to say to you  
13 is a brief general introduction to this trial so that you  
14 will be better able to perform your important duty of  
15 deciding the facts diligently and conscientiously.

16 First, if they wish, both the state's attorney and  
17 the defense attorneys may make opening statements. Opening  
18 statements are not evidence. They are only statements of  
19 what the lawyers expect to prove.

20 At times during the trial objections will be made,  
21 and I will rule on these objections. These matters are the  
22 exclusive province of the Court, and you should not concern  
23 yourself with the objections made by the lawyers or by my  
24 rulings on them.

25 At other times during the trial brief conferences

1 with the lawyers may be held at the bench, out of your  
2 hearing. These conferences involve legal matters and, again,  
3 you should not concern yourself with any of these matters.

4           Moreover, during the trial and during any recess,  
5 do not express any opinion about the case. Do not even  
6 discuss the case amongst yourselves or with any other person.  
7 Do not allow yourself to overhear anyone discussing the case.  
8 Do not have any contact outside the courtroom with any of the  
9 parties, witnesses or lawyers. Do not research or  
10 investigate the case on your own.

11           You must base your decision only on the evidence  
12 presented in the courtroom and only after full deliberation  
13 of all of the facts and evidence presented with all of the  
14 jury members present.

15           Keep an open mind throughout the trial and, at the  
16 end of all of the evidence, I will explain to you the law  
17 that applies to this case.

18           As you can see, you've been given pads and you are  
19 free to take notes, if you wish. We know that your names are  
20 on the front page and, at the time of each recess, those pads  
21 will be taken from you and not left here so that no one else  
22 can read the notes that you may have taken.

23           For purposes of giving you a little idea about our  
24 schedule, we start promptly every morning at nine, as we've  
25 tried to do during the course of these proceedings. We'll

1 give you a little break at some point in the morning to  
2 stretch your legs and use the restrooms. We'll try to have a  
3 consistent time for noon lunch and recess, giving us some  
4 flexibility as to who may be testifying and whether we would  
5 like to complete it before that break, and a little break in  
6 the afternoon. We will conclude most every day sometime  
7 between 4:30 and 5:30 in the evening, again, giving us some  
8 flexibility as to what may be happening at that moment.

9 Thank you. Mr. State's Attorney.

10 MR. MOOMAU: Thank you, Your Honor.

11 **OPENING STATEMENT BY MR. MOOMAU**

12 MR. MOOMAU: Good morning. My name is William  
13 Moomau. I'm an assistant state's attorney here for Prince  
14 George's County, and I, along with Joseph Wright and Raemarie  
15 Zanzucchi, will be representing the State of Maryland  
16 throughout this trial.

17 Brandon Clark and Robert White worked as furniture  
18 deliverymen. That was their job. Brandon would take the  
19 truck to Marlo Furniture warehouse in the morning, where he  
20 would get it loaded up. He would pick Robert up, and they  
21 would go about their day, making their deliveries. They  
22 would have to carry very large, heavy objects sometimes into  
23 people's homes. They would have to take them upstairs. They  
24 would have to take them downstairs. If something was wrong  
25 with the item of furniture, they would have to bring it back

1 or deal with the customer, calling into the warehouse, doing  
2 something of that nature.

3 By it's nature, the job requires someone that can  
4 lift a lot and move big objects, and Brandon and Robert were  
5 large in stature. Robert was 6'2", 280 pounds. Brandon,  
6 6'7", 330 pounds.

7 On January 24, 2007, they went to work. Brandon  
8 had the truck loaded up, picked Robert up and they went on  
9 their way. They went to various destinations into homes  
10 where they delivered items, Shady Side, Owings, Waldorf.  
11 They started about seven o'clock in the morning. They  
12 usually worked about a 12-hour day or more than that.

13 Then they came to 1513 Shellford Lane in Accokeek,  
14 their last delivery of the day, the home of the defendant,  
15 Keith Washington, and where, after they delivered all their  
16 other items, they had packed up, taken things out to the  
17 truck and gone onto the next location, they were carried out  
18 of that residence on stretchers, fighting for their lives.

19 Robert White shot three times, in the chest, the  
20 stomach, in the knee. Brandon Clark shot twice, in the  
21 stomach and in the leg. Miraculously, Robert White survived.  
22 He's going to be here to testify. Brandon Clark held on  
23 until February 2nd. He died in the same hospital he was  
24 taken to that night.

25 Brandon Clark was 22-years old when he was killed.

1 His mother, Marilyn Clark, is going to be here to testify.  
2 And although the focus of this trial is not going to be on  
3 what Brandon's dreams, plans and hopes were, nor those that  
4 his mother had for him. You're still going to hear a little  
5 bit about Brandon, through testimony of his mother and about  
6 the happenings of that day.

7 But what happened at the defendant's home that  
8 didn't happen at any of the others? And why would this man  
9 be walking around his house, come to the door with a loaded  
10 handgun, concealed on his person, a loaded chamber, and ready  
11 to kill somebody? And why would this man, a trained police  
12 officer, take that gun, that he had concealed on his person  
13 when deliverymen are coming there, and kill one person and  
14 nearly kill another?

15 During this trial you're going to hear persons that  
16 were at the scene, their testimony, that came later, police  
17 officers, ambulance workers. You're going to hear some  
18 expert testimony, medical, DNA and firearms.

19 Let's just start with the medical. You're going to  
20 hear the testimony of the doctor that saved Robert White's  
21 life, tried to save Brandon Clark's life. You're going to  
22 hear the testimony of the doctor that did the autopsy on  
23 Brandon Clark. You'll hear testimony about locations of  
24 wounds, a little bit about bullet paths and treatment.

25 Firearms. Of course, you will hear testimony that

1 the shell casings that were ejected from the defendant's  
2 handgun were fired from that handgun. And there is no  
3 question; he fired the shots that nearly killed Robert White  
4 and did kill Brandon Clark. That witness is Susan Lee and  
5 she will tell you that.

6 She is also going to tell you that she examined the  
7 clothing items for the presence of gunpowder residue or  
8 gunshot residue that comes out of the end of the gun when  
9 it's fired and it leaves traces at a certain distance. Based  
10 on her testimony, some of the shots, she will say, based on  
11 examining the outer clothing, were fired at close range.

12 We'll hear DNA testimony. There will be more DNA  
13 testimony than this, but you will hear testimony that the  
14 defendant's gun was taken at the scene from him, by police,  
15 and they swabbed it for DNA. Of course, they found his DNA  
16 on it; they found evidence of Robert White's DNA on it and  
17 two other persons.

18 We do not know what type of DNA it was, whether it  
19 was blood, saliva, skin, mucus. And we do not know what part  
20 of the gun it came from. Because of the way they swabbed it,  
21 they don't differentiate like the slide, the handle, the  
22 barrel, the end of it. They just swab it all over, and  
23 there's a reason for that, and they'll tell you what the  
24 reason is.

25 But even with that, by the defendant's own account



1 of what happened, he never said anything about anybody trying  
2 to grab his gun, hold his gun, have his gun --

3 MR. COHEN: Objection.

4 THE COURT: Approach the bench.

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

7 MR. COHEN: Your Honor, Mr. Moomau is using the  
8 grand jury testimony.

9 MR. MOOMAU: No, I'm not. I'm referring to the 911  
10 recording that we're going to introduce as evidence. I've  
11 given them a copy and notified them that we're going to use  
12 that.

13 MR. COHEN: He needs to specify what it is, because  
14 what he's doing now is very dangerous in that he is trying to  
15 impeach the defendant, who does not have -- it does not  
16 require him to testify, and he's already talking about what I  
17 believe is grand jury. So he needs to specify exactly what  
18 he's talking about.

19 THE COURT: What exactly are you referring to, for  
20 purposes of the record?

21 MR. MOOMAU: The 911 recording.

22 THE COURT: The 911 recording made?

23 MR. MOOMAU: On that night.

24 THE COURT: As to a call out for police response?

25 MR. MOOMAU: Yes.

1 THE COURT: And you are not in any way, shape or  
2 form or fashion referring to any grand jury testimony?

3 MR. MOOMAU: Oh, no.

4 MR. COHEN: But he's arguing an omission, Your  
5 Honor, that he, I assume, believes should have been on the  
6 911 call.

7 THE COURT: I'm sorry?

8 MR. COHEN: He's arguing some kind of omission.  
9 What I heard him say was the defendant did not say that  
10 someone tried to grab his gun. So he's arguing -- isn't that  
11 what you said?

12 MR. MOOMAU: That's what I said.

13 MR. COHEN: He's arguing an omission that he is  
14 arguing should be on the 911 call, and I don't think that's  
15 appropriate.

16 THE COURT: What would your basis be?

17 MR. MOOMAU: That it's arguing impeachment through  
18 an omission.

19 THE COURT: Your objection is overruled but noted.

20 MR. COHEN: Thank you.

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

23 MR. MOOMAU: Repeating myself. The presence of  
24 Robert White's DNA on the gun, not knowing how it got there  
25 or what kind it was. The defendant himself, during the 911

1 call to the dispatcher -- and you'll hear that -- he doesn't  
2 say anything about that. He just wanted his version known at  
3 that time. And, of course, his version is going to be  
4 different than what Robert White is going to tell you.

5 Now, what Robert White is going to testify to, of  
6 course, is going to be different than what the defendant  
7 said, and the defense is going to raise issues with Robert  
8 White in an attempt to get you to doubt him. They're going  
9 to try to attack his credibility.

10 There's a lawsuit that's been filed. He's one of  
11 the plaintiffs, meaning he's one of the people that are  
12 suing. They'll raise that.

13 When Robert White was in the hospital, as with  
14 Brandon Clark, part of their procedures, they did a  
15 toxicology test on Robert White. It shows the presence of  
16 cocaine in his urine. Now, on the report it says it's not to  
17 be used for legal purposes because it hadn't been confirmed  
18 and there's no chain of custody. Robert White is going to  
19 say he wasn't using cocaine and he didn't use cocaine.

20 But I'm telling you this. The version and the  
21 story -- and that's what it was -- the defendant gave that  
22 night was far, far from the truth. Because, by his own  
23 words, you will see that in the mind of the defendant, Robert  
24 White and Brandon Clark were something less than human, and  
25 what was important to him was not the fact that these men

1 were losing their life, laying on his carpet, but what was  
2 important to him was the fact that they were bleeding all  
3 over his carpet.

4 Now, Brandon Clark and Robert White, they didn't  
5 have any idea of what they were walking into when they came  
6 to that house for that last deliver. They didn't know about  
7 the telephone calls he had been making to Marlo that day  
8 about the delivery. They didn't know that he was going to  
9 turn a simple delivery of bed rails into something that was  
10 worth killing somebody, murdering somebody. They just wanted  
11 to get home. It was their last delivery of the night. That  
12 was his idea.

13 After you review the evidence in this case, I'm  
14 confident that you will see that too and, at the end, we're  
15 going to ask you to return a verdict of guilty on all counts.

16 On behalf of the State of Maryland, we look forward  
17 to working with you throughout this case. We thank you for  
18 your service, and we're sure that, in the end, your verdict  
19 will be a just one. Thank you.

20 **OPENING STATEMENT BY MR. COHEN**

21 MR. COHEN: Keith Washington is innocent. Keith  
22 Washington was defending himself, his wife and his daughter  
23 and his home on January 24, 2007, while he was being brutally  
24 beaten by Brandon Clark and Robert White.

25 Ladies and gentlemen, the State's version makes no

1 sense. The State's version makes no sense because it relies  
2 on one person's testimony and one person's only and that's  
3 Mr. Robert White. And in order for you to convict Mr. Keith  
4 Washington of the offense that he's charged with, you will  
5 have to believe Mr. Robert White. You will have to believe  
6 everything that Mr. Robert White says. And, ladies and  
7 gentlemen, Robert White should not be believed. Robert White  
8 should not be believed and I'll tell you why.

9 But, first, I want to put the January 24, 2007,  
10 incident in some context, and I want to do it with a personal  
11 anecdote. About 40 days ago I witnessed my son's birth and,  
12 when he was born, I made a commitment and a promise to --

13 MR. MOOMAU: Objection.

14 THE COURT: Overruled.

15 MR. COHEN: I made a commitment and a promise to  
16 him, my wife and myself. That commitment and that promise to  
17 him was to protect him from harm for as long as I could.  
18 That commitment to my wife was to protect her, as a nurturer  
19 of him, from harm so that she could continue to nurture him.  
20 And my commitment and promise that I made to myself is I was  
21 going to remain alive and remain healthy so I could take care  
22 of both of them.

23 Those feelings that I felt towards family is no  
24 different than the feelings other members of the Prince  
25 George's County community feel towards family. It's no

1 different than the feelings towards family that Keith  
2 Washington --

3 MR. MOOMAU: Objection.

4 THE COURT: Sustained.

5 MR. COHEN: -- and Stacy Washington felt that  
6 evening.

7 MR. MOOMAU: Objection.

8 THE COURT: Sustained.

9 MR. COHEN: Ladies and gentlemen, I'll explain. On  
10 December, 2006, Keith Washington and Stacy Washington  
11 purchased a bed from Marlo Furniture. It was a sleigh bed.  
12 It was delivered in December to their home in Accokeek,  
13 Maryland, 1513 Shellford Lane.

14 The deliverymen came, delivered the bed. There was  
15 a problem with the bed. The bed rails that they delivered  
16 that evening were broken; they were damaged. The furniture  
17 deliverymen called back to Marlo's and told Marlo's that they  
18 were damaged bed rails.

19 Marlo then made accommodation to bring back the new  
20 bed rails, the nondamaged bed rails. They called Mr. Keith  
21 Washington and Stacy Washington at their home, around January  
22 20th to January 22nd, to say that they would arrive with the  
23 new bed rails around 2:30 to 5:30 on January 24th.

24 Keith Washington and his wife Stacy Washington  
25 planned. They planned that Keith Washington would take off

1 work that day and be home to receive the delivery of the bed  
2 rails. The evidence will show that Keith Washington did take  
3 off that day, and he waited for the delivery of the bed  
4 rails.

5           Around six o'clock his wife called him from her  
6 cell phone to their home to ask him if the delivery had  
7 arrived. He said they're not here yet. She went to pick up  
8 their daughter Kala, who was six-years old, who was at  
9 school, and brought her home.

10           What they did at home that evening was regular.  
11 Kala and Keith played in the family room while Ms. Washington  
12 cooked dinner for Kala and Keith. Ms. Washington was in the  
13 kitchen.

14           During that time there were calls made to Marlo's.  
15 Ms. Washington made some calls to Marlo, and Keith Washington  
16 made some calls to Marlo. They were calling to find out if  
17 and when the deliverymen would come. At this point it's  
18 around 6:00 p.m. They were supposed to come between 2:30 and  
19 5:30. After some calls to Marlo, they were informed that by  
20 7:30 or around 7:30 the deliverymen would arrive with their  
21 bed rails.

22           There was no surprise, at around 7:30, when the  
23 doorbell rang because they were expecting the deliverymen,  
24 given the phone call they received from Marlo. They were  
25 having dinner at the time. Keith Washington, Stacy

1 Washington and Kala were all at the table. The doorbell  
2 rings. Mr. Washington answers the doorbell. On the other  
3 side is Brandon Clark. Mr. Washington asked Mr. Clark to  
4 leave the bed rails right there in the foyer.

5 Ladies and gentlemen, there will be a diagram that  
6 you can look at. It is a diagram of the entire house, and  
7 you'll be able to find out where the relevant rooms are that  
8 I'm referencing here, and you'll see that during the evidence  
9 that the defendant will provide for you.

10 He asked Brandon Clark to leave the bed rails there  
11 in the foyer. They went back and forth. Brandon Clark  
12 decided they wanted to go upstairs and put the bed rails in  
13 the master bedroom. Mr. Washington, Brandon Clark and Robert  
14 White, who was the other deliveryman, walked up Keith  
15 Washington's stairs to put the bed rails in Mr. Washington's  
16 master bedroom. Mr. Washington is leading, Brandon Clark is  
17 behind him, and Robert White is behind Brandon Clark.

18 As Keith Washington leads them up the stairs, he  
19 walks into the master bedroom. When he turns around, he sees  
20 Brandon Clark but doesn't see Robert White. He's confused  
21 now, so he asks Brandon Clark, "Where's your man? Where is  
22 the other man that you came with?" Mr. Clark responds by  
23 backslapping Mr. Washington in the chest, twice, and saying,  
24 "I got him, Shorty."

25 At this point Mr. Washington says, "Don't do that."



1 Just tell me where your man is." And as he says that to  
2 Mr. Clark, Robert White comes out of his daughter's bedroom  
3 and stands in the doorway.

4 Now, ladies and gentlemen, his daughter's bedroom,  
5 you'll see photos of what the bedroom looked like that  
6 evening. It's a six-year old, young girl's bedroom. It has  
7 a pinkish, purplish kind of wall color, flowers on the wall,  
8 flowers on the comforter. There's a picture of her as a baby  
9 up on the wall. He came out of that bedroom, and  
10 Mr. Washington asked him, "What are you doing in there? Come  
11 out of there."

12 Mr. Clark responds to Mr. Washington's statement to  
13 Mr. White by doing the same thing, "I said I got him,  
14 Shorty."

15 At this point Mr. Washington realizes it feels  
16 uncomfortable and wants the men to now leave his home. He  
17 says to the men, "Look, why don't you all just leave?"  
18 Obviously, Mr. Clark didn't like what he said, did not like  
19 the tone. Mr. Clark responds by saying, "You need to watch  
20 the way you talk to people."

21 Mr. Washington said, "Look, man, why don't you all  
22 just leave my house. Leave my house. Leave my house." He  
23 keeps repeating it. The men are not moving. He points. He  
24 goes to point over to the stairs to tell them to leave, and  
25 he says the last time, "Leave my house," and Robert White

1 comes out of the doorway of his daughter's bedroom and hits  
2 Keith in the face. Mr. Clark is behind Keith Washington and  
3 he hits Keith in the back of the head.

4 Ladies and gentlemen, at this point Keith --  
5 Mr. Washington is trying to defend himself. He's trying to  
6 cover up. He gets beat continually, to the point where he is  
7 down in the crouched position.

8 What the men don't know is that Ms. Stacy  
9 Washington heard Keith's statements. She heard him asking  
10 the men to leave. She was in the kitchen with Kala,  
11 finishing up their dinner. When she heard his tone of voice,  
12 she got concerned and she left Kala. She said, "Kala, stand  
13 here; wait a minute," and she went to walk through the  
14 hallway -- and, again, you'll see a diagram that shows you  
15 exactly where she traveled, how far she traveled, where the  
16 landing was upstairs -- and she walked out of the hallway.

17 As she's looking up to the landing, she sees what  
18 the evidence will show is one of the most horrific scenes  
19 that she's seen in her life. She saw Brandon Clark on one  
20 side of Mr. Washington, her husband, and Robert White on the  
21 other side of her husband, beating him, beating him  
22 continuously. And the evidence will show and she'll describe  
23 what she saw when she looked upstairs.

24 Now, she had to make one of the hardest decisions  
25 in her life at this point. The first thought that she had

1 was to go help her husband. She put her foot on the first  
2 step to go upstairs to help Mr. Keith Washington, who was  
3 getting beat by these two deliverymen.

4 And then she realizes Mr. Clark is 6'7", 300  
5 pounds. Mr. White is 6'2", 280 pounds. I can't help Keith  
6 in this situation. I'm going to get up there and get beaten  
7 just like him, and if I get beat unconscious, if I get beat  
8 and hurt, what's going to happen with Kala? Mr. White will  
9 be in my house and Mr. Clark will be in my house with my  
10 daughter downstairs in the kitchen.

11 As she's thinking about what decision to make, then  
12 another thought, an even more scary thought comes into her  
13 mind. Kala doesn't see her mother. She is concerned that  
14 Kala is then going to walk into the room, into this fray of  
15 what's going on.

16 And so now she makes the decision, I got to get  
17 Keith help but I have to tend to Kala, and she makes one of  
18 the hardest decisions of her life. She turns to go to the  
19 phone, to get Kala and to grab the phone to get her husband  
20 help and, as she turns to go to the phone to get her husband  
21 help, she hears gunshots.

22 At this time she doesn't know who is shot. She  
23 doesn't know if Brandon Clark is shot. She doesn't know if  
24 Robert White is shot. She doesn't know if her husband Keith  
25 Washington is shot.

1           When she hears the gunshot, of course, she runs  
2 down the hallway, the same hallway she came out of, grabs  
3 Kala, grabs the portable phone, runs through the laundry room  
4 and into the garage, and throws Kala into the car, tells Kala  
5 to get down, get down, get in the back of the car, and closes  
6 the door and she calls 911.

7           Ladies and gentlemen, you will hear her voice on  
8 the 911 call. You will hear her voice on the 911 call. In  
9 that call she states to the 911 dispatcher, "My husband was  
10 getting beat by two men in his house. Someone has been  
11 shot." Again, she doesn't know who at that point. "Someone  
12 has been shot. He's a police officer. Please send some  
13 help." You will hear the 911 call.

14           And in that same call, moments later, you will hear  
15 dialing. You will hear 911 being dialed in that call, and  
16 you will hear Keith Washington pick up on the same line, on  
17 another receiver in the house.

18           What you will hear is that Keith Washington tells  
19 the dispatcher that he was being beaten in his house and to  
20 please send ambulances. "Two men have been shot; I need two  
21 ambulances here." He calls to get ambulances for Brandon  
22 Clark and Robert White, and he also calls for an ambulance  
23 for himself because, ladies and gentlemen, he sustained  
24 injuries from the assault from Robert White and Brandon  
25 Clark. He needs an ambulance for himself, but he asks for

1 three ambulances.

2 The police officers finally arrive. The neighbors  
3 are kind enough to send someone over to bring Miss Kala from  
4 the garage to their house, and then Ms. Washington -- the  
5 police officer arrives, and she walks the police officer  
6 around to the front and shows them where the incident --  
7 where the shooting occurred, and she goes over to the  
8 neighbor's house to check on Kala.

9 Not speaking, not seeing her husband yet, she goes  
10 across the street to the Hamilton's home to check on Kala.  
11 The police officer comes. EMT's come. Ambulances are there.  
12 They arrive. They actually treat Keith Washington on the  
13 scene. He receives medical assistance for his injuries.

14 The medical reports will show that Keith Washington  
15 received a contusion in the back of the head and marks to his  
16 face, bruising to his face, consistent with blunt force  
17 trauma, consistent with an assault, an assault that Robert  
18 White said never happened.

19 Ladies and gentlemen of the jury, so why are we  
20 here? Why are we here? Why is Keith charged with murder?  
21 The reason we're here is because Robert White tells a very  
22 different version. In fact, Robert White tells very  
23 different versions. None of those versions should be  
24 believed.

25 As I told you before, I will tell you now why

1 Mr. White should not be believed. Mr. White should not be  
2 believed because, after the event, after January 24th, he was  
3 asked whether or not he used cocaine on the day of the event,  
4 on the day of the shooting. His response, ladies and  
5 gentlemen, was no.

6 He was then asked did he use cocaine days before  
7 the shooting. His response then, ladies and gentlemen, no.

8 He was then asked have you ever used cocaine. His  
9 response to that question, no.

10 On the night of the incident, because  
11 Mr. Washington called for an ambulance for him, he was taken  
12 to the hospital and, in furtherance of treatment at the  
13 hospital, the doctor did a blood test. He did a drug test,  
14 and the drug test came back positive for cocaine. That's why  
15 you can't believe Mr. White.

16 Another reason why you can't believe Mr. White is  
17 because Mr. White has been convicted of crimes, crimes that  
18 question his truthfulness, and you will hear about those  
19 convictions.

20 Another reason why you can't believe Mr. White is  
21 Mr. White, two and a half weeks ago, ladies and gentlemen,  
22 two and a half weeks ago filed a \$400 million lawsuit against  
23 Keith Washington. A \$400 million lawsuit against Keith  
24 Washington relating to this incident. And he knows that if  
25 he can get Keith Washington convicted, then he has a better

1 chance, an exponentially better chance of getting money in  
2 that civil lawsuit. That's another reason why you shouldn't  
3 believe Robert White.

4 And the last reason and the most important reason  
5 you can't believe any of Mr. White's versions of what  
6 happened that evening is because the State's own evidence --  
7 the State, not the defense's evidence -- the State's own  
8 evidence is inconsistent with Mr. White's versions of events.

9 Specifically, the DNA evidence that Mr. Moomau  
10 referenced is inconsistent with Robert White's testimony.  
11 The ballistics evidence that Mr. Moomau referenced during the  
12 State's opening is inconsistent with Robert White's version  
13 of events. The trace evidence or fiber transfers that  
14 Mr. Moomau referenced during opening is inconsistent with  
15 Robert White's version of events. Ladies and gentlemen, the  
16 medical records. The medical records are inconsistent with  
17 Robert White's version of events.

18 This was a nightmare, ladies and gentlemen. It was  
19 a nightmarish night for everyone. Brandon Clark is dead.  
20 The Clark family has gone through a lot. Robert White is  
21 injured. The White family has gone through a lot. And the  
22 Washington family, the public scrutiny they've received --

23 MR. MOOMAU: Objection.

24 THE COURT: Approach the bench on that.

25 (Counsel approached the bench and the following

1           ensued.)

2           THE COURT: Basis?

3           MR. MOOMAU: Public scrutiny, what does that  
4 have --

5           THE COURT: Sustained.

6           (Counsel returned to trial tables and the following  
7 ensued.)

8           MR. COHEN: Court's indulgence. This has been a  
9 nightmare for everyone, ladies and gentlemen. Keith  
10 Washington did not intend to kill Brandon Clark. Keith  
11 Washington did not intend to injure Robert White. Keith  
12 Washington was defending himself, defending his wife and his  
13 child and defending his home.

14           Ladies and gentlemen, Keith Washington is innocent.  
15 Thank you.

16           MR. MOOMAU: The State's first witness would be  
17 Marilyn Clark.

18           MR. MOOMAU: May I approach the clerk, Your Honor?

19           THE COURT: Certainly.

20           THE DEPUTY CLERK: State's Exhibit 1 marked for  
21 identification.

22                                   (State's Exhibit No. 1 was  
23                                   marked for identification.)

24                                   **MARILYN CLARK,**  
25 a witness produced on call of the State, having first been



1 duly sworn, was examined and testified as follows:

2 THE DEPUTY CLERK: Please state and spell your  
3 first and last name for the record.

4 THE WITNESS: Marilyn Clark, C-l-a-r-k.

5 THE DEPUTY CLERK: State's Exhibit Number 2 is  
6 marked for identification.

7 (State's Exhibit No. 2 was  
8 marked for identification.)

9 **DIRECT EXAMINATION**

10 BY MR. MOOMAU:

11 Q. Good morning, ma'am.

12 A. Good morning.

13 Q. Ms. Clark, you were the mother of Brandon Clark.

14 A. Yes.

15 Q. How old was Brandon when he was killed?

16 A. Brandon was 22-years old.

17 Q. Ms. Clark, this is kind of a personal question.

18 Did Brandon get his height from your side of the family?

19 A. Yes.

20 Q. And what do you do for a living, ma'am?

21 A. I'm a paraprofessional for a special center for P.

22 G. County schools.

23 Q. You raised Brandon?

24 A. Yes, I did.

25 Q. Did Brandon go to high school?

1           A.    Yes, he did.

2           MR. STARR:  Objection, Your Honor.  Can we  
3 approach?

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

6           MR. STARR:  The basis of the objection is that the  
7 State, by getting into Mr. Clark's education, there was a  
8 reference in their opening to his dreams and aspirations, is  
9 getting into the character of the decedent, and I think it's  
10 a very dangerous thing for them to be doing.

11                   One, because at the time his death, Mr. Clark had a  
12 pending charge.  He was pretrial.  He had a trial date set  
13 for -- I believe it was January 30th of 2007 for a domestic  
14 violence assault, that was being prosecuted by the state's  
15 attorney's office.  That charge was abated by death because  
16 he didn't survive.  But they are opening the door to this and  
17 putting it at issue.

18                   I wanted to be clear to the Court that that's what  
19 is happening and that we're not the ones who are putting this  
20 at issue, but it is the State that is putting it at issue.  
21 By putting his character at issue, we will have to respond to  
22 it.  I object to it but, if they're allowed to do it, then  
23 we're going to have to respond to it.

24           THE COURT:  I don't think the mere fact of whether  
25 or not he went to high school will open that door for you,

1 and we'll have to go on a question-by-question basis.

2 MR. STARR: May we have a proffer?

3 MR. MOOMAU: Just to be clear. In my opening I  
4 said the focus was not on his plans, hopes and dreams, nor  
5 what his mother had for him.

6 MR. STARR: That's very coy, but I mean --

7 THE COURT: What do you intend to elicit?

8 MR. MOOMAU: What high school did he go to, what  
9 high school did he graduate from, period.

10 THE COURT: Your objection is overruled.

11 MR. MOOMAU: I might ask him if he participated in  
12 any sports in high school.

13 MR. STARR: Of what possible relevance --

14 THE COURT: That's not relevant.

15 MR. MOOMAU: Okay.

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

18 BY MR. MOOMAU:

19 Q. Ms. Clark, did Brandon go to school here in Prince  
20 George's County?

21 A. Yes, he did.

22 Q. Did he graduate from high school here in Prince  
23 George's County?

24 A. Brandon graduated from Duval High School.

25 Q. When did he graduate?

1 A. Year 2002.

2 Q. Now, did Brandon have any type of a speech, I  
3 guess, impediment or did he speak different at other times  
4 than other people?

5 A. Yes. Brandon had a real bad sputtering problem,  
6 that he had a hard time getting his words out when he was  
7 speaking sometimes.

8 Q. When did you first notice that about him?

9 A. When he was about a year old.

10 Q. Now, Brandon, you were aware that he worked as a  
11 furniture delivery person?

12 A. Yes.

13 Q. How long had he been doing that, approximately, if  
14 you know?

15 A. Maybe about three years.

16 Q. I'd like to show you an exhibit that I marked as  
17 State's Exhibit Number 1. Can you identify that?

18 A. This is my son Brandon Clark.

19 Q. Do you know where that picture was taken from?

20 A. He went to visit Duval High School, his old  
21 teachers at Duval High School.

22 Q. Was this like part of a group picture that --

23 A. Yes, that's part of a group picture. We just  
24 scanned it and made his face larger.

25 Q. That's an accurate depiction of your son, an

1 accurate picture of your son?

2 A. Yes.

3 MR. MOOMAU: Your Honor, move for admission of  
4 State's Exhibit Number 1.

5 MR. STARR: Nothing aside from --

6 THE COURT: Okay. State's Exhibit Number 1 is  
7 admitted.

8 (State's Exhibit No. 1, previously  
9 marked for identification, was  
10 received in evidence.)

11 BY MR. MOOMAU:

12 Q. Now, Ms. Clark, did there come a time when you  
13 became aware that your son Brandon had been shot?

14 A. I became aware of that late night, around 11:30 on  
15 January 24, 2007.

16 Q. Did you go to any hospitals to try to find your  
17 son?

18 A. Yes, I --

19 MR. STARR: Objection, Your Honor. May we  
20 approach?

21 THE COURT: Okay.

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

24 MR. STARR: The basis of the objection is  
25 relevance. Whether or not she went to the hospital, what

1 happened when she got there has nothing to do with  
2 Mr. Washington's guilt or innocence.

3 MR. MOOMAU: The relevance of it is, Your Honor,  
4 she was trying to find her son. Basically, she was being  
5 prevented from finding her son or wasn't allowed to see her  
6 son. Her ability to see her son was restricted because of  
7 police actions, based on the story that the defendant had  
8 told.

9 MR. STARR: Well, this raises something that is  
10 completely new and that we have not heard before. This  
11 testimony is completely irrelevant. This witness cannot say  
12 that anything that Mr. Washington did -- first of all, I  
13 think there is no factual basis whatsoever for the government  
14 to make that assertion. But this witness cannot say that  
15 Mr. Washington did anything improper to prevent her from  
16 seeing her son. It's just not true. I'd like a proffer.

17 THE COURT: What exactly is the proffer?

18 MR. MOOMAU: I'm going to ask her -- I intend to  
19 ask her if she went to the hospital. The next day she went,  
20 she wasn't allowed to see him. She wasn't allowed to see  
21 him, I guess, later in the evening. He was under police  
22 guard. She wasn't allowed to talk to him.

23 THE COURT: When you say under police guard,  
24 exactly what is she going to say?

25 MR. MOOMAU: That the police were there, listening

1 to what she had to say to him.

2 THE COURT: What relevance does this have to any  
3 issue in the case?

4 MR. MOOMAU: It is relevant to the point of the way  
5 the investigation was up to that point, meaning they were  
6 being treated like criminals.

7 MR. STARR: Your Honor, first of all -- well, the  
8 Court is thinking. I'll let you think.

9 THE COURT: Go ahead.

10 MR. STARR: One of the things that will happen as a  
11 result of this and, frankly, I think it's one of the motives  
12 behind the State trying to introduce this, is that they want  
13 imputed to Mr. Washington some sort of improper activity.  
14 There was none, and the State can't say that there was. He  
15 called 911. He gave his version of events. He didn't do  
16 anything to prevent this man's family from seeing him. He  
17 did not do anything whatsoever in that regard.

18 Secondly, the fact that they were treated like  
19 criminals, I mean, if the State wants to open the door to  
20 that, then we can talk about it in this case. We can talk  
21 about the fact that arrest warrants were being written for  
22 their arrest for their criminal assault.

23 MR. MOOMAU: Your Honor, just to avoid this  
24 arguing, to keep moving on the case, I'm going to withdraw  
25 that.

1 THE COURT: Thank you.

2 (Counsel returned to trial tables and the following  
3 ensued.)

4 BY MR. MOOMAU:

5 Q. Ms. Clark, at some point did you discover that your  
6 son had been taken to a hospital?

7 A. On the night of the shooting, January 24, 2007?

8 Q. Well, at any point from January 24, 2007, did you  
9 find that your son was in a hospital?

10 A. Yes.

11 Q. What hospital was that?

12 A. Prince George's County Community Hospital.

13 Q. And over the next several days did you visit with  
14 your son there?

15 A. Yes.

16 Q. Ms. Clark, did there come a time when you got the  
17 word that your son had died there in the hospital?

18 A. I'm sorry?

19 Q. On February 2nd, did you receive word or were you  
20 at the hospital when your son was undergoing surgery?

21 A. No, I wasn't there when he underwent surgery. I  
22 got the call that night, February 2nd, on that night that I  
23 need to come to the hospital because Brandon wasn't doing  
24 well through the surgery, and they told me to come to the  
25 hospital. When I got there he was already gone.



1 MR. MOOMAU: That's all the questions I have.

2 Thank you.

3 MR. STARR: I have no questions, Your Honor.

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

5 MR. MOOMAU: The next witness would be Josh

6 Carlson.

7 **JOSHUA CARLSON,**

8 a witness produced on call of the State, having first been

9 duly sworn, was examined and testified as follows:

10 THE DEPUTY CLERK: You may be seated. Please state

11 and spell your first and last name for the record.

12 THE WITNESS: Joshua Carlson, J-o-s-h-u-a,

13 C-a-r-l-s-o-n.

14 **DIRECT EXAMINATION**

15 BY MR. MOOMAU:

16 Q. Mr. Carlson, do you hold any positions with the  
17 Accokeek Volunteer Fire Department?

18 A. Yes, sir, I do.

19 Q. And what position is that?

20 A. I am a volunteer fire lieutenant, sir.

21 Q. As a volunteer fire lieutenant, what are your  
22 duties?

23 A. I oversee our lower line officers, being sergeant  
24 and our EMS officers and, also, the privates that are there.

25 Q. How long have you been affiliated with the

1 volunteer fire department?

2 A. The volunteer fire services, altogether, about six  
3 years.

4 Q. Now, sir, do you have any experience treating  
5 persons with gunshot wounds?

6 A. Yes, I do. Only once prior to this, but yes.

7 Q. And training as far as treating persons with  
8 gunshot wounds?

9 A. All the time.

10 Q. What kind of training?

11 A. We do trainings that are specific tasks you have to  
12 do with different types of wounds. And we do training with,  
13 you know, the dressings that we use and the procedures that  
14 we would do when it comes to that kind of thing.

15 Q. Now, were you on duty at the station on the evening  
16 of January 24, 2007?

17 A. Yes, I was.

18 Q. At any point did you get a call related to this  
19 case?

20 A. Yes, I did.

21 Q. And what was the nature of that call?

22 A. We got a call that came out through our fire board  
23 with -- I believe it came out shooting with the county  
24 police.

25 Q. What about the location? Did you know the location

1 that it was at?

2 A. I knew the general area. I didn't know the exact,  
3 you know, house, but I knew the general area where I would  
4 need to go.

5 Q. Did you and other persons working there at the  
6 station, other emergency medical providers, go to that  
7 location?

8 A. That's correct. We first went to a staging  
9 location, myself and my EMT officer on the ambulance and,  
10 also, the fire truck came with us, went to a staging location  
11 before we went to the scene.

12 Q. And what's a staging location?

13 A. A staging location is basically for our safety,  
14 someplace that we'll stay, kind of out of harm's way, until  
15 county police get there and are able to secure the scene and  
16 make it safe for us.

17 Q. Was this staging location in an area where you  
18 could see the house that was your designation?

19 A. No. No, we could not see the house from where we  
20 were at.

21 Q. But could you see, I guess, where police would be  
22 going by -- you could see something from the location --

23 A. Yes. We were on the main access road, Beach Lane.  
24 It runs parallel with the neighborhoods. We were on the main  
25 access road, so we could see anybody that came in and out.

1 Q. Approximately how long did you wait at that staging  
2 location until police arrived?

3 A. Approximately, until the first police officer, one  
4 to three minutes.

5 Q. And then approximately how long did you wait there  
6 until you then went to the scene?

7 A. Approximately, another two to three minutes.

8 Q. You then did go to the scene, to the residence,  
9 correct?

10 A. Yes. After the county police went to the scene,  
11 they called their communications and let them know, hey, it's  
12 safe for fire and EMS to come in. Our communications then  
13 contacted us and let us know that the scene was secure and we  
14 were able to go in.

15 Q. What were your observations when you arrived there  
16 on the outside of the house?

17 A. Pulling up, noticeably, was -- because I was  
18 driving a bigger unit than a car, noticeably was a marked  
19 cruiser on the right-hand side of the road, with his house  
20 being on the left, and there was a large box truck out in  
21 front of the location where we were going.

22 Q. You say a large box truck. What do you mean?

23 A. It was a furniture truck, to be more specific.  
24 Marlo Furniture, I believe, is the name that was on it.

25 THE DEPUTY CLERK: State's Exhibit Number 3 marked

1 for identification.

2 (State's Exhibit No. 3 was  
3 marked for identification.)

4 BY MR. MOOMAU:

5 Q. Sir, I'm showing you what's been marked as State's  
6 Exhibit Number 3. Does that photograph look familiar?

7 A. Yes, sir.

8 Q. What is State's Exhibit Number 3?

9 A. It's a picture of the furniture truck that was out  
10 front of the residence.

11 MR. MOOMAU: The State would move for admission of  
12 State's Exhibit Number 3.

13 MR. STARR: No objection.

14 THE COURT: Number 3 admitted without objection,  
15 State.

16 (State's Exhibit No. 3, previously  
17 marked for identification, was  
18 received in evidence.)

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

20 BY MR. MOOMAU:

21 Q. Is that the photograph you just looked at in front  
22 of the residence?

23 A. Yes, sir.

24 Q. You went inside the residence, correct?

25 A. Yes, sir, I did.

1 Q. And what did you observe when you went inside?

2 A. When I first walked in, there was two gentlemen  
3 standing at the top of the stairs, one a uniformed officer  
4 and one a plain clothes gentleman. As I started to walk up  
5 the steps, I noted one victim at the top of the steps.

6 MR STARR: Objection, Your Honor.

7 THE COURT: As to the phraseology, sustained.

8 MR STARR: Move to strike.

9 THE COURT: Stricken.

10 BY MR. MOOMAU:

11 Q. You saw a person at the top of the steps.

12 A. I saw a person laying at the top of the steps;  
13 that's correct.

14 Q. Did you notice any wounds to that person at the top  
15 of the steps?

16 A. Visibly, no, not as I walked past because, as I got  
17 to top of the steps, I also saw there was another person  
18 lying to right, down the hallway a little bit past him.

19 Q. Now, of those two persons, the one that was at the  
20 top of the steps and the one that was, I guess, further away,  
21 did you work on one of those or was one of those your  
22 patients?

23 A. Yes, I did. I took the one that was further away  
24 from the top of the steps. I didn't take the one directly at  
25 the top.

1 Q. Now, the uniformed officer and the civilian, can  
2 you describe the civilian?

3 A. Taller gentleman, African American, wearing khaki  
4 pants and a dark green vest.

5 Q. Did you notice anything in particular about that  
6 person?

7 A. Not in particular. I didn't notice a badge, but I  
8 did notice a holster with a weapon. I didn't notice anything  
9 out of the ordinary, if that's what you're asking.

10 Q. The weapon, was it open, under clothing or --

11 A. His vest was covering, I guess, most of it. I  
12 could see the butt of the weapon and the holster.

13 Q. I'd like to show you an exhibit marked as State's  
14 Exhibit Number 2. Does this look familiar?

15 A. Yes, sir.

16 Q. And what does State's Exhibit Number 2 show?

17 A. It is the view, as you would step into the front  
18 door of the house, of the stairs.

19 Q. Is that how the area looked when you were there on  
20 January 24, 2007?

21 A. Yeah, except minus the people that were there.

22 Q. On this photo would you be able to show the  
23 location of the person or the approximate location that you  
24 were working on, as well as the other person that was at the  
25 top of the stairs?

1 A. Absolutely.

2 MR. MOOMAU: Your Honor, move for admission of  
3 State's Exhibit Number 2.

4 MR. STARR: No objection.

5 THE COURT: Number 2 will be admitted without  
6 objection, State.

7 (State's Exhibit No. 2, previously  
8 marked for identification, was  
9 received in evidence.)

10 BY MR. MOOMAU:

11 Q. Can you turn around in your -- or just, with the  
12 pointer, would you just show the ladies and gentlemen of the  
13 jury, I guess, how you came up the stairs, where the first  
14 person was and where the person that you worked on.

15 A. The first person, when we came up, was laying right  
16 at the top of the stairs here. The second person was kind of  
17 leaning against that wall/door right there, and the two  
18 gentlemen were standing right there at the edge of the  
19 railing.

20 Q. Mr. Carlson, the first person that you didn't work  
21 on, what emergency service workers provided care to him?

22 A. The emergency service workers that provided care to  
23 him was the officer of the fire truck that came with us. At  
24 that time he was my lieutenant, David Jordan. And Kathryn  
25 Fortgung, I believe she was the driver of the fire truck. At



1 that time she was the captain.

2 Q. Did you notice any wounds on the first person?

3 A. I didn't pay attention, really, to the first person  
4 because my lieutenant told me, hey, I'll get him; go to the  
5 next person, and I pretty much just stepped over to go to the  
6 person that was farthest away from the top of the steps.

7 Q. The person that you worked on, did you notice any  
8 gunshot wounds to that person or any wounds at all, injuries?

9 A. I noticed not injuries but I could tell, you know,  
10 in his shirt that there was something -- he had holes in his  
11 shirt. No visible wounds other than the holes in his shirt.

12 Q. Was this person making any sounds or noises at the  
13 time?

14 A. Kind of like a moan. It wasn't just -- you know,  
15 it was kind of like -- I don't know whether it was aggression  
16 or hurt, but it was more of a moan than anything  
17 recognizable.

18 Q. Did you ask this person any questions to providing  
19 medical care?

20 MR STARR: Your Honor, can we approach?

21 THE COURT: Okay.

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

24 MR. STARR: I asked to approach in anticipation of  
25 hearsay.

1 THE COURT: You're going to begin laying foundation  
2 for --

3 MR. MOOMAU: Yes. That was the first question  
4 about medical care. There is an exception to hearsay rule  
5 for that.

6 THE COURT: No, no, no, but I mean we should do  
7 this out of the presence of the jury.

8 MR. MOOMAU: Okay.

9 MR. STARR: Yes.

10 THE COURT: Okay.

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

13 THE COURT: Ladies and gentlemen, we have some  
14 administrative matters to take care of. Sheila, if you would  
15 bring them, just for a few moments, to the jury deliberation  
16 room, please.

17 (The jury was excused from the courtroom at  
18 10:10 a.m.)

19 THE COURT: Okay.

20 MR. MOOMAU: Just covering that one issue, Your  
21 Honor?

22 THE COURT: Please.

23 **DIRECT EXAMINATION (In camera)**

24 BY MR. MOOMAU:

25 Q. Mr. Carlson, what was the name of the patient that

1 you were working on?

2 A. I do not remember the name of my patient. I  
3 remember the name of my partner's patient.

4 Q. What was the name of your partner's patient?

5 A. The partner's, the patient at the top of the steps  
6 was Brandon. I'm not sure of the last name.

7 Q. Did you ask your patient any questions as far as  
8 what had happened or dealing with the medical treatment that  
9 you were there -- the emergency medical treatment that you  
10 were there to provide to him?

11 A. The first thing I asked was, "Where are you hurt?"  
12 From the nature of the call that was dispatched, we were  
13 there for a shooting. So the first thing that we asked was  
14 where are you hurt; you know, where are you hurting at.

15 Q. What did he say to you?

16 A. He said his stomach and his knee.

17 Q. Did you ask him any other questions?

18 A. After we ascertained the information as to where he  
19 was hurt, the question, you know, what happened did arise.

20 Q. And what did he say in response to what happened?

21 A. The only thing he could tell us or the only thing  
22 that he did tell us was -- forgive the language -- "all over  
23 some fucking rails."

24 Q. Now, Josh -- or Mr. Carlson, did your patient, was  
25 there ever any discussion or statement made dealing with

1 whether or not the patient believed he was going to survive?

2 A. He did tell us, as we were treating him, "I'm  
3 having trouble breathing; I can't breath; I'm leaving this  
4 place." That was a phrase that he repeated several times,  
5 but we reassured him that we were going to do everything to  
6 help him and he wasn't going anywhere.

7 MR. MOOMAU: Your Honor, that's all I intend to  
8 elicit as far as out-of-court statements made by the patient.

9 THE COURT: Voir dire?

10 MR STARR: Yes. One moment, please.

11 **CROSS-EXAMINATION (In camera)**

12 BY MR. STARR:

13 Q. Good morning, Mr. Carlson.

14 A. Good morning, sir.

15 Q. One of the things you said, when the state's  
16 attorney was asking you questions, was that at some point you  
17 asked the patient you were treating what happened.

18 A. Yes, sir.

19 Q. When you asked him what happened, was that before  
20 or after you asked him the question about where he was hurt?

21 A. My main concern, as an EMT, is where he was hurt  
22 at. So it was after.

23 Q. So the first question you asked him was where he  
24 was hurt.

25 A. Where are you hurt at.

1 Q. And when you asked him the question about what  
2 happened, was that inside the house or was that after he left  
3 the house?

4 A. It was inside the house, really, trying to make  
5 conversation to keep him from losing consciousness or,  
6 basically, to keep him talking to me.

7 Q. And you mentioned the statement that you said he  
8 made, "I'm having trouble breathing; I think I'm leaving this  
9 place." Was that inside the house or outside the house?

10 A. Inside the house, sir.

11 Q. Was that made before or after you asked him what  
12 happened?

13 A. I believe it was after. While we were working on  
14 cutting his shirt off and administering our first aid to him,  
15 he kept repeating the phrase "I'm having trouble breathing;  
16 I'm leaving this place."

17 Q. And in response to him saying that, specifically,  
18 that he was having trouble breathing and he was leaving this  
19 place, you made efforts to reassure him that he was going to  
20 be okay, correct?

21 A. Yes, sir.

22 Q. And the reason that you did that is it would be  
23 beneficial to his treatment if he had that state of mind.

24 A. To keep him in a calmer state, yes, because the  
25 more he panics, the more it's going to be harmful or

1 traumatic to him.

2 Q. So when the gentleman you were treating expressed  
3 to you, when he made the statement I'm having trouble  
4 breathing; I'm leaving this place, your response was to try  
5 and calm him.

6 A. Yes, sir.

7 Q. And you said that -- you didn't say just once that  
8 he was going to be okay; you said that several times,  
9 correct?

10 A. In response to his, yes.

11 Q. So every time he said something like he was leaving  
12 this place or having trouble breathing, you said something in  
13 response to try and calm him.

14 A. Yes, sir.

15 MR. STARR: No more questions, Your Honor.

16 MR. MOOMAU: May I follow up?

17 THE COURT: Yes.

18 **REDIRECT EXAMINATION (In camera)**

19 BY MR. MOOMAU:

20 Q. So, Mr. Carlson, even with your assurances, he  
21 still kept saying that; didn't he?

22 A. Yes, sir.

23 Q. And this time period that you were there dealing  
24 with the patient, not Brandon, if you had to -- approximately  
25 how long was that?

1           A.    If I had to guess, without the paperwork right in  
2 front of me, I'd say we were in the house, total, with our  
3 patient, ten minutes, at most. I mean it's -- time really  
4 isn't something that you think about. I mean, I don't really  
5 know if it moved fast or it moved slow. I just know we were  
6 there.

7           MR. MOOMAU: That's all, Your Honor. Do you want  
8 us to approach?

9           THE COURT: Yes.

10           (Counsel approached the bench and the following  
11 ensued.)

12           MR. MOOMAU: Your Honor, the State believes that  
13 the out-of-court statements made by a person -- not Brandon;  
14 obviously, it was Robert White, the other person -- are  
15 admissible under a number of hearsay exceptions. The medical  
16 treatment exception. That's under 5-803. We believe they  
17 would also go into the excited utterance and, also, dying  
18 declarations.

19           Now, with Brandon Clark, there's no time -- we  
20 didn't have that. At the scene we have the patient who  
21 sustained gunshot wounds making the statement, while he's  
22 there on the scene, about I'm leaving this place, I'm leaving  
23 this place, I'm having trouble breathing. That alerts us and  
24 that tells us that he thought he was going to die, which is  
25 what we have to show for dying declaration.

1           The statement was made at the scene. It was a  
2 ten-minute period. Although we're not sure of that, it was a  
3 short period of time right after the shooting. And going to  
4 the cause of it, all over some bed rails, and that the rule  
5 allows that. So that's what we're asking.

6           MR. STARR: I happen to have received a recent  
7 education in dying declarations, Judge. So I would say a  
8 number of things in response to the State's argument.

9           First, I would say that, based on the testimony of  
10 the witness, the statements that he says I'm having trouble  
11 breathing, I think I'm leaving this place, occur after the  
12 statement that the State wants to introduce as a dying  
13 declaration. And there's no testimony that he said anything  
14 before he made the statement about bed rails, indicating that  
15 there was a consciousness of impending death. There's  
16 absolutely no evidence of that in the record.

17           The other thing is, another element of dying  
18 declaration that's not satisfied is that the statement  
19 doesn't describe the manner in which he was injured or  
20 identify the person who did it. Saying that it's over bed  
21 rails has nothing to do with the cause of death. That's what  
22 the statement has to address, the cause of death and the  
23 person who caused it, and there's no statement of  
24 identification or anything like that in this statement.

25           So it occurs prior to any evidence that he believed



1 he was going to die, and it doesn't relate to the cause of  
2 death sufficiently to be a dying declaration.

3 THE COURT: What about the excited utterance and  
4 other ones that he cited in reference to his earlier motion  
5 to you?

6 MR. STARR: Yes. I guess what we have here -- and  
7 I'm trying to take them in turn, because I don't want us to  
8 be always talking about the same thing when I'm having these  
9 conversations, is that there's basically --

10 THE COURT: They're also alleging that it would  
11 come in under the excited utterance exception, present sense  
12 impression, and there is -- what was the third exception you  
13 listed?

14 MR. MOOMAU: Well, as far as the present sense  
15 impression, we're actually going to deal with that on another  
16 hearsay issue. That's excited utterance, dying declaration,  
17 and the medical testimony, of course.

18 THE COURT: Okay.

19 MR. STARR: As far as the statements for purposes  
20 of medical diagnosis, the rule clearly states that the  
21 statement has to have been made for the purpose of medical  
22 diagnosis. It's not sufficient that it was made to someone  
23 who can provide medical treatment. The statement has to be  
24 made for the purpose of a diagnosis and, obviously, all this  
25 over some bed rails has nothing to do with the medical

1 diagnosis.

2           The rule spells out. It gives examples of what  
3 would qualify and this doesn't qualify. So that statement is  
4 not made for purposes of medical diagnosis. It's not in  
5 response to a question about medical diagnosis.

6           What happened to the -- the officer said that --  
7 Mr. Carlson said that he was asking that question for  
8 purposes of trying to make small talk to keep him conscious.  
9 It had nothing to do with his medical treatment. The  
10 statement in itself is innocuous. It had nothing to do with  
11 the officer's intent of trying to keep him conscious.

12           As far as an excited utterance, Your Honor, the  
13 statement does not relate sufficiently to the startling event  
14 because the startling event is the shooting. I mean, that's  
15 the event that -- that's the only event that's in the record,  
16 first of all, that could have been startling, was being shot.  
17 There's no testimony about anything else that led up to it.

18           So the bed rails don't have anything to do with  
19 being shot. All this over some bed rails, it's a statement  
20 with an unclear meaning, certainly not clear enough to say  
21 that it satisfies the elements of excited utterance by  
22 relating to the cause of the excitement. I don't know what  
23 that means. We don't know what that means.

24           And there's an issue where -- I understand the  
25 State uses the previous -- the three day issue as its

1 bi-line, but I do think that -- that's clever argument, but I  
2 would say we shouldn't be using that as any yardstick and  
3 that there is temporal distance, there is conversation, there  
4 is question and answer about other topics that precedes it.

5           There is, in the words of the witness, small talk  
6 being made. There's already questions that have been posed  
7 and answers that have been given, and we have a time line  
8 that could be as much as ten minutes and a statement that  
9 doesn't address the cause of the excitement, which can only,  
10 based on where the record is right now, be the shooting.

11           MR. MOOMAU: Your Honor, it's going do be tied in  
12 through the testimony of Robert White. He's going to say  
13 they were delivering bed rails. That's not going to be a  
14 question.

15           The excited utterance does go to the startling  
16 event or condition, delivering the bed rails. That's what he  
17 said it was over, and he was dealing with the stress of the  
18 excitement.

19           Also, under the dying declaration or belief of  
20 impending death, we got a statement here, made right at the  
21 scene, that I'm leaving this place. This goes to the cause  
22 of the circumstances of what caused him to do that. I mean,  
23 was it made after or before? What would that matter? It was  
24 right at the same time. It reflects his beliefs at that time  
25 when he made the statement.

1           MR. STARR: Well, it does matter because it goes to  
2 his state of mind. I mean, we don't know -- based on the  
3 fact that the testimony is that the statement was made --  
4 that the statements about him leaving this place were made  
5 after the statement they want to admit, there's a span of,  
6 potentially, as much as ten minutes where he could have gone  
7 through all sorts of different feelings. You know, he could  
8 have felt one way and then, five minutes later, felt  
9 completely different. That's how it happens.

10           There comes a time when somebody develops that  
11 opinion, based on what they're feeling, that they might die.  
12 The statement, to be a dying declaration, has to be made  
13 after that time; otherwise, you can't say that there's  
14 consciousness of impending death.

15           Also, there's no testimony in the record as to what  
16 the time span was. I mean we're saying ten minutes just  
17 because that's how long the witness said he was in there. It  
18 is a little bit false even for me to say that because there's  
19 no temporal connection between the shooting and when the  
20 statement was made in terms of time. That time is not in the  
21 record at all.

22           So we don't know the time, it doesn't relate to the  
23 cause, and we can't say that it --

24           THE COURT: Is there any proffer of what time the  
25 911 call was made?

1 MR. MOOMAU: I'm going to be introducing that  
2 through the certified CAD sheet.

3 THE COURT: Well, I need to know what it is.

4 MR. MOOMAU: Can I go back?

5 THE COURT: Yes.

6 MR. MOOMAU: Your Honor, the 911 call was at 1948,  
7 7:48.

8 THE COURT: Are you disputing the time of that call  
9 at all?

10 MR. STARR: I don't dispute that the call was made  
11 at 7:48. I have the printout, it seems.

12 But what I would say, Your Honor, is that we don't  
13 have a time for when the statement was made. And what we  
14 know is that there was delay, because we know that  
15 Mr. Carlson waited in a staging area, waiting for the scene  
16 to be cleared. We know that he went in, and he was in there  
17 for as long as ten minutes before the statement was made.  
18 And, again, it doesn't relate to the cause of the excitement,  
19 which is the shooting.

20 THE COURT: I believe that the statement is  
21 unavailable with respect to the dying declaration exception  
22 as it is so called, and I would adopt the law and reasons  
23 which are somewhat similar in the earlier written opinion I  
24 provided about the statement made in the hospital, and I  
25 adopt that.

1           However, I do believe the statement is admissible  
2 under 803(b) (2) as an excited utterance. My understanding of  
3 an excited utterance, as defined under that rule, it is a  
4 declarant's statement produced by a startling event. I can't  
5 think of any more startling event than what took place at  
6 that time. And the time span we're talking about here is, at  
7 most, 20 minutes and, in all likelihood, less, based on the  
8 time frames that have been provided.

9           The testimony of the medical technician was that  
10 they received the call, they went to a staging area, they  
11 waited there for between one and three minutes. There was  
12 another two or three minutes before they actually arrived on  
13 the scene. They went inside. They began to address the  
14 wounds and the issues with respect to Mr. White and, during  
15 that time period, Mr. White made those statements that he  
16 did.

17           I believe that it was a startling event made so  
18 close in time that the declarant remained under the influence  
19 of the excitement produced by that event, and that statement,  
20 as I understand it, that was produced was, in fact, an  
21 excited utterance and was not made during a time after the  
22 excitement had subsided.

23           I don't believe that there was sufficient time for  
24 Mr. White to have reflected on his thoughts, and I believe  
25 there was an excited utterance that was traditionally thought

1 of under the rule and as cited in case law all over the  
2 place.

3 So I don't believe it is available under the dying  
4 declaration. I do believe it is under the excited utterance.

5 MR. STARR: Well, I guess we have to specify the  
6 statements that we are talking about.

7 THE COURT: What he just testified to.

8 MR. COHEN: Both statements are coming in?

9 THE COURT: Yes.

10 MR. COHEN: Thank you.

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

13 (The jury returned to the courtroom at 10:35 a.m.)

14 MR. MOOMAU: Can we proceed, Your Honor?

15 THE COURT: Please.

16 **DIRECT EXAMINATION (Continued)**

17 BY MR. MOOMAU:

18 Q. Mr. Carlson, when you arrived at that scene, what  
19 was your priority?

20 A. The patient's care.

21 Q. And you've already testified as to the location of  
22 the patient that you were working on. Did you get the name  
23 of that patient?

24 A. I'm sure I did, but I do not remember it.

25 Q. There were two patients. Did you get the name of

1 the other patient?

2 A. Brandon.

3 Q. So that was the one you were not working on.

4 A. That is correct.

5 Q. That was at the top of the stairs.

6 A. Brandon was at the top of the stairs.

7 Q. When you approached your patient, did you ask him  
8 any questions? Or when you got to your patient and were  
9 kneeling down to provide --

10 A. "Where are you hurt; what hurts on you?"

11 Q. And what did your patient say to you?

12 A. "My stomach and my knee."

13 Q. At any time while you were caring for your patient,  
14 was there any discussion or any statement made by him about  
15 what had happened; what had caused this?

16 A. After I found out what was hurting on him, what was  
17 wrong, what his complaints were, I asked him what happened,  
18 and he didn't give me any specific details. He just said --  
19 forgive my language -- "all over some fucking railings."

20 Q. Now, during the course of your treatment of your  
21 patient, did he make any statements about whether or not he  
22 believed his death was imminent?

23 A. He made the statement, "I'm having trouble  
24 breathing; I think I'm leaving this place."

25 Q. And did your patient say that more than once?



1 A. Yes, he did.

2 Q. Do you know how many times?

3 A. I couldn't begin to tell you. I was just  
4 repetitious.

5 Q. Now, what type of treatment or care did you give to  
6 your patient there at the scene?

7 A. I stopped the bleeding by applying gauze or trauma  
8 pads and prevented a sucking chest wound, which is basically  
9 when there is an internal injury and, with every breath he  
10 takes, it pulls air into his thoracic cavity.

11 Q. Now, I'm assuming you have to do something with the  
12 clothes, correct?

13 A. Yes. You have to cut the clothes off.

14 Q. And did you do that in this case?

15 A. Yes.

16 Q. And when you do that, when you leave, are the  
17 clothes left behind?

18 A. To tell you the truth, I don't remember. Sometimes  
19 they get caught up in the backboard and they go underneath of  
20 them.

21 Q. In this case you don't --

22 A. I don't remember whether they were left on the  
23 scene or on the backboard with him.

24 Q. Was your patient handcuffed?

25 A. No.

1 Q. Do you know if the other one was?

2 A. To my knowledge, he was not.

3 Q. Who was working on him now?

4 A. David Jordan, my lieutenant at that time, and  
5 Katherine Fortgung, my captain at that time.

6 Q. Now, when you were working on the patient, was the  
7 civilian and the uniformed officers, were they upstairs  
8 there?

9 A. Yes, they were.

10 Q. At some point your patient was taken out of the  
11 home there, correct?

12 A. Yes, sir.

13 Q. Now, what order were the patients taken out?

14 A. We had my patient collared and backboarded first,  
15 so we took ours out first.

16 Q. Why did you take yours out first?

17 A. Because I was on the ambulance, the first arriving  
18 ambulance, we had everything ready to us quicker than the  
19 personnel on the fire truck providing aid. So we were able  
20 to secure him to the backboard, collar, the whole nine yards  
21 as far as securing him and getting him ready to be moved. We  
22 were done before the other patient.

23 Q. Were you present when the other patient that was at  
24 the top of the steps was taken out?

25 A. I was in the back of the ambulance.

1 Q. Now, where did you take your patient to after he  
2 was put in the ambulance?

3 A. Our landing zone.

4 Q. By landing zone, what do you mean? Where a  
5 helicopter would be?

6 A. Yeah. We had to land -- I believe it was two  
7 helicopters that evening. At Indian Head Highway and Pine  
8 Lane, we shut down north and southbound lanes of traffic to  
9 land the helicopters.

10 Q. Now, your patient that you were working on, did he  
11 appear to be responsive to what you were asking him?

12 A. Yes.

13 MR. MOOMAU: Court's indulgence, please. That's  
14 all the questions I have. Thank you.

15 THE COURT: Cross.

16 MR. STARR: Thank you.

17 **CROSS-EXAMINATION**

18 BY MR. STARR:

19 Q. Mr. Carlson, good morning.

20 A. Good morning, sir.

21 Q. Now, when you arrived at this house, you went  
22 upstairs, correct?

23 A. Yes, sir.

24 Q. And the patient you treated was not the patient  
25 laying at the top of the stairs, but you had to kind of make

1 a right turn and go down the hallway.

2 A. At the top of the stairs, made a right, yes.

3 Q. So it would be the second person. You had to step  
4 over the first one, correct?

5 A. (No audible response.)

6 Q. Now, you said that when you got up there you saw a  
7 uniformed police officer, right?

8 A. When we walked through the door, there was a  
9 uniformed police officer standing at the top of the rails.

10 Q. He was standing at the top of the stairs.

11 A. Yes.

12 Q. And there was another person standing at the top of  
13 the stairs who was in civilian clothes, correct?

14 A. Yes, sir.

15 Q. And that person was a police officer as well,  
16 correct?

17 A. At that time I did not know. Afterwards, I learned  
18 that he was.

19 Q. And you said you saw that person with the gun in  
20 the holster, correct?

21 A. That's correct.

22 Q. You indicated, when Mr. Moomau was asking you  
23 questions, that that person, who you later learned to be a  
24 police officer, wasn't doing anything out of the ordinary,  
25 correct?

1 A. No, sir. He was standing there at the top of the  
2 steps with the uniformed police officer.

3 Q. And he wasn't talking to you or interfering with  
4 what you were doing; was he?

5 A. No, sir.

6 Q. He was only interacting with the uniformed police  
7 officer, correct?

8 A. That's correct.

9 MR. STARR: No more questions.

10 MR. MOOMAU: No redirect, Your Honor.

11 THE COURT: Lieutenant, thank you very much.

12 MR. MOOMAU: Your Honor, I would ask that this  
13 witness -- I mean he's free to go as far as I'm concerned. I  
14 would ask that he remain under order not to discuss his  
15 testimony with anyone in case he would need to be.

16 THE COURT: Alright, sir, you understood that,  
17 correct?

18 THE WITNESS: Yes, sir.

19 MR. WRIGHT: Want me to go out and get the next  
20 witness, Your Honor?

21 THE COURT: Please.

22 **ROBERT RASCOE,**

23 a witness produced on call of the State, having first been  
24 duly sworn, was examined and testified as follows:

25 THE DEPUTY CLERK: You may be seated. Please state

1 and spell your first and last name for the record.

2 THE WITNESS: My first name is Robert, R-o-b-e-r-t,  
3 last name is Rascoe, R-a-s-c-o-e.

4 **DIRECT EXAMINATION**

5 BY MR. WRIGHT:

6 Q. Mr. Rascoe, please keep your voice up so everyone  
7 can hear, okay?

8 A. Yes, sir.

9 Q. Where do you work, sir?

10 A. I work for Marlo Furniture.

11 Q. What do you do for Marlo Furniture?

12 A. I'm a supervisor in the dispatch office.

13 Q. And how long have you been with Marlo?

14 A. For nine years.

15 Q. As a supervisor in the dispatch office, what do  
16 your duties entail?

17 A. My job is to assist the drivers in load out and out  
18 on the road.

19 Q. And how do you assist them when they're out on the  
20 road?

21 A. If they call in -- if they have an issue or  
22 something goes on and they can't handle it, they call into us  
23 and then we deal directly with the problem.

24 Q. When you say deal directly with the problem, does  
25 that sometimes mean customers?

1 A. Yes.

2 Q. Now, when the drivers leave Marlo, how do you  
3 maintain contact with them?

4 A. They have radio to call into us to let us know  
5 where they at at all times.

6 Q. Now, are these drivers employees with Marlo?

7 A. No; they are contractors.

8 Q. When you say contractors, explain to the jury what  
9 do you mean?

10 A. We hire them as contractors. That means they  
11 responsible for getting their own help in that situation.

12 Q. Some of the people they get for help, are those the  
13 deliverymen?

14 A. Yes.

15 Q. Do some of the deliverymen work for more than one  
16 contractor?

17 A. Yes.

18 Q. Did you know Brandon Clark?

19 A. Yes, I did.

20 Q. How did you know him?

21 A. He worked with several other contractors.

22 Q. How long have you known him?

23 A. I want to say five years, at least.

24 Q. Did you know Robert White?

25 A. No, I didn't.

1 Q. Let's go back to Brandon Clark. Did you know him  
2 to have a speech impediment?

3 A. Yes; he stuttered.

4 Q. When did he stutter?

5 A. When he was hyper, you know. Sometimes I had to  
6 calm him down just to talk to him.

7 Q. Did the stuttering make it hard for you to  
8 understand what he was saying?

9 A. Yes.

10 Q. Let me ask you about the events of January 24th,  
11 2007. Do you remember that day?

12 A. Yes.

13 Q. What hours were you working that day?

14 A. That day I worked from like four to two.

15 Q. Did you have anything to do with scheduling the  
16 delivery of the furniture to Keith Washington's residence?

17 A. No.

18 Q. On January 24th, though, you said you got off at  
19 two o'clock.

20 A. Yes.

21 Q. Did you speak with Keith Washington that day?

22 A. Yes, I did.

23 Q. What time did you speak with him?

24 A. It was around one or 1:30.

25 Q. How is it you ended up speaking with Mr. Washington



1 around one or 1:30?

2 A. The call was transferred over to my phone and  
3 that's how I got to speak with him.

4 Q. Why was it transferred to your phone?

5 A. I don't know. I guess it was -- they thought it  
6 was a delivery issue, so it came over.

7 Q. And how did he sound on the phone?

8 MR. COHEN: Objection, Your Honor.

9 THE COURT: Do we want to approach the bench,  
10 please?

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

13 THE COURT: I just need a proffer on where we're  
14 going from here, so they know.

15 MR. WRIGHT: Thank you, Your Honor. Mr. Rascoe did  
16 have a conversation with Mr. Washington at 1:30, in which  
17 Mr. Washington was agitated. Mr. Washington wanted to know  
18 about his delivery; would it be there on time. This is a  
19 hearsay telephonic conversation between Mr. Washington and  
20 Mr. Rascoe; however, it does fall within hearsay exceptions  
21 of present sense impression.

22 THE COURT: Is that where we're going now?

23 MR. WRIGHT: And also the statement by Washington,  
24 803(a) (1), 803(b) (2), and that's what the State relies on.

25 MR. MOOMAU: The objection was to the tone of the

1 voice.

2 MR. WRIGHT: I can lay a little more foundation as  
3 to the tone of voice.

4 THE COURT: What was the conversation, so I know  
5 off the record, out of the presence of the jury.

6 MR. WRIGHT: The conversation was that  
7 Mr. Washington was agitated. He was calling about his  
8 delivery, he was agitated, and he wanted to know when will it  
9 be here; will it be on time. And he had issues with -- and  
10 whether it would be there on time. He said that there wasn't  
11 time for the delivery at this point.

12 THE COURT: I'm sorry?

13 MR. WRIGHT: He said your delivery will be there.  
14 He tried to allay his concerns. He did make mention of Marlo  
15 screwing him before and this would be the last time.

16 THE COURT: Now, you have to tell me everything --  
17 you have to tell me everything you intend to elicit here.

18 MR. WRIGHT: Let me grab the transcript. The phone  
19 conversation involved agitated and not happy with his  
20 delivery.

21 THE COURT: What exactly is this witness going to  
22 say, in that light, about what his impression was, if that's  
23 how you wish to call it just at the bench?

24 MR. WRIGHT: What this witness will testify to is  
25 that his impression was that Mr. Washington was agitated.

1 THE COURT: How do you intend to elicit that? What  
2 exactly is he going to say?

3 MR. WRIGHT: He's going to say he speaks to  
4 customers in his job. That's part of his customer service.  
5 He said that already, in dealing with customers, he has to  
6 allay their concerns.

7 He will say, when he was talking with  
8 Mr. Washington, he was agitated. How could he tell he was  
9 agitated? He had a high-pitched voice and that what he was  
10 saying to him, the conversation continued that Mr. Washington  
11 said he didn't want to take any more time off from work. He  
12 said that Marlo's had screwed him one other time and that he  
13 wasn't going to take it anymore.

14 And he tries to allay his concerns. He's going to  
15 say that, that he tried to allay his concern by saying,  
16 Mr. Washington, you do not have to be there; anyone can be  
17 there to sign for the bed rails. Mr. Washington hangs up the  
18 phone. That's his conversation.

19 THE COURT: And you're saying this comes in by?

20 MR. WRIGHT: It was Washington's own statement.

21 THE COURT: Statement made by a party?

22 MR. WRIGHT: Yes, statement made by a party  
23 opponent.

24 THE COURT: Okay. And?

25 MR. WRIGHT: And also -- that's 5-803(a) (1) and

1 also 5-803(b) (1), present sense impression, and also  
2 5-803(b) (3), existing mental state.

3 MR. MOOMAU: These are statements made by  
4 Mr. Washington dealing with the delivery, that these delivery  
5 persons came in. It's very relevant. It goes to the same  
6 subject, Your Honor, the bed rails.

7 MR. COHEN: Your Honor, we would oppose any  
8 questions about or any responses from the witness about his  
9 impression of what Mr. Washington's mental state --

10 THE COURT: I understand that part. What about the  
11 statements he made?

12 MR. COHEN: I think that the statements that he can  
13 elicit are confined to Mr. Washington's statements only, not  
14 the impressions of this gentleman.

15 THE COURT: Okay. I agree.

16 MR. COHEN: That was my point.

17 THE COURT: I believe that what this witness heard,  
18 as to the statements made by Mr. Washington, are, in fact,  
19 admissible under the exception, present sense impression, and  
20 I believe that they come in under that. I don't believe you  
21 should -- I believe that it's restricted to the statements he  
22 made, without at least this witness giving any impression of  
23 whether or not he was agitated. The jury can listen to the  
24 words and make that opinion for themselves, which is their  
25 function.

1 MR. COHEN: Your Honor, my concern is that the  
2 witness, in response to a question of Mr. --

3 THE COURT: I am going to remove the jury for a  
4 minute or, in some other way, have you speak to this witness  
5 to let him know that he cannot give his impression on whether  
6 or not the witness was agitated. He can just say what the  
7 witness said to him. I don't know --

8 MR. WRIGHT: Can we remove the jury for one minute?

9 THE COURT: You just want to have Mr. Wright  
10 approach him or how do you want to do that?

11 MR. MOOMAU: Have him come up to the bench.

12 THE COURT: We'll bring him up to the bench.

13 (The witness joined the bench conference and the  
14 following ensued.)

15 THE COURT: How are you, sir?

16 THE WITNESS: Good.

17 THE COURT: We all thank you very much for coming  
18 in today. What I need to advise you of, in your testimony  
19 and in your response to Mr. Wrights' questions, you are  
20 limited to what Mr. Washington said to you.

21 THE WITNESS: Okay.

22 THE COURT: And you cannot, by any question that  
23 Mr. Wright will ask, give your opinion on whether or not he  
24 may have been agitated at the time.

25 THE WITNESS: Okay.

1 THE COURT: So you're limited to questions made by  
2 Mr. Wright to tell us what he said to you.

3 Counsel, do you believe that to be adequate for  
4 that purpose?

5 MR. COHEN: I do, Your Honor.

6 THE COURT: Thank you. Go ahead, Mr. Rascoe. You  
7 can have a seat back there.

8 (The witness returned to the witness stand.)

9 THE COURT: I just wanted to put on the record --  
10 which I forgot to do, of course -- my decision is also based  
11 not only on what I believe the elements of present sense  
12 impression and statement made by a party/opponent, but I  
13 also, as I did with the excited utterance, reviewed both of  
14 those in terms of whether the probative value outweighed the  
15 prejudicial impact that it might have on the jury, and I  
16 believe that the probative value far outweighs any impact or  
17 prejudicial impact it would have on the jury.

18 MR. WRIGHT: Thank you.

19 MR. COHEN: Thank you.

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

22 BY MR. WRIGHT:

23 Q. You had a phone conversation with Mr. Washington?

24 A. Yes.

25 Q. Please tell the jury that phone conversation you

1 had with him.

2 A. When I received the call, Mr. Washington, he was  
3 asking about his delivery.

4 Q. Please keep your voice up so everyone on the jury  
5 can hear you.

6 A. When he called, he was asking about his delivery.  
7 He said he couldn't take off work anymore; he wasn't going to  
8 take off work anymore.

9 At that time I checked the system to see what time  
10 the guys were supposed to be there. It was between three and  
11 six. I assured him they would be there.

12 I even went farther, to look in the system to see  
13 what was he getting that day. I assured him that -- once I  
14 seen what it was, I was like, oh, they ought to be in there  
15 ten minutes. I said, sir, you don't have to be there.

16 Q. If I may. When you looked into the computer  
17 system, what did you find?

18 A. I found that he was getting an exchange on some  
19 rails, which is ten minutes. It's a ten-minute job. And I  
20 assured him. I said they'll be in there ten minutes, in and  
21 out. There won't be an issue. They'll be in there and out.  
22 And I assured him. I said you don't have to be there to  
23 receive the delivery. Anyone can be there, as long as  
24 they're over 18, to receive the delivery. I said you don't  
25 have to be there. So, you know, he went on. He was like,

1 I'm not going to take off work anymore, and we ended the  
2 conversation. He hung up.

3 Q. So he made mention that he had dealt with Marlo's  
4 before?

5 A. Yes.

6 MR. COHEN: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. WRIGHT:

9 Q. Did he use any curse words with you?

10 MR. COHEN: Objection, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: Yes, he did. The exact words, I  
13 can't tell you now but -- I don't know what they were, but it  
14 wasn't directed towards me; it was towards the company.

15 BY MR. WRIGHT:

16 Q. What did he say towards the company?

17 MR. COHEN: Objection, Your Honor.

18 THE COURT: Grounds?

19 MR. COHEN: He says he doesn't remember.

20 THE COURT: Well, I'm not sure if he does or not.

21 BY MR. WRIGHT:

22 Q. What did he say towards the company?

23 A. I want to say he said "damn" but --

24 THE COURT: Sir, if you recall, you can tell us; if  
25 you don't recall, just say you don't recall.



1 THE WITNESS: Okay. I don't recall at this time.

2 BY MR. WRIGHT:

3 Q. You said the phone conversation ended. Describe  
4 for the jury exactly how did it end.

5 A. As I told him what he was getting from the delivery  
6 and how long would it take, he went on, he wasn't going to  
7 take off and, you know, he was tired, he was tired of dealing  
8 with Marlo.

9 MR. COHEN: Objection, Your Honor. Move to strike.

10 THE COURT: Can we approach the bench, please.

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

13 THE COURT: In your earlier preparation and what  
14 you believe was going to be elicited from Mr. Rascoe, do you  
15 believe that he is testifying that that's what Mr. Washington  
16 said?

17 MR. WRIGHT: Yes, what --

18 THE COURT: Well, then ask him a question  
19 specifically.

20 MR. COHEN: I'm sorry. What are we doing here? I  
21 misunderstood the Court. Are we --

22 THE COURT: I want to know if he is proffering  
23 that's what Mr. Washington said, that he was tired dealing  
24 with Marlo, not that that's what he felt or thought. So I  
25 told him to ask a specific question.

1           If it doesn't come out, I will strike the whole  
2 thing and tell the jury to not consider it. If that's what  
3 he said, that's another story.

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

6           BY MR. WRIGHT:

7           Q. Do you remember your specific conversation, exactly  
8 what he said to you in response to his dealings with Marlo  
9 before?

10          A. Yes. He said he was sick of dealing with Marlo's;  
11 you know, he wanted his delivery right. And I assured him.  
12 I said, sir, we will take care of this. I said you don't  
13 have to be there in order for us to take care of this. I  
14 said anyone can be there. That was my last comment to him,  
15 anyone can be there to deal with the delivery. And, at that  
16 point, he hung up.

17          MR. WRIGHT: Court's brief indulgence.

18          BY MR. WRIGHT:

19          Q. Had you dealt with Mr. Washington before?

20          A. No.

21          Q. Were you aware of whether he had dealt with Marlo  
22 before?

23          MR. COHEN: Objection, Your Honor. Asked and  
24 answered.

25          THE COURT: Sustained.

1 BY MR. WRIGHT:

2 Q. Did Mr. Washington ever state that he had dealt  
3 with Marlo previously?

4 A. Yes.

5 MR. COHEN: Objection, Your Honor. Asked and  
6 answered.

7 THE COURT: Overruled.

8 BY MR. WRIGHT:

9 Q. Tell the jury specifically, if you remember, what  
10 it is he said to you about his prior dealings with Marlo.

11 MR. COHEN: Can we approach, Your Honor?

12 THE COURT: Yes.

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

15 THE COURT: What's your proffer?

16 MR. WRIGHT: Mr. Washington told him that Marlo has  
17 screwed me for the last time, and it's a specific statement  
18 made by Mr. Washington to Mr. Rascoe.

19 MR. COHEN: Your Honor, he's been asked on more  
20 than one occasion about the conversation, and he's told  
21 exhaustively what he knows about the conversation.  
22 Mr. Wright keeps asking him the same question over and over  
23 and over again, trying to elicit something that the witness  
24 is, obviously, not going to give him. I think he's finished.

25 THE COURT: I'm going to allow him to ask that

1 question. If it's not answered, it's not answered.

2 MR. WRIGHT: Which question is that?

3 THE COURT: The question you just asked him, but  
4 we're not going over everything again.

5 MR. WRIGHT: Thank you, Your Honor.

6 (Counsel returned to trial tables and the following  
7 ensued.)

8 BY MR. WRIGHT:

9 Q. Do you remember my question, sir?

10 A. Can you repeat it?

11 Q. Did Mr. Washington specifically make any statements  
12 to you about his prior relationship with Marlo?

13 A. Yes.

14 Q. What did he say?

15 A. He said he was tired of dealing with them on this  
16 issue and he wanted to get it right.

17 Q. Do you remember if he said anything else?

18 MR. COHEN: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. WRIGHT:

21 Q. Did he say anything else?

22 MR. COHEN: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. WRIGHT: Nothing further.

25 **CROSS-EXAMINATION**

1 BY MR. COHEN:

2 Q. Good morning, Mr. Rascoe.

3 A. Good morning.

4 Q. The conversation that you referenced that you had  
5 with Mr. Washington, that conversation was no more or less  
6 severe than any other calls that you receive, correct?

7 A. Yes.

8 Q. In fact, you receive one to two calls like that a  
9 day, correct?

10 A. That's correct.

11 Q. How long did that conversation last between you and  
12 Mr. Washington?

13 A. I want to say 10 to 15 minutes.

14 Q. Now, you stated that Mr. Washington's delivery was  
15 supposed to arrive between three and six. Are you sure about  
16 those times?

17 A. That's the time that was in the system.

18 Q. And it's your testimony today that Mr. Washington  
19 called you prior to that delivery time, correct?

20 A. That's correct.

21 Q. And you were not working on the evening of January  
22 24, 2007, around the time of 6:00 p.m. through the rest of  
23 the evening, correct?

24 A. No.

25 Q. You were off, correct?

1 A. That's correct.

2 Q. Do you remember talking to any police officers in  
3 this matter?

4 A. I talked to a detective.

5 Q. And prior to talking to the detective -- do you  
6 remember what date that was that you talked to the detective?

7 A. No, I don't.

8 Q. You watched a media report on January 24th of this  
9 event, correct?

10 A. The media?

11 Q. Yes.

12 A. Yes.

13 Q. And prior to speaking to the police officer, you  
14 had watched media reports, correct?

15 A. That's correct.

16 Q. And prior to speaking to the police officer, you  
17 also met with Marlo Furniture lawyers, correct?

18 MR. WRIGHT: Objection.

19 THE COURT: Why don't we approach the bench.

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

22 THE COURT: Where are we going here? I'm asking as  
23 I asked the State.

24 MR. COHEN: Yes, Your Honor. I'm going to ask him  
25 if he spoke to Marlo Furniture's lawyers before he gave any

1 statement to the police.

2 THE COURT: About what? What statement? I don't  
3 know about any statement. No statement has been made part of  
4 the evidence, so I'm not quite sure where we're going or what  
5 the relevance is.

6 MR. COHEN: Well, I asked him did he give a  
7 statement. He said yes; he didn't remember the date, and he  
8 spoke to a lawyer before giving that statement.

9 THE COURT: What statement did he make to the  
10 police? Is that relevant to this trial? Is it going to be  
11 introduced? Is there going to be some testimony to show it  
12 has some relevance? Just the fact that he may have seen a  
13 news report before -- what --

14 MR. COHEN: I understand. I'll let it go, Your  
15 Honor. I'll withdraw the question.

16 THE COURT: Thank you.

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

19 BY MR. COHEN:

20 Q. You didn't look up any prior deliveries or any  
21 prior interaction for Marlo Furniture dealing with Keith  
22 Washington; did you?

23 A. No.

24 MR. COHEN: Thank you, Mr. Rascoe. Nothing  
25 further.

1 THE COURT: Any redirect, Mr. State's Attorney?

2 MR. WRIGHT: No, Your Honor.

3 THE COURT: Mr. Rascoe, thank you very much, sir.

4 MR. MOOMAU: The next witness will be Corporal  
5 George Jones.

6 **GEORGE LAMONT JONES,**

7 a witness produced on call of the State, having first been  
8 duly sworn, was examined and testified as follows:

9 THE DEPUTY CLERK: Please state and spell your  
10 first and last name for the record.

11 THE WITNESS: Corporal George Lamont Jones.

12 MR. MOOMAU: Can I approach the clerk, Your Honor?

13 THE COURT: Please.

14 THE DEPUTY CLERK: State's Exhibit 4 marked for  
15 identification.

16 (State's Exhibit No. 4 was  
17 marked for identification.)

18 **DIRECT EXAMINATION**

19 BY MR. MOOMAU:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. What's your occupation?

23 A. A Prince George's County police officer.

24 Q. And where are you stationed?

25 A. District IV, Oxon Hill.



1 Q. How long have you been a member of the Prince  
2 George's County Police Department?

3 A. Nine and a half years now.

4 Q. Were you working the evening of January 24, 2007?

5 A. Yes, sir.

6 Q. And at any time did you get a call or receive some  
7 type of notification to respond to 1513 Shellford Lane in  
8 Accokeek?

9 A. Yes, sir.

10 Q. Do you know the approximate time you got that call?

11 A. Not the approximate time that I got it, no.

12 Q. Now, how do those calls work? I guess that's like  
13 a 911 call is made in and then the dispatch comes in and you  
14 all are notified?

15 A. Yes, sir.

16 Q. Are you familiar with CAD reports for the county  
17 police department?

18 A. Yes, sir.

19 Q. I'd like to show you a document -- and what is a  
20 CAD report?

21 A. You got computers in your cars, and dispatch can  
22 dispatch it through your cars and you can read it off of  
23 that.

24 Q. And does the CAD just show, like, the times certain  
25 things were done, like the initial call and then action that

1 was taken after that?

2 A. Yes, sir.

3 Q. I'd like to show you what's been marked as State's  
4 Exhibit Number 4. For the record, this is the calls for  
5 service/inquiry/response in regard to this case. Can you  
6 tell us, from looking at that, the call initiation time?

7 A. 1948 hours, initiation time.

8 Q. So that would have been the time the 911 call was  
9 made?

10 A. Yes, sir.

11 Q. And 1948, that's military time. 7:48 p.m. being --

12 A. Yes. Almost eight o'clock.

13 Q. So, approximately, that was close to the time that  
14 you received a call to go to that location.

15 A. Yes, sir.

16 Q. You went there, correct?

17 A. Yes, sir.

18 Q. And what county and state is that address in?

19 A. Accokeek, Maryland.

20 Q. County?

21 A. Yeah, P. G. County, yes.

22 Q. And just for the record, P. G. means?

23 A. Prince George's County.

24 Q. Did you observe anything outside when you arrived  
25 there?

1           A.    Just a truck outside and Mr. Washington's wife was  
2 standing outside.

3           Q.    And what did you do?

4           A.    I asked her where was her husband, and she advised  
5 me he was inside.

6           Q.    Now, were you the first police officer to arrive  
7 there?

8           A.    Yes, sir.

9           Q.    What did you do when you went in?

10          A.    I --

11          Q.    Well, what did you see when you went inside?

12          A.    Oh.  When I went inside I saw Mr. Clark and  
13 Mr. White upstairs, on each end of the foyer upstairs.

14          Q.    Standing up?  Laying down?

15          A.    No, they were laying down on each side.

16          Q.    Did you notice any injuries to them?

17          A.    At the time I didn't, until I got closer.

18          Q.    And when did you notice the injuries?

19          A.    When I went upstairs, you could see that both was  
20 shot and both was saying they was shot.

21          Q.    Were they saying anything else, making any noises?

22          A.    Just saying I need some help --

23               MR STARR:  Objection, Your Honor.  Hearsay.

24               THE COURT:  Why don't you approach again.

25               (Counsel approached the bench and the following

1           ensued.)

2           THE COURT: Are we going toward another --

3           MR. MOOMAU: There is a hearsay issue with this  
4 witness.

5           THE COURT: Okay.

6           MR. MOOMAU: He is going to -- I'm going to ask him  
7 was there ever any conversation about what they were doing  
8 there. He was the first responding officer. He would say  
9 that both of them told him that they were delivering  
10 furniture.

11           MR. STARR: It's just a question and answer  
12 out-of-court statement offered for the truth. It is raw  
13 hearsay.

14           MR. MOOMAU: Excited utterance, both of them laying  
15 there with gunshot wounds, same theory as under the Robert  
16 White statement.

17           THE COURT: And that's the only thing he's going to  
18 say?

19           MR. MOOMAU: Yes, that's the only hearsay that will  
20 be elicited from this witness.

21           THE COURT: And how does that fall within the  
22 excited utterance exception?

23           MR. STARR: Your Honor, again, it's question and  
24 answer, for one. So it's not a spontaneous utterance. It's  
25 elicited for questioning. And it doesn't relate sufficiently

1 to the startling event, which is the shooting. They were  
2 saying they were there delivering furniture. I mean, there's  
3 nothing out of the ordinary about delivering furniture.

4 That's not the startling event.

5 THE COURT: I'm sorry?

6 MR STARR: That's not the startling event.

7 THE COURT: Well, based on my earlier decision and  
8 the time frame against this matter, he was the first  
9 responder to the call, the 911 made at 7:48, and his  
10 response, initially what he saw within a short period of  
11 time, I believe, again from my earlier rulings, would fall  
12 within the excited utterance exception. Weighing what he  
13 said and the probative value of it, I believe, outweighs any  
14 prejudicial impact it may have on the jury, and I believe it  
15 properly falls within that exception.

16 MR. MOOMAU: Thank you.

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

19 BY MR. MOOMAU:

20 Q. Sir, I asked you if they were making any noises or  
21 saying anything. Were they?

22 A. Yes. They needed some help, you know.

23 Q. Did they ever say anything about what they were  
24 doing there?

25 A. Later on, while I was there, they advised me they

1 were there to deliver furniture.

2 Q. Now, when you came in the house -- you had a  
3 weapon, correct? You had your side arm?

4 A. Yes.

5 Q. Did you draw that?

6 A. When I went into the house, I had it drawn because  
7 I didn't know what I was walking into, yes.

8 Q. And when you went upstairs, did you have it drawn?

9 A. Not when I saw Mr. Washington. It seemed like  
10 everything was, you know, calm, so no.

11 Q. Did Mr. Washington have a weapon drawn?

12 A. I don't know. No.

13 Q. Excuse me?

14 A. No; no, sir.

15 Q. You had some handcuffs, correct?

16 A. Yes.

17 Q. And what did you do with those handcuffs?

18 A. Well, I handcuffed one of the persons there.

19 Q. Which one of them did you handcuff?

20 A. I believe Mr. Clark.

21 Q. So he was gunshot and you handcuffed him.

22 A. Because it was two people there, so you can't watch  
23 both. So I handcuffed one so I could go stand by the other  
24 until some more officers got there.

25 Q. And you handcuffed him because?

1 A. He was the closest one to me at the time.

2 Q. But they were both shot.

3 A. I seen people get shot and get up and do things, so  
4 that's why I handcuffed him, sir.

5 Q. But you didn't handcuff Mr. Washington; did you?

6 A. No, I didn't.

7 Q. Did Mr. Washington have a badge on?

8 A. I'm not sure. I think he did but I'm not sure. I  
9 can't really recall if he had his badge on or not.

10 Q. Do you know, later, if he had his badge on?

11 A. I remember seeing it later, yes.

12 Q. Now, how long were you at the home?

13 A. From the whole time until the end?

14 Q. Yes. I guess from when you got there until when  
15 you left. Because you kept the scene secured; didn't you?

16 A. About five in the morning.

17 Q. So you were there --

18 A. I got there a little after eight until about five  
19 in the morning.

20 Q. About seven hours?

21 A. Yes.

22 Q. And at some point Mr. Washington left; didn't he?

23 A. He probably did. Because I was focussing on the  
24 door at the time, so I'm not sure.

25 Q. At some point later you saw him with a badge on?

1           A.    Later on.  Like I said, he could have had it on  
2 earlier.  I just didn't notice it then, but I noticed it  
3 later on that he had the badge on.

4           Q.    Was he upstairs or downstairs?

5           A.    I guess he was walking through the house with a  
6 couple of the FOP people that arrived on the scene.

7           Q.    And FOP is?

8           A.    Fraternal Order of Police.

9           Q.    Were you there when any members of the emergency  
10 medical personnel arrived?

11          A.    Yes, sir.

12          Q.    And who else was in the house besides yourself and  
13 Mr. Washington -- well, was anyone else there besides  
14 yourself?  Any police officers or emergency medical people  
15 out there?

16          A.    Corporal Delancy was there.  I think he was the  
17 second officer on the scene, Corporal Delancy.  As far as  
18 when the person -- when the fire department got there, that  
19 was just Delancy and myself was upstairs.

20          Q.    So Delancy and -- who was the other officer?

21          A.    A female officer, Corporal Norton came in, but I  
22 don't think she came upstairs though.

23          Q.    But you think Delancy was there before the  
24 emergency squad came?

25          A.    Yes.



1 Q. So it would have been you, Delancy --

2 MR. STARR: Your Honor, I object to the leading.

3 THE COURT: Overruled.

4 BY MR. MOOMAU:

5 Q. When the emergency medical personnel got there,  
6 you, Delancy, anyone else?

7 A. Just Mr. Washington.

8 Q. And then the two persons that were shot?

9 A. Yes.

10 Q. Now, at some point did you take the handcuffs off  
11 Brandon Clark?

12 A. Yes, sir.

13 Q. When was that?

14 A. When fire board arrived and they started working on  
15 him, and I asked them if they needed me to take the handcuffs  
16 off him and they said yes. So I took the handcuffs off him.

17 Q. When you came up the stairs, was he leaning against  
18 the wall? Sitting down? Laying on his back? Do you  
19 remember?

20 A. He was sitting up, leaning on an elbow.

21 Q. And you put the cuffs on him how? I mean did you  
22 put them behind his back and have to roll him over?

23 A. Basically, yes.

24 Q. Were you present when the persons that were shot,  
25 Brandon Clark and Robert White, were taken out of the house?

1 A. Yes.

2 Q. Were you trying to keep the scene secure, even with  
3 all the medical people around?

4 A. Yes, sir.

5 Q. Tell me what you mean -- when I say "keeping a  
6 scene secure," what does that mean in police language?

7 A. Trying to keep any unnecessary people from coming  
8 into the house, stepping on any of the evidence, the shell  
9 casings and stuff like that.

10 Q. Like trying to keep them in the place they are?

11 A. Trying to, yes.

12 Q. Now, was it a big location upstairs? Kind of a  
13 narrow location?

14 A. It was kind of big, yes, sir.

15 Q. Does, sometimes, scene security give way to trying  
16 to save lives?

17 A. Yes, sir.

18 Q. I mean, is that pretty much the first priority?

19 MR STARR: Objection, Your Honor. Leading.

20 THE COURT: Could you rephrase the question.

21 BY MR. MOOMAU:

22 Q. What are the priorities when you come to a scene  
23 and people are shot?

24 A. You try to make it safe for yourself, is number  
25 one. You get help to victims or even suspects. You get help

1 as soon as you can. And you try to preserve what evidence  
2 that you have.

3 Q. Were you present when the two persons that were  
4 shot were taken out of the house, taken out of the residence?

5 A. Yes, sir.

6 Q. Both of them?

7 A. Yes, sir.

8 Q. And at some point was there a piece of evidence  
9 that may have been moved?

10 A. Yes, sir.

11 Q. And what was that?

12 A. A shell casing.

13 Q. What did you see as far as that?

14 A. I really don't remember which individual they  
15 brought downstairs, but a shell casing fell off of the  
16 stretcher when they brought it down to the bottom of the  
17 steps.

18 Q. Did you hear it ping on the floor?

19 A. You kind of heard it.

20 Q. After that point did you try to keep it --

21 A. Yeah, we try to keep it down. I notified evidence  
22 that -- evidence had arrived. I told them about it.

23 MR. MOOMAU: That's all the questions I have.

24 Thank you, sir.

25 THE COURT: Cross-examination?

1 MR. STARR: Yes, Your Honor.

2 **CROSS-EXAMINATION**

3 BY MR. STARR:

4 Q. Corporal Jones, good afternoon.

5 A. Good afternoon, sir.

6 Q. Now, you were the first police officer to arrive at  
7 the scene of the shooting, correct?

8 A. Yes, sir.

9 Q. And when you arrived at the scene of the shooting,  
10 there was a woman out in front of the house, correct?

11 A. Yes, sir.

12 Q. And you later learned that that woman was  
13 Mr. Washington's wife, correct?

14 A. Yes, sir.

15 Q. And when you saw Mr. Washington's wife out in front  
16 of the house, it's fair to say that she was very upset,  
17 correct?

18 A. Yes, sir.

19 Q. It's fair to say that she was crying, correct?

20 A. Yes, sir.

21 Q. And would it be fair to say that she was very  
22 excited?

23 MR. MOOMAU: Objection.

24 THE COURT: Grounds?

25 MR. MOOMAU: Can we approach?

1 THE COURT: Sure.

2 (Counsel approached the bench and the following  
3 ensued.)

4 MR. MOOMAU: Goes beyond the scope of the direct,  
5 for one thing.

6 The second thing is they're trying to make the same  
7 conclusions that Mr. Wright was trying to draw the same  
8 impression -- Mr. Wright was trying to draw with Mr. Rascoe,  
9 the agitation.

10 THE COURT: Of who?

11 MR. MOOMAU: Mr. Wright tried to bring it out with  
12 Rascoe. They're trying to get the same type of emotion  
13 testimony from this witness.

14 THE COURT: About whom?

15 MR. MOOMAU: Mrs. Washington.

16 THE COURT: No, I mean -- what is it that you're --

17 MR STARR: Here's where we are. First of all, Your  
18 Honor, I would say there was -- forgive me for being a little  
19 flip -- but there was cross-examination from Mr. Moomau about  
20 the fact that this witness placed Mr. Clark in handcuffs.  
21 I'm just going to make a proffer to the Judge as to what I'm  
22 going to do.

23 There was cross-examination about this witness  
24 placed one of these two men -- or there was testimony  
25 elicited by the State about the fact that this witness placed

1 one of two men in handcuffs and it was done in a critical  
2 fashion. That is one mechanism.

3 But there are several others through which a  
4 statement made by Mrs. Washington out in front of the house  
5 is admissible. It is an excited utterance. This witness has  
6 characterized her as hysterical and said --

7 THE COURT: What is the statement?

8 MR. STARR: "They were beating my husband." She  
9 points the first officer on the scene into the house and  
10 says, "they were beating my husband." That's one of the  
11 reasons he handcuffed the man. It's independently  
12 admissible, but it's also relevant for that purpose.

13 And when he spoke to Mr. Washington, Mr. Washington  
14 said that he asked them to leave the house and they refused  
15 and they assaulted him and that's why he fired his gun.

16 THE COURT: We're not there yet. We're only on  
17 what you're eliciting, a statement this officer may or may  
18 not have heard from Mrs. Washington. So your grounds would  
19 be what?

20 MR. MOOMAU: Projecting to that statement?

21 THE COURT: Yes.

22 MR. WRIGHT: Mr. Moomau's grounds were based on one  
23 officer stating that she was excited without the ability to  
24 determine whether she was excited.

25 MR. MOOMAU: There's been no grounds laid as to

1 what she saw and didn't see yet.

2 MR STARR: He said he was the first officer on the  
3 scene and she was crying out front.

4 MR. MOOMAU: There's been no evidence to what she  
5 saw.

6 THE COURT: What are you saying why it would not be  
7 an excited utterance?

8 MR. MOOMAU: There's no evidence as to what she  
9 saw, at least as of this stage. He comes in and sees her  
10 outside. There's no foundation as to what she saw. She's  
11 excited. We don't know the startling events she saw at this  
12 stage.

13 MR STARR: Your Honor, we all know that she called  
14 911. We know that she saw the incident. We all know that.  
15 He's the first officer on the scene, and she's out front on  
16 the scene, in this man's words, hysterical and says they were  
17 beating my husband.

18 MR. MOOMAU: We don't intend to introduce her 911  
19 call unless it's in cross-examination.

20 THE COURT: When I made my decisions with regard to  
21 the excited utterances -- show me a case where it says that  
22 an excited utterance isn't an excited utterance on the basis  
23 of whether or not anybody has yet provided testimony about  
24 what they observed or didn't observe.

25 MR. MOOMAU: I thought to get it in you have to lay

1 the foundation.

2 THE COURT: And the foundation of?

3 MR. MOOMAU: The startling event that she observed.

4 THE COURT: That's true. Sustained. Right now  
5 there is no --

6 MR. STARR: But it also goes to -- first of all, I  
7 would say to the Court this. There's a couple of ways we can  
8 do it. We can call him in our case and he can give this  
9 testimony, or we can do it now while he's here.

10 But the other thing I would say, it is relevant to  
11 his state of mind as to why he placed this man in handcuffs,  
12 and I would object to the Court to giving an instruction that  
13 it's only to be considered for that reason at this stage.  
14 The State has elicited --

15 THE COURT: Relevant to whose state of mind?

16 MR STARR: This witness. It explains why this  
17 witness did what he did. At that point it's not offered for  
18 truth; it's offered to explain why he put the man in  
19 handcuffs, which the State has elicited.

20 THE COURT: Well, at this point in time the officer  
21 has not testified to any observations that he saw or heard as  
22 to what she told him. So to me, at this point in time with  
23 this witness, there has been no probative -- no testimony and  
24 no indication of what startling event caused Mrs. Washington  
25 to make it and, therefore, I don't think it comes in.



1           MR. STARR: Your Honor, the testimony has been --  
2 first of all, we have the time. We have that he is the first  
3 officer on the scene. We have -- we all know that she saw  
4 it, and if the Court --

5           THE COURT: We don't know anything because I don't  
6 know. There is no evidence before me at this time. I have  
7 what I heard in opening statement, but I don't have in front  
8 of me any evidence that says that she saw anything for me to  
9 be able to consider it as true hearsay exception based on  
10 excited utterance.

11           MR STARR: Well, we'll call the witness in our case  
12 and do it that way.

13           THE COURT: I'm not precluding you from doing that.  
14 I'm saying at this point it seems premature.

15           MR. STARR: There's two things. That's one issue,  
16 the excited utterance.

17           The other issue is whether it is being admitted for  
18 truth and it's not. It's a separate impact on this witness.  
19 He doesn't have to know whether she saw anything or not, but  
20 the State has put at issue why this man placed Mr. Clark into  
21 handcuffs and this explains why.

22           I can proffer to the Court, if you're concerned  
23 about any prejudice whatsoever, that we will elicit this  
24 statement through this witness and through Mrs. Washington on  
25 the stand. So there's not going to be any prejudicial

1 impact. But I need to explain in the cross-examination, to  
2 respond to the direct, that there's a reason why he did what  
3 he did. It's because he got there -- he didn't just start  
4 handcuffing people. He talked to two people. He talked to  
5 Mrs. Washington and he talked to Mr. Washington and then he  
6 did that.

7 THE COURT: Well, at this point in time I think --  
8 let me think this one through.

9 MR. STARR: The statements of impact on the  
10 listener clearly makes it nonhearsay because it's no longer  
11 offered for the truth. I don't object to instructing the  
12 jury, Your Honor, that they can't consider it for truth, and  
13 then we'll revisit it later when it's admitted. But the  
14 State has put this at issue.

15 MR. MOOMAU: If they want to recall him later,  
16 after the foundation has been laid, fine. We will let him  
17 stay on call.

18 MR STARR: Well, then we're left, at the end of  
19 this examination, with a direct that I have not been able to  
20 respond to on cross for reasons that have nothing to do with  
21 hearsay. This is nonhearsay for this witness.

22 THE COURT: I would think you could do it by asking  
23 this gentleman, just yes or no, did Mrs. Washington say  
24 anything to you? Yes. As a result of what she said to you,  
25 what did you do once inside the home? And then she's

1 later -- you're proffering that she's later going to take the  
2 stand and you can elicit what that was.

3 MR. STARR: But, Your Honor, it's left with no  
4 probative force. I mean I do expect to call these witnesses  
5 but I don't know -- we didn't put this at issue; the State  
6 has put this at issue. I'm responding, on cross, to direct  
7 examination. That's what I'm doing. It's not about the  
8 defense's case in chief at this point.

9 In the State's case they've raised an issue on  
10 direct, and I just want to explain why the man did what he  
11 did on cross. If I say did you talk to somebody, okay, based  
12 on that, what did you do, it doesn't have any force.

13 The State has clearly created an impression that it  
14 wasn't right to handcuff Brandon Clark and they've made this  
15 an issue. The man is on the stand right now. I'm not  
16 offering it for the truth at this point. I don't object to  
17 the instruction --

18 THE COURT: The instruction when? Later?

19 MR. STARR: You can give it now if you want.

20 THE COURT: What instruction would I give?

21 MR. STARR: That the words of Mrs. Washington and  
22 Mr. Washington, when we get to that point, are not being  
23 offered for the truth; they're only to consider their impact  
24 on this witness and how they may have affected his actions.

25 THE COURT: Well, I would give an instruction at a

1 later period of time, when instructions are given.

2 MR. STARR: Well, that's fine, but I would still  
3 need to elicit the testimony at this point.

4 THE COURT: I don't think it's available under the  
5 excited utterance exception. But if you're talking about  
6 present sense impression of this witness and how he responded  
7 accordingly, then I rule that you're able to do that.

8 (Counsel returned to trial tables and the following  
9 ensued.)

10 BY MR. STARR:

11 Q. Now, before that little break, Corporal Jones, I  
12 was asking you questions about the woman that you  
13 encountered, that you later learned to be Mr. Washington's  
14 wife, and when you got to the scene, you had said that she  
15 was standing in front of the house, right?

16 A. Yes.

17 Q. And when you saw Mr. Washington's wife standing in  
18 front of the house, she was very upset, correct?

19 A. Correct.

20 Q. And you had said that she was crying, correct?

21 A. Correct.

22 Q. And you could tell, based on her tone of voice, it  
23 was not a normal tone of voice, correct?

24 A. Correct.

25 Q. And one of the things that happened when you

1 encountered Mr. Washington's wife in front of the house is  
2 that she told you that her husband was --

3 MR. MOOMAU: Objection.

4 THE COURT: Sustained.

5 BY MR. STARR:

6 Q. When you encountered Mrs. Washington in front of  
7 the house, she told you --

8 MR. MOOMAU: Objection.

9 MR. STARR: May we approach?

10 THE COURT: Okay.

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

13 THE COURT: Just ask the question, what, if  
14 anything, did she say to you. What did she say to you?

15 MR. STARR: Is there a reason why I can't ask a  
16 leading question on cross-examination?

17 THE COURT: No, there's no reason, unless you  
18 are -- are you going to suggest the answer to him?

19 MR STARR: I was going to ask a leading question,  
20 isn't it true that she said to you --

21 THE COURT: You can't say "isn't it true what she  
22 said to you." Why don't you ask him what she said?

23 MR. MOOMAU: Your Honor, this is going way beyond  
24 the scope of the direct. This is basically --

25 THE COURT: No, it isn't. You asked this witness

1 what he did with regard to handcuffs and, clearly, you  
2 elicited a lot of questions about the handcuffs and the fact  
3 that he had to roll him over and the fact that he handcuffed  
4 him behind his back with, apparently, no other questions  
5 about that. So I believe they have an ability to ask that  
6 question.

7 MR. MOOMAU: Okay.

8 (Counsel returned to trial tables and the following  
9 ensued.)

10 BY MR. STARR:

11 Q. Corporal Jones, when you encountered  
12 Mr. Washington's wife in front of their home, isn't it true  
13 that she said to you they were beating my husband?

14 A. That's correct, yes.

15 Q. And you had that information before you went in the  
16 house, correct?

17 A. Correct.

18 Q. And there came a time when you also spoke to  
19 Mr. Washington about what had happened, correct?

20 A. Correct.

21 Q. And Mr. Washington also told you what had happened,  
22 correct?

23 A. Correct.

24 Q. And isn't it true that Mr. Washington --

25 MR. MOOMAU: Objection.

1 THE COURT: Grounds?

2 MR. MOOMAU: Out-of-court statement, hearsay.

3 THE COURT: Overruled.

4 BY MR. STARR:

5 Q. Isn't it true that Mr. Washington told you that he  
6 had been assaulted by the two men in the house?

7 A. That's correct.

8 Q. And isn't it true that Mr. Washington told you that  
9 that was the reason he had shot them, because they were  
10 assaulting him?

11 A. Correct.

12 Q. And that information is part of the reason why you  
13 placed Mr. Clark in handcuffs, correct?

14 A. That's correct.

15 Q. Because you have an obligation, as the first  
16 officer arriving at the scene, to secure the scene, correct?

17 A. Correct.

18 Q. And the procedure was to place, as you understood  
19 the procedure, was to place one of those two men in  
20 handcuffs, correct?

21 A. Correct.

22 Q. So you could watch the other one, correct?

23 A. Correct.

24 Q. And that's a procedure that exists to ensure safety  
25 at a crime scene, correct?

1 A. Correct.

2 Q. Now, when you saw -- and just to be clear, neither  
3 of these two men was handcuffed before you arrived, right?

4 A. No.

5 Q. No meaning they were not?

6 A. No, they were not handcuffed, no.

7 Q. And when you encountered Mr. Washington on this  
8 evening at his home, as the first officer that arrived, you  
9 saw that his lip was bleeding, correct?

10 A. Correct.

11 MR STARR: No more questions.

12 **REDIRECT EXAMINATION**

13 BY MR. MOOMAU:

14 Q. The Mr. Washington you're referring to, is that  
15 person present in the courtroom?

16 A. Yes, sir.

17 Q. Would you identify him?

18 A. Sitting right over there, burgundy tie.

19 THE COURT: The record will reflect that the  
20 witness has identified the defendant.

21 BY MR. MOOMAU:

22 Q. Now, on that particular night, you handcuffed these  
23 two gunshot victims based on what Mr. Washington told you?

24 A. No. I handcuffed only one.

25 Q. Okay, one of them.



1 A. Yes.

2 Q. Based on what he told you?

3 A. Not based on what he told me, but it had a lot to  
4 do with me trying to make the scene safe for myself and  
5 everyone there, yes.

6 Q. So did the other officers have handcuffs?

7 A. Yes, yes, sir.

8 Q. For them Brandon Clark was handcuffed?

9 A. At that time, yes.

10 Q. Now, were you present when pictures were taken of  
11 Mr. Washington later?

12 A. No, sir.

13 Q. You weren't?

14 A. I mean, I was probably there, but I didn't see the  
15 pictures taken.

16 MR. MOOMAU: That's all the questions I have.

17 Thank you.

18 MR. STARR: Nothing further.

19 THE COURT: Thank you, officer. Appreciate it.

20 Mr. State's attorney, do we have a short witness,  
21 or is there going to be --

22 MR. MOOMAU: Is there going to be a short witness?

23 THE COURT: Yes.

24 MR. MOOMAU: No. The next witness will be a long  
25 witness.

1 THE COURT: Do you think it's an appropriate time  
2 to break for the lunch recess?

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, the next witness we are  
8 going to call is Robert White. But when I think about it, I  
9 could have -- there might be a couple short ones out here  
10 that, just for witness accommodation, I could get them on and  
11 let them go. The rescue squad workers.

12 THE COURT: Who is going to relay any statements  
13 they heard or --

14 MR. MOOMAU: No. There isn't going to be any  
15 hearsay.

16 THE COURT: Just as to the functions they performed  
17 or what they observed?

18 MR. MOOMAU: Yeah. I mean, one of them is going to  
19 deal with which stretcher the shell casing fell off of, first  
20 one down or second one down.

21 MR. STARR: I don't expect lengthy cross.

22 THE COURT: Alright.

23 (Counsel returned to trial tables and the following  
24 ensued.)

25 MR. MOOMAU: Your Honor, may I be excused to speak

1 to my witness coordinator?

2 THE COURT: Yes.

3 MR. MOOMAU: Probably ought to take the break now,  
4 Your Honor.

5 THE COURT: Okay. Alright, ladies and gentlemen,  
6 we're going to break for the noon luncheon recess.

7 You'll hear me say this repeatedly at any time that  
8 we break, but you are admonished that you are not able to  
9 speak to anyone about anything that you may have heard during  
10 these proceedings or during the jury selection process.  
11 You're not allowed to discuss the case even amongst  
12 yourselves. You are not to respond to any questions that may  
13 be directed to you by anyone, other than in this courtroom  
14 during these proceedings. If you are out at the noon  
15 luncheon recess and were to see any of the parties, witnesses  
16 or people who may be involved in this case, remove yourself  
17 from them so that you do not overhear anything that they may  
18 be talking about.

19 With those admonitions, and now you know where the  
20 restaurants are in Upper Marlboro, the three or four that  
21 there are, we will see you back at 1:30.

22 Sheila, do you want them in --

23 THE BAILIFF: The main jury lounge.

24 THE COURT: The main jury lounge, and then Sheila  
25 will bring you back promptly.

1 (The jury was excused from the courtroom at  
2 11:50 a.m.)

3 THE COURT: Is there anything we need to do before  
4 1:30?

5 MR. MOOMAU: No, Your Honor.

6 MR. COHEN: Nothing for the defense, Your Honor.

7 (At 11:50 a.m. a luncheon recess was taken.)

8 -oOo-

9 **AFTERNOON SESSION**

10 1:30 p.m.

11 THE DEPUTY CLERK: Criminal trial 07-1664X, State  
12 of Maryland versus Keith A. Washington.

13 MR. MOOMAU: William Moomau present for the State,  
14 Your Honor.

15 MR. WRIGHT: Joseph Wright for the State.

16 MS. ZANZUCCHI: Raemarie Zanzucchi for the State.

17 MR. COHEN: Good afternoon, Your Honor. Vincent H.  
18 Cohen for Mr. Washington.

19 MR. STARR: And Michael Starr for Mr. Washington,  
20 who is present.

21 MR. MOOMAU: Your Honor, there is going to be a  
22 hearsay issue with the testimony of Robert white. I would  
23 just like to approach and get that resolved now so we don't  
24 have to deal with it while the jury is here.

25 THE COURT: Okay.

1           (Counsel approached the bench and the following  
2           ensued.)

3           MR. MOOMAU: Robert White, I'm proffering this, is  
4 going to testify that, when he was in the Marlo truck out in  
5 front of Washington's home, Brandon Clark went to the door,  
6 met with Washington, and Clark was able to see -- or White  
7 was able to see that. And then he came back, Clark came back  
8 to the truck and said something to the effect of, man, this  
9 guy is looking for a fight.

10           Our position -- of course, Brandon Clark can't be  
11 here to testify. He's unavailable. Our position is that  
12 it's a present sense impression. It was Brandon Clark's  
13 impression of Mr. Washington immediately after having contact  
14 with him, immediately after perceiving him and meeting with  
15 him.

16           MR. STARR: Your Honor, we object to it. First of  
17 all, there won't be cross-examination of Brandon Clark. So  
18 it is a statement that Robert White is allowed to make  
19 without any kind of cross-examination.

20           And there is two relevant layers of hearsay. First  
21 of all, what the statement actually is is it's an  
22 interpretation -- it comes only from Robert White. There's  
23 no corroboration of it. But it's an interpretation -- it's  
24 Brandon Clark's interpretation, his opinion about  
25 Mr. Washington's state of mind, and that is not admissible.

1           They argue it's a present sense impression, but  
2 it's really an opinion about an interaction about which we  
3 know nothing, and that's not admissible. And then relaying  
4 that to Mr. White doesn't make it admissible either.

5           There's a case, Your Honor, that we've located,  
6 actually, that we think is on point. It's called University  
7 of Maryland Medical System Corporation versus Mallory. It's  
8 795 A 2nd 107. It's factually similar in that it involves  
9 emergency personnel, and technician-1 testifies that they saw  
10 technician-B hold up the whole bottle and communicate the  
11 patient must have swallowed this. Technician-B, the  
12 declarant, was not at the trial.

13           The appellate court ruled that that statement was  
14 properly excluded because it was technician-B's opinion, and  
15 just the fact that he'd said it to someone else didn't make  
16 it admissible through any kind of hearsay exception.

17           So we don't know anything about what the  
18 interaction was that led him to form this opinion. It comes  
19 only from Robert White. It's not corroborated by anything,  
20 and Brandon Clark can't be cross-examined.

21           There's multiple layers of hearsay, and it's not a  
22 present sense impression. It's just a statement of someone  
23 else's state of mind, and he's not qualified to render that  
24 opinion. And the fact that he said it to someone else  
25 doesn't make it admissible.

1 MR. MOOMAU: Your Honor, the case that they're  
2 referring to --

3 THE COURT: Ladies and gentlemen, I need you not to  
4 talk in the courtroom, please. We can't hear what we're  
5 doing. There's a little bit noise refraction because of all  
6 of the microphones. We're having trouble with it. Thank  
7 you.

8 MR. MOOMAU: The case they're referring to is an  
9 out-of-court statement by an emergency medical worker that  
10 said the patient or the person they were working on may have  
11 swallowed. The person that they couldn't find that made that  
12 statement didn't even know for sure. And a present sense  
13 impression can be an opinion.

14 The case that, I guess, approved present sense  
15 impressions in Maryland, Booth versus State, deals  
16 specifically with that issue. It says it is absurd to insist  
17 that a statement must not be phrased in terms of inference or  
18 opinion, because most of the times people -- when they are  
19 talking about something, there is an opinion mixed in there  
20 with it.

21 This was Brandon Clark's impression of the  
22 defendant immediately after he dealt with him; this guy is  
23 looking for a fight.

24 THE COURT: What is the exact statement that he  
25 made?

1           MR. MOOMAU: I'm going to say it as close as  
2 possible as I can. "Man, this guy is looking for a fight."  
3 That's what Brandon Clark said to Robert White when he came  
4 back to the truck, immediately after meeting with  
5 Mr. Washington at the front of the house.

6           THE COURT: I'd like to see that Mallory case, if  
7 you have it.

8           MR. COHEN: I apologize. We actually did the  
9 research over the lunch break, and it was sent to us on a  
10 blackberry.

11          MR. MOOMAU: We can get you a copy of it.

12          MR. STARR: We don't have offices in the  
13 courthouse, Your Honor.

14          MR. COHEN: Or in the State.

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

17          (Ms. Zanzucchi hands document to the Court.)

18          THE COURT: Just give me a moment to read it, and  
19 then I will have you come up.

20          Would you gentlemen like to approach the bench.

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

23          MR. STARR: Before the Court rules, there were a  
24 couple of things. I did want to put on the record the  
25 language from this case, the University of Maryland Medical



1 System Corporation case. There is certain language in here  
2 that I think is particularly pertinent to this issue.

3 It says at issue is Reinhart's statement that  
4 someone, either a paramedic or firefighter, held up a bottle  
5 and implied that Jamal may have ingested its contents. The  
6 exception for present sense impressions does not apply here  
7 because it is the observations of that unknown rescuer, as he  
8 or she was looking at the bottle, that Reinhart is relying  
9 and not her own personal observations of the bottle.

10 That is precisely what is happening here. It is  
11 Brandon Clark's observations of Mr. Washington, and not  
12 Robert White's observations of Mr. Washington, that he will  
13 be testifying about.

14 Also, Your Honor, there is a sixth amendment  
15 confrontation problem because Brandon Clark, obviously, will  
16 not be available for cross-examination.

17 I think there's a reliability issue here, and  
18 there's a doctrine in the Maryland law that talks about a  
19 friendly ear; meaning, when the witness, who is going to  
20 provide the testimony at trial, is someone who is biased or  
21 is aligned with the declarant and it's a favorable statement,  
22 it raises a reliability question.

23 That's what we have here. Brandon Clark and Robert  
24 White are cousins. Robert White got this job for Mr. Clark,  
25 and this is an uncorroborated statement that comes only from

1 Robert White, and he's relaying the opinion or the impression  
2 of the observation of Brandon Clark and not his own.

3           Additionally, Your Honor, it is unfairly  
4 prejudicial for this statement of Mr. Washington's state of  
5 mind to be admitted when we are powerless, through  
6 cross-examination, to challenge it or explore it or even get  
7 at what the basis for the statement is. We have absolutely  
8 no ability to do that here.

9           So it's highly prejudicial and unfairly prejudicial  
10 for a witness to be allowed to come in and say that someone  
11 else told him what someone else's state of mind was, what  
12 Mr. Washington's state of mind was. We can't cross-examine  
13 that person, and the Maryland Medical System case, that we  
14 have provided to the Court, is right on point.

15           MR. MOOMAU: I don't know of any friendly ear  
16 exception to the exception of the hearsay rule in Maryland.

17           Also, in this particular case that they're citing,  
18 one, they don't know who the unknown person was that made the  
19 statement; two, it wasn't even a statement. This person may  
20 have ingested what was in the bottle and, given those  
21 circumstances, yeah, I can see why it couldn't come in. But  
22 in this particular case we know who the declarant was and he  
23 spoke to Robert White immediately after.

24           As far as the confrontation, it isn't a  
25 testimonial-type statement. It wasn't given to be used in

1 court. It's what Brandon Clark told Robert White, and it  
2 should be admissible as a present sense impression.

3 MR. STARR: But Mr. Moomau says doesn't get at what  
4 that case is really talking about, Your Honor. What the case  
5 is talking about is one witness, through the present sense  
6 impression, testifying to the impressions of another witness.  
7 That's what the case is saying. That's the case that we put  
8 on the record, and that's what the case is saying cannot  
9 happen through this exception.

10 THE COURT: Well, I read the Maryland Medical  
11 System Corporation case that you kindly provided to me, and  
12 I've read Booth versus State, 306 Maryland 313, and Jones  
13 versus State, 311 Md. 23. The Maryland Medical System  
14 Corporation case is 143 Md. 327.

15 I believe that the Maryland Medical System's case  
16 is in opposite to the setting that we have in this particular  
17 matter provided by Maryland Rule 5-803(b) (1), which gives  
18 present sense impression as a statement describing or  
19 explaining an event or condition, even while the declarant  
20 was perceiving the event or condition. This rule seems to be  
21 entirely consistent with the case law, and the declarant,  
22 without any motivation to falsify, describes an event he is  
23 observing at that very moment or shortly thereafter.

24 That appears to be the setting here. The State is  
25 proffering that that statement to be made was prior to any

1 shooting that later occurred in the house. I believe that  
2 this falls squarely within the confines of Booth versus  
3 State, in 306 Maryland, as a present sense impression  
4 statement made by an unavailable declarant.

5 In the Maryland Medical System Corporation case,  
6 the facts are not precisely as they occur in the factual  
7 setting that is present, as I understand it, in this case,  
8 and we'll see shortly. Presuming that that statement is  
9 prior to anything -- the shooting allegedly occurred in the  
10 house, I believe this is admissible.

11 I have weighed the impact of that statement, in  
12 terms of the probative value of it, balancing it against the  
13 possible prejudicial impact that it may have on the jury, and  
14 I find that the probative value far outweighs the prejudicial  
15 impact of this.

16 MR STARR: Your Honor, I just would say that, as  
17 far as the reliability and the timing of the statement --  
18 because the Court addressed that -- the statement was not  
19 relayed to any authorities or to anyone until long after the  
20 motive to fabricate or falsify had attached to Mr. White, and  
21 Mr. White is the person who brings this statement to the  
22 attention of the authorities. And that, Your Honor, is  
23 another level of hearsay that requires a reliability finding,  
24 and the Court cannot find that that's reliable.

25 THE COURT: I don't believe it is. I believe it's

1 in opposite to the factual setting that you're presenting,  
2 and you are entitled, certainly, to cross-examine Mr. White  
3 about when that statement was made to him and all of the  
4 circumstances surrounding it, but I believe this is a classic  
5 present sense impression.

6 MR. STARR: And would we also be entitled to  
7 cross-examine him about the manner in which and the timing  
8 about when he brought that statement to light?

9 THE COURT: Well, that's certainly within your  
10 purview, sure.

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

13 THE COURT: Now are we ready to bring the jury  
14 back?

15 MR. MOOMAU: Yes.

16 (The jury returned to the courtroom at 2:00 p.m.)

17 THE COURT: Sorry for the delay, ladies and  
18 gentlemen.

19 Alright, Mr. State's Attorney.

20 MR. MOOMAU: The State would call Robert white.

21 THE DEPUTY CLERK: State's Exhibits 5 and 6 marked  
22 for identification.

23 (State's Exhibit Nos. 5 and 6 were  
24 marked for identification.)

25 **ROBERT WHITE,**

1 a witness produced on call of the State, having first been  
2 duly sworn, was examined and testified as follows:

3 THE DEPUTY CLERK: Please state and spell your  
4 first and last name for the record.

5 THE WITNESS: Robert White, R-o-b-e-r-t, W-h-i-t-e.

6 **DIRECT EXAMINATION**

7 BY MR. MOOMAU:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Mr. White, did you used to work as a furniture  
11 delivery person working for or delivering furniture for Marlo  
12 Furniture?

13 A. Yes, sir.

14 Q. And did you have that job on January 24, 2007?

15 A. Yes, sir.

16 Q. Did you work with anyone at that job?

17 A. Brandon Clark.

18 Q. Were you related to Brandon in any way?

19 A. He's my cousin.

20 Q. Just tell the jury a little bit about the job, how  
21 you and Brandon worked together.

22 A. Well, what we do is me and Brandon, he comes and  
23 picks me up in the morning. We go out. He usually talks to  
24 all of the customers. I usually sit in the truck until he  
25 comes back and let me know what to do. And, basically, he

1 hook up everything and I'm just like his helper. So if he  
2 hooking up something, I'm going out taking trash out or  
3 moving the next stuff up for the next stop.

4 Q. What about some of the items that you and Brandon  
5 would move in and out of homes?

6 A. Well, the beds, dressers, numerous stuff, cabinets.

7 Q. Would you ever have to take things downstairs?

8 A. Yes, sir.

9 Q. What about upstairs?

10 A. Upstairs, yes, sir.

11 Q. Who was the person that, I guess, actually employed  
12 you?

13 A. Mike Robinson.

14 Q. Did he have like a truck, a Marlo truck contract?

15 A. Yes, he had a contract with Marlo. I think he had  
16 two trucks.

17 Q. Who would load the truck in the morning?

18 A. Brandon and Mike would load the truck in the  
19 morning. Then Brandon would come by and pick me up. I would  
20 meet him on Martin Luther King Avenue, by the Popeye's, every  
21 morning at seven o'clock.

22 Q. Do you know what time -- did you ever go to the  
23 warehouse with Brandon?

24 A. The only time I go to the warehouse is when we  
25 coming back in. Because we got trash on the truck, we got

1 furniture that we bring back to the company that's being  
2 exchanged, and then either Mike will take me home or  
3 Brandon's mother will take me home.

4 Q. What hours would you normally work and what days?

5 A. I go to work at seven in the morning, when he pick  
6 me up, and sometimes it be eleven o'clock when we get back.  
7 Not every night, but some nights.

8 Q. How many deliveries would you make?

9 A. Fourteen to 15 a day.

10 Q. I want to get something out now, okay, as to what  
11 happened on January 24th. Did you end up going to the  
12 hospital that night?

13 A. Yes, sir, I did.

14 Q. What did you go to the hospital for?

15 A. Because I was shot four times.

16 Q. You know they tested your urine at the hospital?

17 A. Yes, sir.

18 Q. And you know it tested positive for cocaine.

19 A. Yes, sir.

20 Q. Did you use cocaine?

21 A. No, sir.

22 Q. Can you explain how it got in there?

23 A. I don't know.

24 Q. Now, I want to talk about January 24th. Do you  
25 remember everything about that day?



1 A. Not exactly everything, but I remember a lot.

2 Q. Is there a reason that you might not remember  
3 everything?

4 A. The time pass. It's been a year.

5 Q. Were you in a coma for a period of time, or was  
6 there a period after the 24th that you don't --

7 MR. STARR: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. MOOMAU:

10 Q. On the 24th, after that, do you remember  
11 everything?

12 A. No. No, I didn't.

13 Q. Was there a point in time that you started  
14 remembering things?

15 A. As the time go by, some things come to me and some  
16 things I just couldn't remember.

17 Q. January 24th, do you remember how many deliveries  
18 you made before the last one of the day?

19 A. Not exactly.

20 Q. How did you keep track of the deliveries or how was  
21 that kept track of?

22 A. They had a printout sheet, and we went by the  
23 printout sheet. That way we know which house to go to, the  
24 address, phone numbers, and we go down the list.

25 Q. And, Robert, were you familiar with Brandon's

1 handwriting?

2 A. Yes, sir.

3 Q. Now, this list that you're talking about, who would  
4 take care of that?

5 A. Brandon would write on the list.

6 Q. What type of things would he write on it?

7 A. Like if furniture damaged, he would write that  
8 down. If the customer got a problem with it, he would write  
9 whatever they got the problem with and then he'll call the  
10 supervisor.

11 Q. I'd like to show you what's been marked as State's  
12 Exhibit Number 6. Do you recognize that?

13 A. Yes, sir.

14 Q. Does that have a particular date on it?

15 A. January 24th.

16 Q. Now, is there some writing on there?

17 A. Yes, sir, it is.

18 Q. Whose writing do you recognize?

19 MR. STARR: Your Honor, can we approach?

20 THE WITNESS: It's Brandon's writing.

21 THE COURT: One moment, Mr. White.

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

24 MR. STARR: Your Honor, I have a hearsay objection  
25 to the document and to the contents and what was supposedly

1 written by Mr. Clark.

2 THE COURT: Has he seen this document?

3 MR STARR: I have.

4 MR. MOOMAU: It's an item of physical evidence that  
5 was recovered at the scene. We're offering it for -- this  
6 was evidence that was recovered at the scene. It's the  
7 delivery manifest. He recognizes Brandon's name on it. He  
8 recognizes -- and he'll describe what it means.

9 THE COURT: What, specifically, are you saying why  
10 that would not be admissible?

11 MR. STARR: Well, it's not admissible because it  
12 was recovered from the scene. I think it's inadmissible  
13 because of hearsay. I don't know, as of yet, what it's  
14 relevant to.

15 THE COURT: Well, we'll find out, I'm assuming, by  
16 the questions, and then you can pose an objection to it. I  
17 don't know at this point what --

18 MR. STARR: You asked the question of whether we've  
19 seen this. We have. We have not known, you know, who wrote  
20 what or any of that, so.

21 THE COURT: May I see what is written there? Just  
22 so I know, is it --

23 MR. COHEN: It's 1513.

24 MR. MOOMAU: Now you got me mixed up. I thought it  
25 was 1315.

1 THE COURT: Is that on here? I just want to see  
2 what's written there, just to make sure that it's on here.  
3 It's 1513?

4 MR. COHEN: Yes.

5 MR. MOOMAU: Yes.

6 THE COURT: Well, I don't have any basis to make a  
7 decision at this point in time because I don't know what  
8 other questions are going to be asked. But your objections  
9 to this, at least at this moment, are based on hearsay  
10 grounds?

11 MR. STARR: Correct.

12 MR. MOOMAU: In response, Your Honor, he was one of  
13 the workers in the truck. I mean, it's his business record,  
14 to a degree.

15 THE COURT: Okay.

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

18 BY MR. MOOMAU:

19 Q. Robert, looking at State's Exhibit Number 6, do you  
20 recognize any of the writing on there?

21 A. Yes.

22 Q. And what writing do you recognize?

23 A. Damage coming back, and they got a number, and  
24 that's a number we have to call our supervisor to get.

25 Q. Now, I notice on State's Exhibit Number 6 there is

1 a number of signatures on it, correct?

2 A. Correct.

3 Q. And what do those signatures indicate?

4 A. These are the signatures of the customers who  
5 signed the paper after we done hooking up the furniture and  
6 they're satisfied.

7 Q. Who was it that would deal with the customer and  
8 have them sign?

9 A. Brandon.

10 Q. Now, looking at the backside of State's Exhibit  
11 Number 6, was there a customer on there that was to be the  
12 last one for the day?

13 A. Yes.

14 Q. And which one is that?

15 A. Keith Washington.

16 Q. And what were you delivering there?

17 A. A set of bed railings.

18 Q. This exhibit, State's Exhibit Number 6, is it an  
19 accurate manifest and list of the deliveries you were to make  
20 that day?

21 A. Correct.

22 MR. MOOMAU: Your Honor, the State would move for  
23 the admission of State's Exhibit Number 6.

24 MR. STARR: No objection.

25 THE COURT: Six, admitted without objection, State.

1 (State's Exhibit No. 6, previously  
2 marked for identification, was  
3 received in evidence.)

4 BY MR. MOOMAU:

5 Q. Robert, on January 24th, do you remember,  
6 approximately, the time it was that you arrived to do the  
7 last delivery?

8 A. I'm not sure what time it was. It was late.

9 Q. Who was driving the truck?

10 A. Brandon was.

11 Q. What happened when you arrived at Shellford Lane?

12 A. Well, before we got to that lane, we actually  
13 called the customer to see if he was home, because it was  
14 getting dark or dark, and we asked him could he either come  
15 outside or turn a light on; we wasn't far away from his  
16 house. When we arrived, the customer was standing outside.  
17 Brandon gets out of the truck, goes out to talk to the  
18 customer, comes back and says --

19 MR STARR: Your Honor, I object to the narrative  
20 here.

21 THE COURT: I believe the witness can explain it as  
22 he wishes.

23 BY MR. MOOMAU:

24 Q. Continue as to when Brandon got out of the truck.

25 A. Brandon gets out of the truck, goes up to talk to

1 the customer, comes back and said, "The guy's looking for a  
2 fight." I said, "Brandon, let's go. Well, let's just  
3 leave." He said we couldn't do that; we have to call our  
4 supervisor.

5 Q. Without going into anything else that Brandon  
6 said --

7 A. Right.

8 Q. -- who was the supervisor?

9 A. Mike Robinson.

10 Q. Did anybody call him?

11 A. Yes, sir, he did.

12 Q. Who called him?

13 A. Brandon called him.

14 Q. Did he use a cell phone?

15 A. Yes, he did.

16 Q. Whose cell phone did he use?

17 A. It was mine.

18 Q. I'd like to show you what has been marked as  
19 State's Exhibit Number 5. Was that cell phone in your name?

20 A. No, it wasn't.

21 Q. Whose name was it in?

22 A. It was in my fiance's name.

23 Q. What was her name?

24 A. Deborah Simmons.

25 Q. I would like to show you what's been admitted as

1 State's Exhibit Number 5. It's a three-page document. Look  
2 through it and see if you recognize it.

3 A. Yes, I do.

4 Q. What is that?

5 A. This is my phone record.

6 Q. What date is that for?

7 A. 11-13-07. Okay. The whole sheet say January 24th,  
8 2007.

9 MR. MOOMAU: Your Honor, I'D move to admit as  
10 State's Exhibit Number 5.

11 MR. STARR: No objection.

12 THE COURT: State's 5 admitted without objection.

13 (State's Exhibit No. 5, previously  
14 marked for identification, was  
15 received in evidence.)

16 BY MR. MOOMAU:

17 Q. After you make the call to Michael Robinson, you  
18 all eventually deliver the item into the house?

19 A. Yes, sir, we did.

20 Q. How big of a box was it?

21 A. It was a nice size box. It wasn't too big. It was  
22 a nice size box.

23 Q. Who carried it into the house?

24 A. We both carried it. I grabbed one end; he grabbed  
25 the other end.



1 Q. Did you meet with any person inside or outside the  
2 house?

3 A. He was outside. Mr. Washington was outside.

4 Q. That person you're referring to as Mr. Washington,  
5 is he in the courtroom?

6 A. Yes, sir.

7 Q. Can you just point to him and describe the clothing  
8 that he has on?

9 A. He has on a suit with a burgundy tie.

10 MR. MOOMAU: Your Honor, can the record reflect the  
11 witness has identified the defendant?

12 THE COURT: The record will so reflect.

13 BY MR. MOOMAU:

14 Q. What happened when you went inside?

15 A. When we went inside, he direct us to a bedroom  
16 upstairs. I was walking first, in front of Brandon. Brandon  
17 was walking behind me. He was behind Brandon, and he  
18 directed us to a bedroom upstairs. We went in, we set the  
19 rails down, and then Mr. Washington started arguing with  
20 Brandon.

21 Q. And what was Mr. Washington arguing with Brandon  
22 about?

23 A. Because, I guess, we got to his house late, and he  
24 was upset because he was waiting to his house all day.

25 Q. Go ahead and tell us what happened.

1           A.    So Brandon kneeled down -- I'm standing on the  
2 other side, close to the railing, Brandon at the bed, and he  
3 ask Mr. Washington why you disassemble your bed, and he  
4 said -- this was his words -- "Motherfucker, are you telling  
5 me what to do in my house?" I said, "Brandon, do you know  
6 Mr. Washington?" Brandon said no.

7                        So it was a few seconds later he pushed Brandon and  
8 told Brandon to get the fuck out of his house. I said,  
9 "Brandon, I think we should go." Brandon said, "No, just let  
10 me do my job. It's only going to take ten minutes."

11                      Brandon kneeling again -- he's still kneeling.  
12 Mr. Washington pushed him again, "Get the fuck out of my  
13 house," and the third time he pushed him, he pushed him until  
14 he was actually laying on his side. Brandon jump up. I told  
15 Brandon, "That's it; we out of here." I stepped between both  
16 of them, Mr. Washington and Brandon, Brandon going back out  
17 the door with his hands up. I got my back to Mr. Washington,  
18 and all I heard was shots after we got out of the room. He  
19 said, "I know how to get you the fuck out my house."

20           Q.    After you heard the shots, what did you do; what  
21 did you see?

22           A.    Brandon was going back towards the stairs, and I  
23 grabbed Brandon to keep him from falling down the stairs.  
24 After I laid him down -- could I show the jury?

25                      MR. MOOMAU: Can the witness get up from the stand,

1 Your Honor?

2 MR. STARR: No objection.

3 THE COURT: Please.

4 THE WITNESS: This is the room. Brandon is coming  
5 back. The stairs is here.

6 MR. MOOMAU: May I have this marked?

7 THE DEPUTY CLERK: State's Exhibit 7 marked for  
8 identification.

9 (State's Exhibit No. 7 was  
10 marked for identification.)

11 MR STARR: Can we approach on that exhibit?

12 THE COURT: On the exhibit?

13 MR. STARR: Yes.

14 THE COURT: Certainly.

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

17 MR. STARR: The issue with the exhibit is this. It  
18 contains crime scene officer's -- you know, the little yellow  
19 numbers that they use to mark evidence, and it shows  
20 bloodstains on the exhibit too.

21 Now, what those things do, particularly the  
22 bloodstains, it leads the witness -- I mean, on this point  
23 he's being asked to testify about the location of where  
24 things happened inside of the house, and to show him the  
25 crime scene sort of may process it -- with blood on the

1 carpet, shows him where these things happened.

2 I mean it's known in the case -- there's already  
3 been testimony in the trial of where he was laying and where  
4 Mr. Clark was laying, and to show him the bloodstained carpet  
5 with the crime scene workers' tabs on there -- I don't know  
6 how many of them there are, but there's at least five of them  
7 visible where the scene has been marked up, and I think that  
8 that leads the witness, especially when the reason the  
9 diagram is being used is so that he can testify to orient the  
10 jury to where things happened.

11 MR. MOOMAU: Your Honor, he's not going to be  
12 testifying about any of the crime scene. He's just going to  
13 be testifying as to the structure where he was at and so he  
14 can explain his testimony, and that's all it's being used  
15 for.

16 THE COURT: Overruled.

17 MR. COHEN: It's our understanding that Mr. White  
18 is going to do a physical rendition of what he alleges  
19 happened that evening. We would ask that, if he does that,  
20 that we get a description given as he's moving, on the  
21 record, so that we can -- I assume Mr. Moomau is going to do  
22 that anyway.

23 THE COURT: Who are you suggesting give that  
24 description?

25 MR. STARR: Usually the person examining the

1 witness.

2 MR. COHEN: I thought he would do it on the record  
3 anyway, Your Honor.

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

6 BY MR. MOOMAU:

7 Q. Mr. White, I want to show you an item that's been  
8 marked as State's Exhibit Number 7. Without going into the  
9 yellow markers or anything, does the picture and what is  
10 shown in State's Exhibit Number 7 appear to be familiar to  
11 you? Do you recognize it?

12 A. Some of it.

13 Q. What does this appear to be to you?

14 A. The area where we got shot.

15 Q. As far as the layout, the walls, the floor, the  
16 stairs, the banister, is that an accurate depiction of your  
17 memory of the location?

18 A. It looks about right.

19 MR. MOOMAU: Your Honor, the State would move for  
20 the admission of State's Exhibit Number 7.

21 MR. STARR: Same objection.

22 THE COURT: Seven is admitted.

23 (State's Exhibit No. 7, previously  
24 marked for identification, was  
25 received in evidence.)

1 BY MR. MOOMAU:

2 Q. Mr. White, would this help you in explaining to the  
3 jury the location where it happened?

4 A. Yes.

5 (The witness steps down from the witness stand.)

6 BY MR. MOOMAU:

7 Q. Mr. White, just standing in a position where  
8 everyone on the jury can see you -- and if you need to move  
9 to show the jury how you were located and situated, just go  
10 ahead.

11 A. I think this is the room that we was in, right  
12 here, if I'm not mistaken. And when Brandon was walking  
13 backwards, I see him going towards the stairs, and then when  
14 I heard the shots, I just seen him coming back, so I just  
15 caught him and I came down to like here, to lay him down so  
16 he won't fall down the stairs. I laid him down. I asked  
17 him, I said, "Brandon, where is the cell phone," because he  
18 had my cell phone in his pocket.

19 This is how I did this. I'm on the second or the  
20 third step. I had to lay him down, and as I ask him where  
21 the cell phone at, when I turned around, I heard more shots.  
22 Then I realized I was hit.

23 Q. And where were you shot on your body?

24 A. In the chest, in the stomach.

25 Q. And what did you do -- go ahead.

1 A. I was hit here and here.

2 Q. Now, are any of those bullets still in your body?

3 A. Yes, sir.

4 Q. Which ones?

5 A. The one in my side right here and one in my cheek.

6 Q. The one in your side, which wound is it from?

7 A. The chest wound.

8 Q. And you said your cheek. You mean your rear check?

9 A. Right.

10 Q. What bullet wound is that from?

11 A. From the stomach.

12 Q. Now, what did you do after you had been shot?

13 A. I didn't want to go down the stairs --

14 Q. Try to use the pointer so everyone --

15 A. I didn't want to go down the stairs because he  
16 already shot me. So I moved up, to move away from Brandon,  
17 and I came down here and I laid down here, down on this side.  
18 Mr. Washington went back in his room. I got back up because  
19 I knew I needed help. When I got back up, he comes out of  
20 his room and he said, "Motherfucker, didn't I told you to  
21 stay down," and he start shooting again. That's when I  
22 realized I was hit in the knee. I went down.

23 Q. You went down. Then what happened?

24 A. We laid there screaming, asking him to help us, to  
25 call somebody, and he said he wasn't calling nobody.

1 Q. You can go back to the stand. What's the next  
2 thing you remember after that?

3 A. It was a while after that. I don't know how much  
4 time. It was a while, and then he finally got on the phone  
5 and he called -- he made a call and the conversation went  
6 like this: "These two guys just busted in my house and beat  
7 me up and I shot both of them. They in here laying down,  
8 bleeding all over my carpet."

9 Q. What happened after that?

10 A. A while after that a cop arrived. He came in.  
11 Brandon was closest to the stairs, so when he came in, he  
12 just rushed in, slammed Brandon to the floor, put handcuffs  
13 on him. Mr. Washington, he was kicking him, and I said to  
14 myself I don't believe this right here; I don't believe this  
15 is about to go down like this right here. And I knew I was  
16 next, so I just closed my eyes. For how long, I don't know.

17 Q. And why did you close your eyes, Robert?

18 A. Because I was playing dead because I didn't want to  
19 get beat up like Brandon was.

20 Q. What happened after that?

21 A. A little while after that, when I did open my eyes,  
22 I remember a guy standing in front of me, and I opened my  
23 eyes and I look up and I grabbed his leg, and the guy said,  
24 "What are you doing in this house?" I said, "Don't you see  
25 that big furniture truck sitting outside," and I said, "We



1 furniture delivery guys." And I asked him, I said, "Man,  
2 could you get them handcuffs off of Brandon?"

3 And a while after that the paramedics came in.  
4 They went to Brandon first. One guy came to me and he asked  
5 me where was I hurt, and I tell him I don't know; all I know  
6 is I got a hole in my shirt right here and I said I can feel  
7 something in my stomach. And he cut my shirt off me and told  
8 the rest of the paramedics come over here; this guy got a  
9 chest wound. They took me out first and that was the last  
10 thing I remember.

11 Q. When you were laying there, you said you had your  
12 eyes closed. At anytime did anyone touch you?

13 A. I feel someone nudge me in my side, and I could  
14 feel like a hand going over my face. But to actually touch  
15 my face, I don't know. They didn't touch my face, but I feel  
16 somebody nudge me in my side.

17 Q. Why didn't you open your eyes at that point?

18 A. I was scared.

19 Q. Do you remember anything about being transported to  
20 the hospital?

21 A. I remember they -- the paramedics asked for two  
22 choppers, and I remember being in a chopper and that's the  
23 last thing I remember. When I woke up and actually had some  
24 recollection, I was in a baby ward at a hospital.

25 Q. What hospital were you at?

1 A. Prince George's County.

2 Q. At some point did you learn that Brandon had died?

3 MR. STARR: Objection. Relevance.

4 THE COURT: Overruled.

5 BY MR. MOOMAU:

6 Q. You can answer that.

7 A. Well, I was watching TV. Because I was --

8 THE COURT: Sir, just yes or no, please.

9 THE WITNESS: Yes.

10 BY MR. MOOMAU:

11 Q. Where were you at when you learned that?

12 A. I was in my room watching TV, and it came across

13 the screen that one of the furniture delivery guys --

14 MR. STARR: Objection.

15 THE COURT: Sustained, please.

16 BY MR. MOOMAU:

17 Q. That's enough.

18 MR. MOOMAU: I need to mark these, Your Honor.

19 THE DEPUTY CLERK: State's Exhibits 8 and 9 marked  
20 for identification.

21 (State's Exhibit Nos. 8 and 9 were  
22 marked for identification.)

23 BY MR. MOOMAU:

24 Q. Robert, I'd like to show you two items marked for  
25 identification as State's Exhibits 8 and 9. Do you recognize

1 these?

2 A. Yes, sir.

3 Q. What are they?

4 A. These are the clothes that I had on.

5 Q. Those are photographs of the clothes?

6 A. Right.

7 MR. MOOMAU: Move for admission of State's Exhibit  
8 Numbers 8 and 9.

9 MR. STARR: No objection.

10 THE COURT: Eight and nine admitted without  
11 objection.

12 (State's Exhibit Nos. 8 and 9,  
13 previously marked for  
14 identification, were received in  
15 evidence.)

16 BY MR. MOOMAU:

17 Q. Robert, did you know that the defendant in this  
18 case, Mr. Washington, when you went there, did you know he  
19 was a police officer?

20 A. I never seen this man before.

21 Q. At any point did you learn he was a police officer  
22 that night?

23 A. When that other cop came in and he said, he was  
24 like they didn't know I was a police officer.

25 Q. Did you have any idea that he was carrying a gun?

1 A. No.

2 Q. Did you have any type of weapon on you?

3 A. No, I didn't.

4 Q. Now, on that day did you see -- did you ever see  
5 Brandon with any type of weapon, a knife or a gun on him?

6 A. No.

7 Q. Robert, as far as the delivery, were you all on  
8 time or late that day?

9 A. I couldn't really say because I don't know what  
10 time we usually -- I mean we go down the list and, when we  
11 leave one customer house, we call our supervisor and let them  
12 know that we just left one house and we going to the next  
13 house. Then we'll call the customer. I don't know exactly  
14 what time we supposed to be in and out of somebody's house,  
15 because you might have somebody getting 14 pieces of  
16 furniture, like a whole bedroom set or four or five beds in  
17 their house.

18 Q. That night when you were in the hallway or  
19 upstairs, did you know how many times Brandon had been shot?

20 A. No.

21 Q. You had mentioned what Mr. Washington had said on  
22 the phone. Have you ever heard the 911 call?

23 A. I don't remember.

24 Q. In this case did you give a sample of your saliva?

25 A. Yes, sir, I did.

1 Q. That was just something they did with a Q-tip  
2 inside your mouth?

3 A. Well, they came in and they cut my fingernails and  
4 they swabbed my mouth on one occasion. On another occasion  
5 they took hair samples.

6 MR. MOOMAU: That's all the questions I have on  
7 direct. Thank you.

8 MR. STARR: May we approach, Your Honor, on a very  
9 brief matter?

10 THE COURT: Sure.

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

13 MR. STARR: I have a pressing -- you don't have to  
14 write this down, I don't think. I have a pressing need to  
15 use the bathroom.

16 THE COURT: No objection. How about we take a five  
17 minute recess so the jury can do the same thing. You want me  
18 to do that so they can stretch their legs too?

19 MR. MOOMAU: Yes, that will be great.

20 THE COURT: Ladies and gentlemen, we're going to  
21 take a ten-minute break so you can stretch your legs, use the  
22 restrooms, before we continue.

23 (At 2:45 p.m. a brief recess was taken.)

24 MR. MOOMAU: Your Honor, I forgot a couple of  
25 questions. May I be permitted to ask the witness a couple

1 more questions?

2 THE COURT: Yes.

3 THE COURT: Let's bring the jury back in.

4 (The jury returned to the courtroom at 2:55 p.m.)

5 MR. MOOMAU: Thank you, Your Honor.

6 BY MR. MOOMAU:

7 Q. Just a couple more questions, Robert. I noticed  
8 that when you were testifying, especially when you were  
9 handling the delivery paper, you weren't opening your right  
10 fist. Was that injury there before?

11 A. Yes.

12 Q. Just hold your hand up. Can you open your hand?  
13 How did that happen?

14 A. A car accident in 1992.

15 Q. Robert, at anytime, to your knowledge, did you  
16 touch the gun that Mr. Washington used to shoot you?

17 A. No.

18 MR. MOOMAU: That's all the questions I have.

19 **CROSS-EXAMINATION**

20 BY MR. STARR:

21 Q. Now, Mr. White, Brandon Clark was your cousin,  
22 correct?

23 A. Yes.

24 Q. In fact, it was Mr. Clark that got you the job  
25 working for Marlo, correct?

1 A. Yes.

2 Q. He had been working there for a long time before  
3 you started working there, correct?

4 A. Correct.

5 Q. Now, on January 24th, when you were inside of  
6 Mr. Washington's house, isn't it true that you went into his  
7 daughter's bedroom?

8 A. No.

9 Q. Mr. White, did you ever, at any point while you  
10 were inside Mr. Washington's house, touch him?

11 A. No.

12 Q. You never struck him?

13 A. No.

14 Q. At anytime while you were inside Mr. Washington's  
15 house with your cousin Brandon, did you ever -- did Brandon  
16 ever strike him?

17 A. No.

18 Q. And your testimony would also be that Brandon never  
19 touched him, correct?

20 A. Correct.

21 Q. Let me ask you this. Mr. White, was there any  
22 fight, physical, between you, Mr. Clark and Mr. Washington  
23 before the two of you were shot?

24 A. No, there wasn't.

25 Q. No fight whatsoever?

1 A. No.

2 Q. Now, when you testified when Mr. Moomau was asking  
3 you questions, you said that Mr. Washington at some point  
4 pushed Brandon Clark, correct?

5 A. Correct.

6 Q. And is it your testimony that prior to that, prior  
7 to Mr. Washington pushing Brandon Clark, there had been no  
8 physical contact between you and Mr. Washington or between  
9 Mr. Clark and Mr. Washington?

10 A. Correct.

11 Q. Was there any argument?

12 A. Yes, when we first got there.

13 Q. Okay. And the argument was what you described when  
14 you said that Mr. Washington had said "Motherfucker, are you  
15 going to tell me what to do in my house;" is that what you're  
16 talking about?

17 A. Yes.

18 Q. And your testimony is that, in response to that,  
19 there was no argument on the other side from Mr. Clark,  
20 correct?

21 A. No.

22 Q. And no argument from you, correct?

23 A. Correct.

24 Q. Now, you wrote a statement about this incident,  
25 correct?



1           A.    Correct.

2           Q.    And you released that statement to the media,  
3 correct?

4           A.    Correct.

5           Q.    And when you released that statement about this  
6 case to the media, that was before you had spoken and told  
7 the police about the incident, correct?

8           MR. MOOMAU:  Objection.

9           THE COURT:  Approach the bench.

10                   (Counsel approached the bench and the following  
11 ensued.)

12           THE COURT:  Grounds?

13           MR. MOOMAU:  I'm just afraid they're going to start  
14 getting into this talking to police.

15           THE COURT:  Well, what are your grounds?

16           MR. MOOMAU:  The timing of it doesn't matter.

17           Withdrawn.  Never mind.

18           THE COURT:  Hold on.  I'm trying to understand.

19           MR. MOOMAU:  He said before -- never mind.  They  
20 can ask him.

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

23           BY MR. STARR:

24           Q.    Mr. White, you released your statement to the media  
25 before you had told your story to the police, right?

1 A. Correct.

2 Q. And you released your statement to the media in  
3 about the third week of February of 2007, correct?

4 A. I don't know.

5 Q. Well, you would agree that you released your  
6 statement to the media approximately three weeks after the  
7 shooting incident, right?

8 A. I can't really say.

9 Q. Now, in your media statement you describe the  
10 incident, the shooting incident, correct?

11 A. Correct.

12 Q. And nowhere in your media statement did you say  
13 that Mr. Washington had said to you and Mr. Clark  
14 "Motherfucker, are you going to tell me what to do in my  
15 house," correct?

16 A. That's incorrect.

17 Q. It's in here?

18 MR. STARR: May I approach the witness?

19 THE COURT: Please.

20 THE DEPUTY CLERK: Defense Exhibit Number 1 marked  
21 for identification.

22 (Defense Exhibit No. 1 was  
23 marked for identification.)

24 BY MR. STARR:

25 Q. Now, I'm going to ask you to take a look at the

1 media statement and tell me if it contains those words,  
2 "Motherfucker, are you going to tell me what to do in my  
3 house." Are you finished?

4 A. Yeah.

5 Q. Now, those words don't appear in the statement; do  
6 they?

7 A. Correct.

8 Q. Now, Mr. White, you drafted this media statement,  
9 and it would be fair to say that this was the first sort of  
10 public version of these events you had given, correct?

11 A. Right.

12 Q. And you drafted this statement along with an  
13 attorney that you had hired, correct?

14 A. Correct.

15 Q. And you had hired the attorney while you were still  
16 in the hospital, correct?

17 MR. MOOMAU: Objection.

18 THE COURT: Approach the bench, please.

19 (Counsel approached the bench and the following  
20 ensued.)

21 MR. MOOMAU: Whether he has an attorney is of no  
22 relevance.

23 THE COURT: What are your grounds?

24 MR. MOOMAU: Relevance.

25 THE COURT: And what are you proffering?

1           MR. STARR: Here's what I'm proffering. Mr. White  
2 hired civil counsel, not criminal counsel, while he was in  
3 the hospital and gave notice of his intent to sue based on  
4 this incident on January 31st.

5           THE COURT: And you cross-examine him about the  
6 civil suit itself. What does the relevance of the order have  
7 to do with that? I've already made a ruling that you'll be  
8 able to cross-examine him for bias on the civil suit.

9           MR. STARR: Because the timing of it and the fact  
10 that, frankly -- the timing of the civil suit, the timing of  
11 when he decided and expressed an interest to file a civil  
12 suit is what's relevant, and that's what the case law clearly  
13 says --

14          THE COURT: Say that again.

15          MR. STARR: The timing of when he decided to file a  
16 civil suit is what's relevant, because that shows when the  
17 bias attached.

18          THE COURT: And I would indicate to you that you  
19 will have the opportunity to cross-examine him on the civil  
20 lawsuit and ask him the question, when did you -- you don't  
21 have to go into the lawyer. What relevance does that have to  
22 your line of questioning, if I'm permitting you to  
23 cross-examine him about the lawsuit? Because, number one,  
24 it's beyond the scope of direct examination by far.

25          MR. STARR: The lawsuit?

1 THE COURT: Your questioning.

2 MR. STARR: Your Honor, it's bias about what is  
3 motivating --

4 THE COURT: Not whether or not he has a lawyer. I  
5 said you are permitted to cross-examine him about the  
6 lawsuit. That's clear. I've already made a ruling on that.

7 MR. STARR: What I'm saying is this. The decision  
8 to retain civil counsel demonstrates that there was, at that  
9 moment, a bias. That's how you affix the bias.

10 THE COURT: Why don't you ask him the date he hired  
11 the lawyer.

12 MR. STARR: What's that?

13 THE COURT: Get a date he hired a lawyer.

14 MR. MOOMAU: I object to that. He can ask him  
15 about the lawsuit. I mean that's the bias.

16 THE COURT: Do you have any other reason for that  
17 question, other than what you're saying?

18 MR STARR: Well, it goes to the statement, I mean  
19 that --

20 THE COURT: What statement?

21 MR. STARR: The media statement that he released;  
22 in fact, that he drafted that with civil counsel is relevant.

23 THE COURT: Okay. Overruled.

24 (Counsel returned to trial tables and the following  
25 ensued.)

1 BY MR. STARR:

2 Q. Now, Mr. White, the lawyer that we're talking  
3 about, the lawyer that you drafted your media statement with,  
4 you hired that lawyer for purposes of filing a lawsuit based  
5 on this incident, correct?

6 A. No.

7 Q. Well, that lawyer has filed a lawsuit on your  
8 behalf based on this incident, correct?

9 A. I don't know. I haven't seen anything.

10 Q. Wait a minute. Is it your testimony that you do  
11 not know that you are currently the plaintiff in a lawsuit  
12 against Keith Washington and Prince George's County based on  
13 this incident?

14 A. No, I don't. I haven't seen any paperwork about  
15 that.

16 THE DEPUTY CLERK: Defense Exhibit 2 marked for  
17 identification.

18 (Defense Exhibit No. 2 was  
19 marked for identification.)

20 BY MR. STARR:

21 Q. Now, Mr. White, I'm going to show you what's been  
22 marked for identification purposes at this point as Defense  
23 Exhibit Number 2. Is it your testimony that you've never  
24 seen this before?

25 A. Never seen it.

1 Q. Do you see where your name appears on the front  
2 page, Robert White?

3 A. Yes, I do.

4 Q. Do you see an address there, 161 Olivia Road?

5 MR. MOOMAU: Objection.

6 THE COURT: He's said he could recognize his name.

7 BY MR. STARR:

8 Q. Do you see an address there?

9 A. Correct.

10 Q. Do you recognize that address?

11 A. Yes.

12 Q. Who lives at that address?

13 A. I do.

14 Q. And underneath of your name and address it says  
15 plaintiffs, correct?

16 A. Correct.

17 Q. And this has a stamp on it, Clerk of the Court,  
18 correct?

19 A. Correct.

20 Q. It says January 24th, correct?

21 A. Correct.

22 Q. 1:51 p.m., correct?

23 A. Correct.

24 Q. And your testimony is that you've never seen this  
25 before in your life?





1 2007, correct?

2 A. Correct.

3 Q. And it says regarding Mr. Brandon Clark and  
4 Mr. Robert White, correct?

5 A. Correct.

6 Q. Date of incident, January 24th, 2007, correct?

7 A. Correct.

8 Q. Location, Shellford Lane, Accokeek, Maryland,  
9 correct?

10 A. Correct.

11 Q. Now, the document goes on to say the incident that  
12 gives rise to this notice --

13 MR. MOOMAU: Objection.

14 THE COURT: I don't know what it says. Can I see  
15 it first?

16 MR. STARR: Yes.

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

19 MR. MOOMAU: If the witness isn't familiar with it  
20 and he hasn't seen it, how can it come in? He's already said  
21 he's not familiar with it.

22 THE COURT: I think counsel can ask him if he was  
23 aware that his attorney filed a lawsuit, making those  
24 representations. That he can answer yes or no.

25 MR. MOOMAU: Okay.

1 (Counsel returned to trial tables and the following  
2 ensued.)

3 BY MR. STARR:

4 Q. Mr. White, returning to Defense Exhibit 3 for  
5 identification, the letter that has your lawyer's signature  
6 on it, I just want to ask you about this sentence. Does it  
7 say "the incident that gives rise to this notice occurred on  
8 the evening of January 24, 2007, when Messrs. Clark and White  
9 were delivering furniture to the home of Keith Washington, a  
10 member of the Prince George's County Police Department;" does  
11 it say that?

12 A. Yes, sir.

13 Q. And your testimony is that you have no idea that  
14 that notice of intent to sue was provided on your behalf in  
15 this case?

16 A. I haven't seen that before.

17 Q. Well, you are aware, Mr. White, that a lawyer hired  
18 by you had given notice, on January 31st of 2007, of an  
19 intent to sue based on this shooting incident; weren't you?

20 A. I don't even know where I was January 31st.

21 Q. You don't know where you were?

22 A. Of what year?

23 Q. 2007.

24 A. I don't even know where I was.

25 Q. Well, the shooting happened on January 24th of

1 2007.

2 A. Correct.

3 Q. Were you still in the hospital; do you know?

4 A. Yes, I was.

5 Q. So you are aware that a lawyer on your behalf, on  
6 that day, January 31, 2007, gave notice to P. G. County of  
7 your intent to file a lawsuit based on the shooting incident,  
8 right?

9 A. I don't know nothing about it.

10 Q. Have you -- you don't know anything about a lawsuit  
11 that's been filed by you?

12 MR. MOOMAU: Objection.

13 THE COURT: That's what he said. Sustained.

14 BY MR. STARR:

15 Q. But you have spoken to that attorney,  
16 Mr. Winkelman, correct?

17 A. Correct.

18 Q. And that is your attorney, correct?

19 A. Correct.

20 Q. Now, when Mr. Moomau was asking you questions, you  
21 talked about where you were at the time that you were shot by  
22 Mr. Washington. Do you remember talking about that?

23 A. Say that again.

24 Q. Do you remember saying, when the State was asking  
25 you questions, that you were on either the second or third

1 step when you were shot?

2 A. Correct.

3 Q. And when you say the second or third step, you mean  
4 the second or third step going down from the top floor,  
5 correct?

6 A. At the top.

7 Q. Yes, the second or third step from the top floor.

8 A. Right.

9 Q. From the floor where the master bedroom was where  
10 you took the bed rails.

11 A. Correct.

12 Q. And at the time that you were shot, Mr. White, and  
13 you were on that second or third step, according to you,  
14 where was Mr. Washington?

15 A. I couldn't really say.

16 Q. So you don't know where Mr. Washington was when he  
17 shot you and you were on that second or third step?

18 A. Not exactly.

19 Q. Well --

20 MR. STARR: One moment, Your Honor. I have to  
21 locate a document.

22 THE COURT: Certainly; that's fine.

23 BY MR. STARR:

24 Q. Mr. White, you testified in the grand jury about  
25 this case, correct?



1 A. Yes, sir.

2 Q. Having been first duly sworn, was examined and  
3 testified as follows. Do you see that?

4 A. Correct.

5 Q. Do you see where you are asked a question here on  
6 line 17 on page two, "Can you please state your name for the  
7 reporter sitting right in front of you," and your answer is  
8 "Robert White." Do you see that?

9 A. Correct.

10 Q. Taking your attention to page 33 at line 22. Does  
11 it say, "A Juror: Was Mr. Washington in his bedroom when he  
12 shot you?

13 "The Witness: When he shot me he was standing in  
14 front of his bedroom door and I was on, like, the second  
15 step." Does it say that?

16 A. Correct.

17 Q. And that's what you said, correct?

18 A. Correct.

19 Q. So you said to the grand jury that Mr. Washington  
20 was standing in front of the bedroom door when he shot you,  
21 correct?

22 A. Correct.

23 Q. Now, when Mr. Moomau was asking you questions, he  
24 asked you questions about what it is that you did after you  
25 were shot. Do you remember that?

1 A. Correct.

2 Q. And you said that you walked upstairs, onto that  
3 second floor, correct?

4 A. Correct.

5 Q. And what you ended up doing when you got  
6 upstairs -- this is your testimony; tell me if I'm correct --  
7 is that you walked down that hallway and laid up against the  
8 wall or a door at the end of the hallway, correct?

9 A. I walked down there and laid down.

10 Q. But you walked down that hallway, correct?

11 A. Correct.

12 Q. You did not walk down the stairs and out of the  
13 house, correct?

14 A. Correct.

15 Q. And the -- you'll agree that the place where you  
16 ended up laying down is at the end of that hallway on that  
17 top floor, correct?

18 A. Correct.

19 Q. On this day, Mr. White, you'd been working since  
20 about 7 a.m.?

21 A. Correct.

22 Q. And this incident happened sometime after 7 p.m.?

23 A. I don't know. I don't know what time it was. I  
24 don't remember.

25 Q. Can you estimate what time it happened?

1           A.    I don't know.  Around about that time.  It was just  
2 getting dark.

3           Q.    It was just getting dark?

4           A.    Right.

5           Q.    But are you saying it was around 7:30 p.m.?

6           A.    Got to be around -- I don't know.

7           Q.    Well, this was your last delivery, correct?

8           A.    Correct.

9           Q.    And you wanted to go home, correct?

10          A.    Correct.

11          Q.    And you were very tired, correct?

12          A.    Yes.

13          Q.    And, in fact, those feelings, last delivery, having  
14 been at work since about 7 a.m., tired, had you agitated,  
15 correct?

16          A.    No.

17          Q.    Not at all?

18          A.    Not at all.

19          Q.    Do you remember making the delivery on that day to  
20 a Mr. Baker?

21          A.    I don't remember.

22          Q.    Now I'll ask you some questions, Mr. White, about  
23 where everyone was positioned at the time that you say the  
24 shooting happened.  Where was Mr. Clark and where were you in  
25 relation to Mr. Clark when Mr. Clark was shot.  You're saying



1 that Mr. Clark was shot first, correct?

2 A. Correct.

3 Q. Where were you when he was shot?

4 A. Outside of the bedroom.

5 Q. Where was Mr. Clark?

6 A. Outside the bedroom.

7 Q. And you said that he had been walking backwards,  
8 with his hands up in a surrender position?

9 A. Correct.

10 Q. And you also said that when he fired the shots,  
11 Mr. Washington said, "I know how to get you the fuck out of  
12 my house." Was that your testimony?

13 A. Correct.

14 Q. And your testimony is that at the time that  
15 Mr. Washington fired the shots, you and Mr. Clark were  
16 walking out of the house, correct?

17 A. Correct.

18 Q. Now, when Mr. Clark was walking out of the room,  
19 according to you, backwards, with his hand in the surrender  
20 position, had you -- were you facing him?

21 A. Facing who?

22 Q. Mr. Clark?

23 A. Correct.

24 Q. But you had walked out in front of Mr. Clark,  
25 correct?

1 A. I was in between both of them.

2 Q. Your testimony is that you were in between  
3 Mr. Clark and Mr. Washington?

4 A. Correct.

5 Q. So just to make sure I understand it correctly,  
6 Mr. Clark is walking out of the room with his hands up in a  
7 surrender position and you're facing Mr. Clark, correct?

8 A. Correct.

9 Q. And Mr. Washington is behind you, correct?

10 A. Somewhere. I don't know.

11 Q. You don't know where he was?

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

13 Q. Well, you testified about this in the grand jury  
14 about where everyone was positioned, correct?

15 A. Correct.

16 MR. STARR: I'm at page 9, line 4, Mr. Moomau.

17 BY MR. STARR:

18 Q. And at one point in the grand jury you said, "He  
19 got his hands up, walking backwards, and I'm in front of him  
20 and all I heard was shots. So I see him falling, so I caught  
21 him and I laid on top of him. I laid on top of him." Do you  
22 recall saying that in the grand jury?

23 A. Correct.

24 MR. STARR: Now page 21, Mr. Moomau, at line 11.

25 BY MR. STARR:

1 Q. Do you recall being asked the following question,  
2 giving the following answer in the grand jury:

3 "Question: Do you want to explain anything based  
4 on what he asked you? Do you want to explain more about  
5 that?

6 "Answer: I could. What I'm saying was when  
7 Brandon went out of the room backwards, I'm behind him. I  
8 don't know if he was all the way out of the room or in the  
9 room because I didn't really look back at him. I was trying  
10 to get me and Brandon out of there before anything escalated,  
11 you know, because that was our last stop. I was tired. I  
12 was ready to go home and all I heard was the shots."

13 Did you say that?

14 A. I don't remember.

15 Q. I'm going to show you again, Mr. White, what's been  
16 marked for identification purposes at this point as Defense  
17 Exhibit 4. I'm going to ask you to tell me if I'm reading  
18 this correctly. Page 21, line 11.

19 "Question: Do you want to explain anything based  
20 on what he asked you? Do you want to explain more about  
21 that?

22 "Answer: I could. What I'm saying was, when  
23 Brandon went out of the room backwards, I'm behind him. I  
24 don't know if he was all the way out of the room or in the  
25 room because I didn't really look back at him."

1           Did you say that?

2           A.    Yes, I did.

3           Q.    So when you testified in the grand jury, you said  
4 that you didn't know where Brandon was because you didn't  
5 look back at him, correct?

6           A.    No.

7           Q.    You didn't say that?

8           A.    Yes, I said that, but that's not how it is.

9           Q.    So what you said in the grand jury was not true; is  
10 that your testimony?

11          A.    No, you misunderstood what I said.

12          Q.    Okay. Well, I read the words correctly; didn't I?

13          A.    Yes.

14          Q.    But what you're saying today is that you were on  
15 the second or third step going down and that you were facing  
16 Mr. Clark, correct?

17          A.    Correct.

18          Q.    So Mr. Clark would have been on the steps going  
19 down in front of you?

20          A.    No.

21          Q.    No?

22          A.    No.

23          Q.    Okay. Okay. Now, you talked a little bit about a  
24 phone call that -- well, first of all, you said that you and  
25 Mr. Clark were asking Mr. Washington to call for help and

1 that he refused. You said that, right?

2 A. Correct.

3 Q. Wasn't it true, Mr. White, that Mr. Washington  
4 called 911 right in front of you?

5 A. I don't know who he was talking to on the phone.

6 Q. But you heard him talking on the phone, correct?

7 A. Correct.

8 Q. And so he was talking on the phone in front of you,  
9 correct?

10 A. He was in his bedroom talking one time, and then  
11 the other time he was on the phone with somebody. I don't  
12 know who it was.

13 Q. And you said that when you heard him talking on the  
14 phone, Mr. Washington said, "These guys busted up in here,"  
15 correct?

16 A. Correct.

17 Q. Isn't it true that when he was talking on the phone  
18 in front of you, Mr. Washington said that the people in his  
19 house were furniture deliverymen?

20 A. I don't remember.

21 Q. Okay. Well, you know that when Mr. Washington made  
22 this phone call in front of you, he asked for an ambulance to  
23 come, correct?

24 A. I don't remember.

25 Q. Mr. White, when you released your media statement,

1 you talked about this 911 call, or the call that you say you  
2 heard, in the media statement, correct?

3 A. Correct.

4 Q. And you said there that you also heard  
5 Mr. Washington say on the phone that they had hit him with a  
6 pipe, correct?

7 A. Correct.

8 Q. Is it your testimony that you heard that?

9 A. Correct.

10 Q. Now, when you testified in the grand jury, you also  
11 talked about the 911 call, correct, or the call you heard?

12 A. Correct.

13 Q. And there you said you heard Mr. Washington say on  
14 the phone that one of the guys was dead. Did you say that?

15 A. I don't remember.

16 Q. Mr. White, I'm going to show you -- this is Defense  
17 Exhibit 4 for identification purposes, and do you see that  
18 there on page 2 it says "Robert White"?

19 A. Correct.

20 MR. STARR: Now I'm on page 10 at line 23,  
21 Mr. Moomau.

22 BY MR. STARR:

23 Q. Tell me if this paper says this. "So he called  
24 somebody on the phone. I heard part of the conversation. He  
25 called somebody on the phone. He said two guys just busted

1 up my house, beat me up with a pipe. I shot both of them.  
2 One of them is dead, bleeding out nose and mouth." Does it  
3 say that?

4 A. Correct.

5 Q. And you said that in grand jury, correct?

6 A. Correct.

7 Q. Now, is that true?

8 A. Yes.

9 Q. So your testimony is that you heard Mr. Washington  
10 on the phone say that one of the two men that he shot was  
11 dead?

12 A. Correct.

13 Q. Mr. White, you were convicted in 1993 in South  
14 Carolina of grand larceny, correct?

15 A. I don't know if it was 1993, but I did.

16 Q. What's that?

17 A. I don't know if it was 1993, but I did.

18 Q. You do have a grand larceny conviction from South  
19 Carolina; do you agree?

20 A. Yes.

21 Q. And you were convicted in 1995 in South Carolina of  
22 receiving stolen goods, correct?

23 A. No, I don't remember that.

24 Q. Are you denying that one?

25 MR. MOOMAU: Objection. Not denied.

1 THE COURT: His testimony was he didn't remember  
2 that one.

3 BY MR. STARR:

4 Q. Now, in 1995 in South Carolina you were convicted  
5 of first degree burglary, correct?

6 A. Correct.

7 Q. Now, one of the things that happened while you were  
8 testifying in the grand jury is that you were asked questions  
9 about your prior criminal convictions, right?

10 A. Correct.

11 Q. And the way that it happened is you were asked,  
12 Mr. White, you were convicted of this; you were convicted of  
13 that, and then you were answering to each one, correct?

14 A. Correct.

15 Q. And you were then asked in the grand jury, after  
16 you were questioned about your convictions, you were asked,  
17 question -- this is page 25. He read off some of the crimes  
18 that you were accused of. "Are there any others that weren't  
19 mentioned," and your answer was no, correct?

20 A. Correct.

21 Q. Now, isn't it true that when you were asked the  
22 series of questions before that, about your record, the first  
23 degree burglary had not been mentioned, correct?

24 A. I don't know.

25 Q. Mr. White, I'm going to show you -- this is Defense



1 Exhibit 4 for identification purposes. I'm going to ask you  
2 to read from page 14, line 14. Do you see that?

3 A. Uh-huh.

4 Q. To page 16 at line 6. Can you do that for me?

5 THE COURT: Mr. White, Mr. Starr means read that to  
6 yourself.

7 MR. STARR: Yes.

8 THE WITNESS: Okay.

9 BY MR. STARR:

10 Q. Are you there yet, line 6?

11 A. Uh-huh.

12 Q. Now, in that series of questions you were not asked  
13 about the first degree burglary, correct?

14 A. Correct.

15 Q. And when you were asked later, by one of the grand  
16 jurors, whether you had listed all your convictions, you said  
17 that you had, correct?

18 A. Correct.

19 Q. And that was false, correct?

20 A. Correct.

21 Q. Now, these bed rails that you were delivering, you  
22 agree with me that the bed rails were never taken out of  
23 their box, correct?

24 A. That's right.

25 Q. Did you say in the grand jury the bed rails had

1 been taken out of the box?

2 A. No.

3 Q. Did you say in grand jury "we took the rails out"?

4 A. I don't remember that.

5 Q. I'll show you what's been marked Defense Exhibit 4  
6 for identification purposes. I'm on page 8, line 13. Now,  
7 this document says "Robert White," correct?

8 A. Correct.

9 Q. And line 13, it says -- okay, let's go up a little  
10 higher to line 9. "When we got in the house, we went  
11 upstairs. Brandon kneeled down. I kneeled down. Brandon  
12 was closest to the door. Mr. Washington was on the side of  
13 him. I was at the far right. We took the rails out and he  
14 was upset already." Doesn't it say that?

15 A. Yes.

16 Q. And that's what you said in the grand jury,  
17 correct?

18 A. Correct.

19 Q. But you agree that the rails were never taken out,  
20 correct?

21 A. Not out of the box.

22 Q. Now, Mr. Moomau asked you some questions about  
23 you -- let me ask you this. You're 6'2", correct?

24 A. Correct.

25 Q. And you weigh 280 pounds?

1 A. Correct.

2 Q. And that's what you weighed on January 24 of 2007?

3 A. About that.

4 Q. Your cousin Mr. Clark was 6'7", correct?

5 A. I don't know.

6 Q. You agree he was bigger than you, correct?

7 A. Taller.

8 Q. He was taller than you? You also agree he was  
9 heavier than you, correct?

10 A. I don't know.

11 Q. Well, let me ask you this. Isn't it true that  
12 Brandon Clark was 6'7" and weighed 330 pounds?

13 A. No.

14 Q. That's not true?

15 MR. MOOMAU: Objection.

16 THE COURT: Overruled.

17 BY MR. STARR:

18 Q. That's not true?

19 A. No.

20 Q. Now, Mr. Moomau asked you some questions about a  
21 cheek swab that was done. You said they pulled some head  
22 hairs; is that correct?

23 A. Correct.

24 Q. And you know that the purpose of that was to get a  
25 sample of your DNA, correct?

1 A. Correct.

2 Q. And you know, Mr. White, that your DNA was on  
3 Mr. Washington's gun, correct?

4 A. Correct.

5 Q. Can you explain how it ended up there?

6 A. I don't know.

7 Q. You never touched him?

8 A. Nope.

9 Q. And there was no fight between you and  
10 Mr. Washington?

11 A. No, there wasn't.

12 Q. At the time that you were shot, you were close  
13 enough to grab the gun, correct?

14 A. I don't know.

15 Q. You don't know?

16 A. No.

17 Q. You were asked some questions about Mr. Clark's  
18 stuttering. Do you remember that?

19 A. Who?

20 Q. Mr. Clark, Brandon Clark.

21 A. Okay. Yes.

22 Q. You remember that?

23 A. Correct.

24 Q. And you indicated that he did stutter, correct?

25 A. Correct.

1 Q. Now, based on the interactions that you saw between  
2 Mr. Clark and Mr. Washington, nothing took place that made  
3 you believe that Mr. Washington couldn't understand  
4 Mr. Clark, correct?

5 A. Correct.

6 Q. In fact, as far as you can tell, Mr. Washington  
7 understood everything Mr. Clark said, correct?

8 A. Correct.

9 Q. Now, Mr. Moomau asked you some questions about  
10 cocaine. Do you recall those questions?

11 A. Correct.

12 Q. And you were asked questions in the grand jury  
13 about cocaine, correct?

14 A. Correct.

15 MR. STARR: Page 14, line 19, Mr. Moomau.

16 BY MR. STARR:

17 Q. You were asked the following questions and you gave  
18 the following answers:

19 "Question: And on the blood test I showed you from  
20 Prince George's Hospital, it had a lot of drugs listed. It  
21 said negative for this drug, negative for that drug. By the  
22 word 'cocaine,' it said positive, correct?

23 "Answer: Yes, it did.

24 "Question: Which means they found cocaine in your  
25 system via a blood test.

1 "Answer: Yes, sir.

2 "Question: Were you doing cocaine that day?

3 "Answer: No, sir.

4 "Question: Were you doing cocaine at anytime" --

5 MR. MOOMAU: Objection. He's reading the question.

6 I'm waiting for a question of the witness.

7 THE COURT: He's reading it to him, and then he's  
8 going to ask him if he remembers.

9 BY MR. STARR:

10 Q. I think where I was, Mr. White, was, "Question:  
11 Were you doing cocaine that day?

12 "Answer: No, sir, I wasn't.

13 "Question: Were you doing cocaine at anytime  
14 leading up to that day?

15 "Answer: No, sir.

16 "Question: How did cocaine end up in your system?

17 "Answer: That's a question I can't answer. I  
18 can't answer that. I can't answer that. I mean I don't  
19 know.

20 "Question: But you saw the blood test for cocaine.

21 "Answer: Yes, I did.

22 "Question: Have you ever used cocaine?

23 "Answer: No."

24 Were you asked those questions and did you give  
25 those answers?

1 A. Yes.

2 Q. Then you were asked by a grand juror -- this is at  
3 page 30, line 8, question from a juror: "The reports show  
4 there was cocaine in your system.

5 "The Witness: Yes. I never did cocaine.

6 "Question: That was my question. Did you ever do  
7 it?

8 "The Witness: Never did it. I don't know how it  
9 got in there. I can't explain it."

10 Now, you were asked those questions as well and you  
11 gave those answers as well, correct?

12 A. Correct.

13 Q. Now, Mr. White, you've been made aware that, after  
14 you were shot, there was a drug test --

15 MR. STARR: May I have this marked, please?

16 THE DEPUTY CLERK: Defense Exhibit 5 marked for  
17 identification.

18 (Defense Exhibit No. 5 was  
19 marked for identification.)

20 BY MR. STARR:

21 Q. You'd been made aware that, after you were shot and  
22 taken to the hospital, a drug test was conducted on your  
23 urine, correct?

24 A. Correct.

25 Q. You've been told that, right?

1 A. Yes.

2 Q. And I'm going to show you this document that is  
3 Defense Exhibit Number 5 for identification purposes. Now,  
4 tell me if I'm reading this correctly. It says admitted 24  
5 January '07, correct?

6 A. Correct.

7 Q. And it has patient name, Robert White, correct?

8 A. Correct.

9 Q. And it says 36 years of age, correct?

10 A. Correct.

11 Q. That was your age at the time, correct?

12 A. Correct.

13 Q. And you see here where it says cocaine?

14 A. Correct.

15 Q. Underneath of the word cocaine, it says "POS,"  
16 correct?

17 A. Correct.

18 Q. Have you ever used cocaine?

19 A. No.

20 MR. STARR: No more questions.

21 THE COURT: Any redirect, Mr. Moomau?

22 MR. MOOMAU: Yes, Your Honor.

23 **REDIRECT EXAMINATION**

24 BY MR. MOOMAU:

25 Q. Mr. White, I'm showing you Defense Exhibit Number 5



1 that was the toxicology report from the hospital that  
2 Mr. Starr was going over with you. Can you read the language  
3 that is right underneath the test results.

4 A. "Treatment, this is a screen test which is not to  
5 be used" -- "not intended for legal purposes."

6 MR STARR: Objection. Your Honor, may we approach?

7 THE COURT: Mr. White, we have to interrupt you for  
8 a moment.

9 (Counsel approached the bench and the following  
10 ensued.)

11 THE COURT: Did you have him read from that  
12 document?

13 MR. STARR: I did, Your Honor, but I don't know  
14 that that makes --

15 THE COURT: Are you going to move for the admission  
16 of the document?

17 MR. STARR: We may or may not. I don't know.

18 MR. MOOMAU: Well, he's already read one thing off  
19 of it. I believe he can certainly read something else.

20 MR. STARR: The disclaimer.

21 THE COURT: Well, that was already said in opening  
22 statement as well.

23 MR. STARR: Well, it was objectionable then too.

24 THE COURT: You didn't object.

25 MR STARR: But that doesn't waive any right to have

1 an evidentiary ruling down the line.

2 THE COURT: And what's your grounds for keeping it  
3 out?

4 MR. STARR: The grounds for keeping it out is that  
5 the disclaimer, about whether or not the document is used for  
6 legal purposes, is irrelevant to the reason that the Court  
7 has admitted the document.

8 THE COURT: I haven't admitted the document and  
9 nobody asked me to admit it.

10 MR STARR: Well, you allowed me to use the  
11 document. I followed the strictures of your ruling very  
12 carefully.

13 THE COURT: Well, the document can be admitted by  
14 either side. It's been authenticated. It's a business  
15 record. You're having him read from it. If the State wishes  
16 to have him read from it -- you're asking me to prevent  
17 that --

18 MR STARR: I'm saying that that language, Your  
19 Honor -- I mean, with all of these exhibits, for example, the  
20 grand jury transcript, we're not going to admit the whole  
21 thing because there was impeachment with certain portions. I  
22 mean, that's how exhibits are handled. We all know that.

23 The disclaimer that's written by the hospital has  
24 nothing to do with whether or not his credibility is  
25 impeached by the fact that he denies using cocaine in the

1 face of a positive test.

2 First of all, the State agrees -- at least their  
3 doctor says it's a reliable test that he relies on. So it's  
4 a little bit of a kind of a false paradigm they're working  
5 off here.

6 THE COURT: That was the document that was relied  
7 on -- as I understand it, that you argue it was relied on by  
8 the State's expert that reviewed that document, including  
9 that rendition of what is on it and still relied on it,  
10 determined it to be -- both of you stipulated that it was  
11 pathologically germane and that -- you know, so if they  
12 relied on it, including that language, it's coming in that  
13 way.

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

16 BY MR. MOOMAU:

17 Q. Mr. White, could you just read the language that  
18 I'd asked you to read just a few minutes ago.

19 A. It says, "Treatment. This is a screen test which  
20 is not intended for legal purpose. No chain of custody has  
21 been documented. Confirm has not been done by a second  
22 method."

23 Q. Robert, Mr. Starr was asking you about, I guess,  
24 your relationship with Mr. Winkelman and this lawsuit and he  
25 showed you this document.

1 MR STARR: Your Honor, what's the exhibit number?

2 MR. MOOMAU: Excuse me. It's Defense Exhibit  
3 Number 2.

4 BY MR. MOOMAU:

5 Q. Are there other names on there besides you?

6 A. Correct, yes.

7 Q. And do you understand what the word "plaintiff"  
8 means?

9 A. Yes.

10 Q. Are there other persons listed as plaintiff?

11 A. Yes.

12 Q. And who are they?

13 A. Marilyn Clark, Chris Fishburn --

14 Q. Who is that?

15 A. Marilyn Clark is Brandon's mother. Chris Fishburn  
16 is Brandon's father.

17 Q. Are they representing the estate of Brandon Clark?

18 A. Correct.

19 Q. Did you have any communication about the lawsuit  
20 with anybody from your attorney's office? Did you get a call  
21 from anyone?

22 A. No.

23 Q. Did you know that this lawsuit was being filed?

24 A. I heard it.

25 Q. Excuse me?

1           A.    I heard.

2           Q.    When you were in the hospital recovering from your  
3 gunshot wounds, did you hire a lawyer?

4           A.    No, I didn't.

5           Q.    Did someone hire a lawyer for you?

6           A.    I think it was my mother, because they wouldn't let  
7 her come in.

8           Q.    You were asked questions about a statement that was  
9 released to the -- I guess the newspapers, correct? And I'm  
10 referring to Defense Exhibit Number 1. You were asked some  
11 questions about, I guess, what Mr. Washington said about  
12 setting up the bed or something to that effect.

13                    Looking at the fourth paragraph of Defense Exhibit  
14 Number 1, do you recognize this document?

15           A.    Correct.

16           Q.    What did you say in that about whatever  
17 Mr. Washington said about setting up the bed?

18           A.    "When I stood up and walked towards Brandon to get  
19 us out of there before the customer started anything more  
20 with Brandon, he looked at me and said nothing, and turned to  
21 Brandon and said, 'Get the fuck out of my house.'

22                    "I began to walk forward and said to Brandon, 'Come  
23 on, let's go.' Brandon was walking backwards out of the room  
24 and I was facing him. The customer was behind me. Brandon's  
25 hands was in a surrender position and said, 'Look, man, I

1 don't want to fight; just let me finish my job.'" "

2 Q. Now, Robert, you were asked questions about whether  
3 or not the rails were ever taken out of the box.

4 A. Correct.

5 Q. Were they?

6 A. No.

7 Q. Did anyone ever, I guess, start to or commence to  
8 take them out of the box?

9 A. No, because he started with Brandon in the room and  
10 he kept cursing at Brandon and then, after he started putting  
11 his hand on him, I was more concerned of getting him out of  
12 there. Because I didn't want to go in. And we just left the  
13 box in there. The bed was still made up. And that was the  
14 last thing I remember.

15 Q. Now, referring to your grand jury testimony, as far  
16 as that issue, at page 25, line 14, can you look at your  
17 grand jury testimony. And again, for the record, I'm  
18 referring to Defense Exhibit 4, line 14. Were you asked a  
19 question there?

20 A. Yes.

21 Q. What question were you asked by a juror?

22 A. "Did you set up the rails?"

23 Q. What was your answer?

24 A. "No, we didn't get a chance to."

25 Q. And was there a question after that?

1 A. "The Juror: So you left them in the box?" "Yes."

2 Q. Was that your answer, yes?

3 A. Yes.

4 Q. Now, Robert, all this that happened up there in the  
5 hallway and in the bedroom, how fast did it happen?

6 A. Real fast. It happened so fast, I just -- it  
7 happened so fast, I couldn't give a time. It just happened  
8 real quick. But it seemed forever to get help.

9 Q. You mean forever to get help when you were laying  
10 there?

11 A. When we was lying there.

12 Q. Could you hear Brandon or did you -- other than  
13 Mr. Washington, did you hear any other voices when you were  
14 laying there?

15 MR STARR: Objection, Your Honor.

16 THE COURT: I believe he can answer that yes or no.

17 BY MR. MOOMAU:

18 Q. Did you hear any other voices?

19 A. Yes.

20 Q. What other voice did you hear?

21 A. His wife.

22 Q. What did you hear her say?

23 MR STARR: Objection, Your Honor. May we approach?

24 THE COURT: Yes, I think we better approach on that  
25 one.

1 MR. MOOMAU: Never mind. Withdrawn.

2 BY MR. MOOMAU:

3 Q. Did you see her?

4 A. No.

5 Q. Robert, when you were getting shot and when  
6 Mr. Washington was shooting Brandon, were you taking  
7 measurements about where he was standing the whole time and  
8 where you were standing and where Brandon was standing?

9 A. I wasn't thinking about no measurement. I was  
10 thinking about not letting him fall down the stairs.

11 Q. What about when he shot you?

12 A. That wasn't even on my mind.

13 MR. MOOMAU: Court's indulgence.

14 THE COURT: Certainly.

15 MR. MOOMAU: That's all I have.

16 MR. STARR: Your Honor, may we approach?

17 THE COURT: Okay.

18 (Counsel approached the bench and the following  
19 ensued.)

20 MR. STARR: Your Honor, on redirect Mr. White said  
21 that he hadn't hired a lawyer; he didn't talk to a lawyer  
22 about this incident.

23 I'm showing the Court a document that I'd like to  
24 make part of the record, if it's not -- if I'm not going to  
25 be allowed to use it to recross Mr. White, and that's



1 Mr. White's signature on the letterhead of his attorney.  
2 There's a fax date at the top of it that says February 6th of  
3 2007, and I'd like to read the language of the document into  
4 the record.

5 But it's our contention that that impeaches  
6 Mr. White's testimony about not hiring a lawyer and not  
7 having a lawyer because he signed a document on the lawyer's  
8 letterhead, invoking his right to have that lawyer present  
9 for all questioning by law enforcement.

10 MR. MOOMAU: Your Honor, this has already been  
11 ruled to not be admissible. He's indicated that his mother  
12 or somebody had hired a lawyer for him. What relevance does  
13 this have?

14 THE COURT: What relevance does it have?

15 MR. STARR: Your Honor, the relevance is, first of  
16 all, we're in an entirely separate place then we were at  
17 pretrial posture. When I raised this at pretrial --

18 THE COURT: When you raised what issue?

19 MR. STARR: I asked to have Mr. White's -- we filed  
20 a motion to have his refusal to speak with the police, his  
21 invocation of his right to counsel admitted, and the Court  
22 denied that motion. It was a separate issue.

23 He has now --

24 THE COURT: I did not make any pretrial ruling on  
25 any silence issue with the police. There is nothing in

1 writing about that as far as I know.

2 MR. STARR: Well, you're correct about it being in  
3 writing. That's my recollection of what was said at the  
4 hearing we had in chambers. I'd like to know if the State  
5 recollects that.

6 THE COURT: You mean at the bench?

7 MR. STARR: No, in chambers on the Friday before  
8 trial. I know that's not on the record but -- well, I guess  
9 what I'm saying is that doesn't matter anyway because we're  
10 in a separate place, dealing with a separate issue.

11 THE COURT: Right, and I didn't say that,  
12 basically, informally, when we were all not on the record,  
13 discussing all the motions that remained outstanding and did  
14 not remain outstanding. I indicated that some required  
15 testimonial foundation, some didn't, and there may have been  
16 initial briefs before I read all the law, etc., but --

17 MR. STARR: If I misinterpreted that, fine. I  
18 accept what the Court says, obviously.

19 What I'm saying now is this. Mr. White has gone to  
20 extreme lengths to deny a lawsuit filed on his behalf and to  
21 deny that -- and part of that denial, Your Honor, is the  
22 denial that he had an attorney, civil counsel, while he was  
23 in the hospital. And this document, he's saying he didn't  
24 talk to a lawyer. That's what he has said about this  
25 incident. His signature is on a document.

1           And just so the language can be on the record, it  
2 says, "I, Robert White, hereby invoke my right to counsel in  
3 all matters which may relate to the incident which occurred  
4 on January 24, 2007, at Shellford Lane in Accokeek, Maryland.  
5 I request my attorney be present before any police office or  
6 other individual question me about the incident of January  
7 24, 2007."

8           This is typed on the letterhead of Law Offices of  
9 McCarthy and Winkelman, LLP, and Michael J. Winkelman is  
10 listed as an attorney with that firm.

11           Mr. White has acknowledged that that was his  
12 lawyer, but has now denied that he talked to a lawyer about  
13 this incident. This directly contradicts that. I'm not  
14 trying to open the door or go anywhere beyond what he has  
15 testified to because I have to be able to challenge the  
16 credibility of that. I have to be able to challenge the  
17 credibility.

18           THE COURT: The credibility of him saying that his  
19 mother got him a lawyer or he believes -- isn't that what the  
20 testimony was?

21           MR. STARR: He said he didn't talk to a lawyer  
22 about the incident.

23           MR. WRIGHT: He said he gave a media statement with  
24 his lawyer.

25           MR STARR: He said a number of things, Your Honor.

1           THE COURT: He has indicated on the record that he,  
2 through your questioning, helped draft a statement to the  
3 media with his lawyer. Your specific question on this issue  
4 was whether or not and when he had a lawyer, if I recall  
5 correctly, and he basically said his mother got him a lawyer.

6           So I believe that, with respect to this matter, it  
7 is ambiguous enough for me to rule that this is a collateral  
8 issue because he's not denying the fact of making a media  
9 statement for the lawyer and not denying the fact that he had  
10 a lawyer, but just that he believes his mother got it for  
11 him.

12           MR STARR: The reason that I came up here on  
13 recross, Your Honor, is that I am responding to the redirect  
14 testimony, not the testimony that was elicited when I was  
15 cross-examining him. I think we should take a look at it  
16 before the Court rules, and we can take a look at the  
17 questions and answers and see what they were. But this is  
18 directly in response to the redirect testimony that was just  
19 elicited by Mr. Moomau about when he had a lawyer.

20           THE COURT: When are you saying that testimony was?

21           MR STARR: I'd like to look at the court reporter's  
22 notes. You know, I don't want to be in a position where I  
23 misstated slightly in some way that's not as favorable to me  
24 and I lose my issue.

25           MR. MOOMAU: Your Honor, there's no question he had

1 a lawyer in some capacity.

2 MR. STARR: He doesn't say that.

3 MR. MOOMAU: Excuse me. They want to get in the  
4 fact that by invoking --

5 MR STARR: We can take that out.

6 THE COURT: Well, that part is definitely not  
7 coming in.

8 MR. STARR: Understood.

9 THE COURT: This section that you wish to have read  
10 into the record and which you did read in the record is not  
11 coming in. If you're trying to just get a document to show  
12 that on February 6th he signed a stipulation with a lawyer, I  
13 have no problem with that and that will be admitted, but it's  
14 not coming in for this.

15 MR. STARR: I will not -- just to make sure I  
16 follow the parameters of the Court's ruling, I will not  
17 question about the body of the document.

18 THE COURT: Correct.

19 MR. STARR: I'll question about what's up here, the  
20 stationery and his signature, and the signature of the  
21 witness, and the date that's on here.

22 THE COURT: Correct.

23 MR. MOOMAU: Just as long as the body of it doesn't  
24 come in.

25 THE COURT: That's correct.



1 A. I don't even know.

2 Q. This Michael Winkelman that I just asked you  
3 about --

4 A. Correct.

5 Q. -- that's the person you've already identified as  
6 your lawyer, correct?

7 A. Correct.

8 Q. And there's a name of a -- do you see the word  
9 "witness" on the document?

10 A. Correct.

11 Q. And it says Carry W. Williams?

12 A. Correct.

13 Q. Who is that person?

14 A. That's my mother.

15 Q. And she was present with you in the hospital,  
16 correct?

17 A. Correct.

18 MR. STARR: No more questions.

19 **FURTHER REDIRECT EXAMINATION**

20 BY MR. MOOMAU:

21 Q. Robert, you would have signed that in the hospital?

22 A. I don't even remember.

23 MR. MOOMAU: That's all. Nothing further.

24 THE COURT: Mr. White, thank you very much.

25 THE WITNESS: Thank you too.

1 MR. MOOMAU: Your Honor, the State would call  
2 Charles Nelson.

3 **CHARLES NELSON,**

4 a witness produced on call of the State, having first been  
5 duly sworn, was examined and testified as follows:

6 THE DEPUTY CLERK: Please state and spell your  
7 first and last name for the record.

8 THE WITNESS: Charles, C-h-a-r-l-e-s, Nelson,  
9 N-e-l-s-o-n.

10 MR. MOOMAU: Court's indulgence, please. I'm just  
11 trying to get this set up.

12 **DIRECT EXAMINATION**

13 BY MR. MOOMAU:

14 Q. Sir, what is your occupation?

15 A. Police officer, Prince George's County Police  
16 Department.

17 Q. And are you assigned to any particular task or job  
18 there? What's your title?

19 A. Yes. I'm currently assigned to the Forensic  
20 Services Division, Evidence Unit.

21 Q. And how long have you been with the Forensic  
22 Services Division?

23 A. A little short of seven years.

24 Q. What are your duties and responsibilities?

25 A. We respond to major crime scenes and we investigate



1 the crime scenes. We identify, locate and collect evidence.  
2 We also photograph crime scenes and perform diagrams.

3 Q. Did you respond to 1513 Shellford Lane in Accokeek  
4 on January 24, 2007?

5 A. Yes, I did.

6 Q. Approximately what time did you arrive there?

7 A. I believe it was 9:15 p.m.

8 Q. Any other evidence techs there?

9 A. Yes. There was William -- I'm sorry. There was  
10 Tech Clelland, William Clelland. There was Corporal Robert  
11 Taylor. There was Corporal Gary Taylor, and I believe that's  
12 it.

13 Q. Do you see the defendant there, Keith Washington?

14 A. Yes, I do.

15 Q. Did you see him there that night?

16 A. No, I did not.

17 Q. Was the exterior and interior of the home  
18 photographed?

19 A. Yes.

20 Q. Sir, you arrived at the scene. What part of the  
21 house did you go to?

22 A. I went to the front door. Then I proceeded  
23 upstairs.

24 Q. What did you observe downstairs and upstairs?

25 A. Downstairs, I observed a roll of papers in the

1 railing going upstairs. There was also some papers on the  
2 kitchen table. There was also a broken doorknob on the  
3 floor, just inside of the front entry door.

4 Upstairs, there were two piles of clothing. There  
5 were bloodstains and other articles of clothing.

6 Q. The piece of paper you were talking about, where  
7 was it at?

8 A. There was a roll of paper inserted between the  
9 railings going upstairs, and there was paper on the kitchen  
10 table.

11 Q. I'd like to show you what's been admitted as  
12 State's Exhibit Number 6. Do you recognize that?

13 A. Yes, I do.

14 Q. And what is State's Exhibit Number 6?

15 A. These were the documents that were rolled and  
16 inserted between the railing going up the stairs.

17 THE DEPUTY CLERK: State's Exhibits 10 through 24  
18 marked for identification.

19 (State's Exhibit Nos. 10 through 24  
20 were marked for identification.)

21 BY MR. MOOMAU:

22 Q. Sir, I'd like to show you photographs. These would  
23 be exterior photographs marked as State's Exhibits 10 through  
24 15. Do you recognize those?

25 A. Yes, I do. This is the outside of the residence

1 and the area in front of the house, the entrance.

2 Q. These photographs, State's Exhibits 10 through 15,  
3 are they accurate depictions of what you saw that night?

4 A. Yes.

5 MR. MOOMAU: Your Honor, the State would move for  
6 the admission of State's Exhibit Numbers 10 through 15.

7 MR STARR: No objection.

8 THE COURT: Ten through 15 admitted with no  
9 exception, State.

10 (State's Exhibit Nos. 10 through 15  
11 were marked for identification.)

12 MR. MOOMAU: Can I just publish one for the jury,  
13 Your Honor?

14 THE COURT: Certainly.

15 BY MR. MOOMAU:

16 Q. Is that the front of the residence there as you --

17 A. Yes, it is.

18 THE COURT: It may help if we dim the lights.

19 MR. MOOMAU: It would help a little bit, Your  
20 Honor.

21 BY MR. MOOMAU:

22 Q. Would that be the front door?

23 A. Yes.

24 Q. Is that how you came in?

25 A. Yes.

1 Q. Did you also photograph the interior of the house?

2 A. I didn't, but Corporal Taylor did.

3 Q. Showing you what's been marked as State's Exhibits  
4 16 through 24. Can you take a look at those.

5 A. (Witness complies.)

6 Q. Are these photographs accurate depictions of the  
7 interior of the residence?

8 A. Yes.

9 Q. Are these the first floor?

10 A. Yes, first floor, ground floor.

11 MR. MOOMAU: Your Honor, the State would move for  
12 the admission of State's Exhibits 16 through 24.

13 MR. STARR: No objection.

14 THE COURT: Sixteen through 24, State, no  
15 objection; admitted.

16 (State's Exhibit Nos. 16 through 24,  
17 previously marked for  
18 identification, were received in  
19 evidence.)

20 BY MR. MOOMAU:

21 Q. And publishing to you what's been admitted as  
22 State's Exhibit Number 17, what is this shot?

23 A. This is just as you enter the front door. Those  
24 are the stairs leading upstairs to the bedrooms.

25 Q. The item shown right there in the banister?



1 the admission of State's Exhibits 25 through 54.

2 MR STARR: No objection.

3 THE COURT: Twenty-five through 54, State, admitted  
4 with no objection.

5 (State's Exhibit Nos. 25 through 54,  
6 previously marked for  
7 identification, received in  
8 evidence.)

9 BY MR. MOOMAU:

10 Q. Sir, I'd like to show you what has been admitted as  
11 State's Exhibit Number 30. This is a hard lighting  
12 situation. Does this area show immediately at the top of the  
13 stairs?

14 A. Yes.

15 Q. Now, you're coming up the stairs there. Do you  
16 remember anything about this particular room; what type of  
17 room that was?

18 A. Coming up the stairs, there was a bedroom that was  
19 closed off, with the door closed, and then there was a master  
20 bedroom.

21 Q. So this would have been a bedroom.

22 A. Yes.

23 Q. And this would have been a master bedroom?

24 A. Yes, a master bedroom.

25 Q. What is a shell casing?

1           A.    A shell casing is a part of a cartridge that, once  
2 the cartridge is fired, it is ejected from the pistol. That  
3 casing contains the powder and primer.

4           Q.    I'd like to show you a photograph that has been  
5 admitted as State's Exhibit Number 7. We can go ahead and  
6 use this as an easel. Would you step down, sir?

7           A.    (Witness complies.)

8           Q.    Just stand so the members of the jury can see it.  
9 I notice there's something shown in this area, as well as  
10 something shown in that area.

11          A.    Those are blood spots.

12          Q.    And these other items, can you show us where, if  
13 any, shell casings were found? If you need to refer to your  
14 report --

15          A.    Yes, I do need to refer to my notes to refresh my  
16 memory. Okay, we had --

17          Q.    And you can use the laser. Just push the button  
18 right there in the middle.

19          A.    This is item CN6, which is right there. That was a  
20 shell casing, nine-millimeter shell casing.

21                Item CN7, right here, that was also a  
22 nine-millimeter shell casing.

23                Item CN9, that's not in this picture.

24          Q.    Was one of them found downstairs?

25          A.    Yes.

1 Q. Was that CN9?

2 A. Yes. That was from the main level, just next to  
3 the living room, next to the foyer.

4 And item CN10, that was in the bathroom, also a  
5 nine-millimeter shell casing.

6 Q. Now, these blood spots, 12 -- I think you marked it  
7 as 11, was that the other one?

8 A. Yes, sir.

9 Q. Did you end up taking any swabs of those?

10 A. Yes, I did.

11 Q. And the purpose of that?

12 A. We were trying to identify who the blood spots  
13 belonged to. In other words, they're taken to the DNA lab  
14 and, by comparison, they can tell us whose DNA it was.

15 Q. You can resume the stand.

16 A. (Witness complies.)

17 Q. Mr. Nelson, were items of clothing found in the  
18 area of the blood spots?

19 A. Yes, sir.

20 Q. What did you do with those clothing items?

21 A. These items were collected. We take them to a  
22 drying room to dry them out, and then they are packaged, and  
23 I believe those items were forwarded to the DNA lab for  
24 comparison.

25 THE DEPUTY CLERK: State's Exhibits 56 through 59



1 marked for identification.

2 (State's Exhibit Nos. 56 through 59  
3 were marked for identification.)

4 BY MR. MOOMAU:

5 Q. Sir, showing you what's been marked as State's  
6 Exhibits 56 through 59. Do you recognize those?

7 A. Yes, I do.

8 Q. And what are they?

9 A. These are the four nine-millimeter cartridge  
10 casings I collected.

11 Q. Which ones were upstairs and which ones were  
12 downstairs?

13 A. Once again, refer to my notes to refresh my memory.  
14 All but item 10 were upstairs. Correction; all but item 9  
15 were upstairs.

16 Q. Do these appear to be in the same condition as when  
17 you collected them?

18 A. Yes.

19 MR. MOOMAU: Your Honor, the State would move for  
20 the admission of State's Exhibits 56 through 59.

21 MR. STARR: May we see those?

22 BY MR. MOOMAU:

23 Q. Sir, I'd also like to show you a photograph that's  
24 been admitted as State's Exhibit Number 38. Do you recognize  
25 that?

1 A. Yes, I do.

2 Q. What is that?

3 A. That is inside the master bedroom.

4 Q. Is there a box there? What's that?

5 A. The box was, I believe, part of a bed that had been  
6 delivered.

7 Q. Also admitted as State's Exhibit Number 4, do you  
8 recognize that?

9 A. Yes, I do.

10 Q. What is that?

11 A. That is another angle of the master bedroom, also  
12 showing the same box.

13 Q. Now, is that looking out toward the --

14 A. Yes, looking out toward the hallway from inside the  
15 bedroom, looking out.

16 Q. And those pile of clothes there by the door?

17 A. Those were the clothes that we found when we came  
18 upstairs.

19 MR. MOOMAU: Your Honor, can I publish these while  
20 he's continuing his testimony?

21 THE COURT: Yes.

22 THE DEPUTY CLERK: State's Exhibit 60 through 62  
23 marked for identification.

24 (State's Exhibit Nos. 60 through 62  
25 were marked for identification.)

1 BY MR. MOOMAU:

2 Q. Sir, you had said that you had collected some  
3 clothing items. Now, I'm not going to take them out of the  
4 bag, but I'm going to show you what has been marked as  
5 State's Exhibit Number 61, 62 and 60.

6 A. Okay.

7 Q. What are those items?

8 A. These are items I collected, items of clothing I  
9 collected.

10 Q. Once you collected them, what did you do with them?

11 A. Once again, they were taken to the drying room,  
12 they were dried out, they were packaged, and those items  
13 containing blood were forwarded to the DNA lab.

14 MR. STARR: For the record, we don't object to  
15 Exhibits 56 through 59, having reviewed them.

16 THE COURT: Then 56 through 59 will be admitted,  
17 State, without objection.

18 (State's Exhibit Nos. 56 through 59,  
19 previously marked for  
20 identification, were received in  
21 evidence.)

22 BY MR. MOOMAU:

23 Q. Sir, you had said you had taken blood swabs from  
24 the scene?

25 A. Yes.

1 Q. I'm going to show you another item.

2 THE DEPUTY CLERK: State's Exhibit 63 marked for  
3 identification.

4 (State's Exhibit No. 63 was  
5 marked for identification.)

6 BY MR. MOOMAU:

7 Q. I'll show you another item marked State's Exhibit  
8 Number 63. Would this be blood swabs that you had taken from  
9 the floor of the scene?

10 A. That's correct.

11 Q. And after you took the blood swabs, what did you do  
12 with them?

13 A. They're dry packaged and moved to the DNA lab for  
14 comparison.

15 MR. MOOMAU: Move for admission of State's Exhibit  
16 Number 63.

17 MR STARR: No objection.

18 THE COURT: Sixty-three admitted, State, without  
19 objection.

20 (State's Exhibit No. 63, previously  
21 marked for identification, was  
22 received in evidence.)

23 BY MR. MOOMAU:

24 Q. Mr. Nelson, I'm just going to show you a couple  
25 other pictures that I've asked to be published. They've

1 already been admitted as State's Exhibit Numbers 31 and 29.

2 Looking at 29, do you recognize that?

3 A. Yes, I do.

4 Q. Is that the first bedroom, I guess, to the left  
5 when you come up the stairs, where you could see part of it  
6 in that big photograph?

7 A. Yes, that's correct.

8 Q. And the other photograph?

9 A. And the other photograph was -- I think this is  
10 from --

11 Q. Would that be, maybe, looking out?

12 A. Yes, looking out of there, going towards the  
13 stairs.

14 MR. MOOMAU: Your Honor, can I publish these?

15 THE COURT: Yes.

16 BY MR. MOOMAU:

17 Q. The clothing items, do you put them in bags there  
18 at the scene?

19 A. Yes.

20 Q. Were there any weapons in them?

21 A. No.

22 Q. Were diagrams produced of the layout of the  
23 upstairs and downstairs?

24 A. Yes.

25 THE DEPUTY CLERK: State's Exhibits 64 and 65

1 marked for identification.

2 (State's Exhibit Nos. 64 and 65 were  
3 marked for identification.)

4 BY MR. MOOMAU:

5 Q. I'd like to show you what's been marked as State's  
6 Exhibits 64 and 65. Do you recognize these?

7 A. Yes, I do.

8 Q. What are these?

9 A. These were the diagrams prepared of the upstairs  
10 and downstairs by Tech William Clelland.

11 Q. Now, these are not to scale; are they?

12 A. We have the scale down there. I'm not sure whether  
13 he put those to scale or not. I believe they are.

14 Q. Are they an accurate depiction of where you found  
15 the items at the scene?

16 A. Yes.

17 MR. MOOMAU: Your Honor, the State would move for  
18 the admission of State's 65, as well as 64.

19 MR. STARR: We need to see those, Your Honor.

20 (Counsel reviews exhibits.)

21 MR. STARR: No objection.

22 THE COURT: State's Exhibits 64 and 65 admitted,  
23 State, without objection.

24 (State's Exhibit Nos. 64 and 65,  
25 previously marked for

1 identification, were received in  
2 evidence.)

3 BY MR. MOOMAU:

4 Q. I'm going to ask you to step down. Mr. Nelson,  
5 just standing in position, what I'll ask you to do is why  
6 don't you just use the laser pointer, and you can show the  
7 jury where items were, starting with the Marlo truck.

8 A. The Marlo truck was right here, parked in front of  
9 the garage.

10 Q. The area in front of the Marlo truck, what is that?

11 A. That's the driveway.

12 Q. And the downstairs of the residence, just describe  
13 the different rooms.

14 A. We have an office here, play room, kitchen, family  
15 room.

16 Q. Now, show the jury where that one shell casing was  
17 that was found downstairs.

18 A. That's item 9 right here. It was found at the base  
19 of the stairs.

20 Q. And the kitchen, where is that located?

21 A. Right here.

22 Q. Now let's do the upstairs. Just show where the  
23 stairs are that are going up.

24 A. These are the stairs that lead to the second floor.

25 Q. And where is the one bedroom that -- the child's

1 bedroom?

2 A. As you come up the stairs --

3 Q. No, here's where you're talking about.

4 MR. STARR: Objection, Your Honor.

5 THE COURT: Sustained.

6 THE WITNESS: Here's the bedroom. As you come up  
7 the stairs, here's the master bedroom and here's the child's  
8 bedroom, here.

9 BY MR. MOOMAU:

10 Q. Or is that the bathroom?

11 MR. STARR: Objection, Your Honor.

12 THE COURT: Sustained.

13 THE WITNESS: The bathroom is here and the child's  
14 bedroom is here.

15 BY MR. MOOMAU:

16 Q. The shell casing that you were referring to?

17 A. Item CN6, that's right here. Item CN7, the other  
18 cartridge casing, that's here, right outside this bedroom.  
19 Item CN9 is the one that's down here on the first level at  
20 the base of the stairs, and item CN10 is right here, just  
21 inside the bathroom.

22 Q. That's fine.

23 (The witness resumes the witness stand.)

24 BY MR. MOOMAU:

25 Q. I'd like to show you an item that has been marked



1 as State's Exhibit Number 55. Sir, I'd like to show you a  
2 photograph that's been admitted as State's Exhibit Number 21.  
3 Do you recognize that?

4 A. Yes, I do. That's the other document that was on  
5 the kitchen table.

6 Q. And I'm showing you an item marked as State's  
7 Exhibit Number 55. Do you recognize that?

8 A. Yes, I do.

9 Q. What is that?

10 A. That is that item CN14 that was on the kitchen  
11 table.

12 Q. And what type of document was that?

13 A. It's a delivery document, sales order from Marlo.

14 Q. Is this the same document that was recovered from  
15 the scene that night?

16 A. Yes, its was.

17 MR. MOOMAU: Move to admit State's Exhibit Number  
18 55.

19 MR. STARR: No objection.

20 THE COURT: Fifty-five admitted, State, without  
21 objection.

22 (State's Exhibit No. 55, previously  
23 marked for identification, was  
24 received in evidence.)

25 MR. STARR: Judge, may I see that?

1 THE COURT: Certainly.

2 MR. STARR: There is no objection.

3 THE COURT: Thank you.

4 MR. MOOMAU: That's all the questions for this  
5 witness, Your Honor.

6 MR. STARR: Your Honor, may we approach?

7 THE COURT: Certainly.

8 (Counsel approached the bench and the following  
9 ensued.)

10 MR. STARR: As a scheduling matter, first, I'm  
11 going to make a proffer that I think if we wait until  
12 tomorrow, my cross-examination will be much shorter. I'm  
13 going to ask that we do that.

14 MR. MOOMAU: He has surgery tomorrow. That's what  
15 I think he said. He said it's a very important medical  
16 matter he cannot miss. That's why I had to rush to get him  
17 on today.

18 MR. STARR: Well, he is tendering him to me today  
19 at 4:57.

20 MR. MOOMAU: He has surgery tomorrow. That's what  
21 he has maintained to me the whole time.

22 MR. STARR: We didn't know that, Judge. We  
23 wouldn't have objected to any scheduling accommodation for  
24 this man if he is having surgery. But it's been a long day,  
25 Judge.

1 MR. MOOMAU: He just says it's a very important  
2 medical procedure. I never delved into it.

3 MR. STARR: He'll be out of here by 9:30.

4 THE COURT: Why don't you find out what time it is  
5 and what it is -- I mean, if it's -- well, just find out what  
6 time that is, at least, so we'll know that.

7 MR. MOOMAU: Woodbridge, Virginia, eleven o'clock.

8 THE COURT: In the morning?

9 MR. MOOMAU: Yes.

10 MR. STARR: We'll have him out of here by 9:30.

11 THE COURT: That's cutting it really close.

12 MR. MOOMAU: Could we just take a short break and  
13 then they can do their cross?

14 MR. STARR: It's five o'clock. I just don't like  
15 keeping -- one, I don't like going past five myself, but I  
16 also don't like keeping jurors past five. I mean, we've had  
17 a full day of testimony here.

18 THE COURT: Well, I tell you what. I don't think  
19 we're going to have a choice because, no matter what we say,  
20 we don't know what the conditions are going to be tomorrow.  
21 And what you may learn that you need to delve in on, his time  
22 frame, anything, as we've seen as we've gone along, can pop  
23 up, which may require you to be more lengthy than you  
24 anticipate. I don't know what's going to happen.

25 And I agree; I don't like to keep the jury here

1 either, but if he has to be in Woodbridge by 11 --

2 MR. STARR: 11:30.

3 MR. MOOMAU: It's 11.

4 THE COURT: I think it was 11. Do you want me to  
5 take a ten-minute break so you can gather your thoughts about  
6 these things?

7 MR STARR: At the very least.

8 THE COURT: I'm going to tell the jury that this  
9 will be a last witness, that he cannot be here tomorrow and  
10 that it shouldn't be that long. Is that a fair statement or  
11 do you want me to --

12 MR STARR: That's fair.

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

15 THE COURT: Ladies and gentlemen, we're going to  
16 take a very brief recess. This is the last witness of the  
17 day. This witness cannot return tomorrow, and it's not going  
18 to be a very long witness, but we thought we'd give you an  
19 opportunity to stretch your legs, as we can, and then we'll  
20 conclude with this witness this evening and then send you  
21 home.

22 Please understand that we appreciate and understand  
23 how long this has been for you today, and we appreciate your  
24 attention to it, and we will conclude with this witness  
25 today.

1 (A brief recess was taken at 5:00 p.m.)

2 MR. MOOMAU: Your Honor, during my direct  
3 questioning I did leave out one other exhibit. It was a pair  
4 of blood swabs. They're agreeable to me reopening the  
5 questioning just for that purpose and showing the witness  
6 that.

7 THE DEPUTY CLERK: State's Exhibit Number 66 marked  
8 for identification.

9 (State's Exhibit No. 66 was  
10 marked for identification.)

11 (The jury returned to the courtroom at 5:10 p.m.)

12 THE COURT: Alright, Mr. Moomau.

13 BY MR. MOOMAU:

14 Q. Mr. Nelson, one more question. I showed you some  
15 blood swabs. I think you swabbed two different spots?

16 A. Yes, I did.

17 Q. One was CN11 and one was CN12. I neglected to show  
18 you CN11. It is marked as State's Exhibit Number 66. Do you  
19 recognize that?

20 A. Yes, I do.

21 Q. After you obtained these or swabbed them from the  
22 carpet, what did you do?

23 A. They were packaged and forwarded to the DNA lab for  
24 comparison.

25 Q. You didn't alter or tamper with the evidence in any

1 way?

2 A. No, I did not.

3 MR. MOOMAU: Move to admit State's Exhibit Number  
4 66.

5 MR. STARR: No objection.

6 THE COURT: State's Exhibit 66 admitted without  
7 objection.

8 (State's Exhibit No. 66, previously  
9 marked for identification, was  
10 received in evidence.)

11 MR. MOOMAU: That's all the questions I have.

12 **CROSS-EXAMINATION**

13 BY MR. STARR:

14 Q. Mr. Nelson, I've been turned into the person who  
15 decides when everybody leaves, so I'm going to try to be  
16 quick. Do you have your report in front of you?

17 A. Yes, I do.

18 Q. I'm going to ask you to refer to that quickly.

19 THE DEPUTY CLERK: Defense Exhibit Number 7 marked  
20 for identification.

21 (Defense Exhibit No. 7 was  
22 marked for identification.)

23 BY MR. STARR:

24 Q. Now, I just want to make sure that what I'm looking  
25 at, which has been marked as Defense Exhibit Number 7, is the

1 same report that you're looking at. Can you tell me if  
2 they're the same?

3 A. Yes.

4 Q. And this is the report that you filled out in this  
5 case?

6 A. Yes, it is.

7 Q. Can you tell me what is item CN3?

8 A. That's a wristwatch.

9 Q. And that was found, according to the report, just  
10 inside the entrance to the master bedroom?

11 A. Yes.

12 Q. Next to the open door.

13 A. That's correct.

14 Q. Officer Nelson, is it fair to say that -- well,  
15 what time did you arrive at this house?

16 A. About 9:15 p.m.

17 Q. So you arrived about nine?

18 A. Fifteen.

19 Q. And you know that a number of police and medical  
20 personnel had been in and out of the house before you  
21 arrived, correct?

22 A. Yes.

23 Q. And once you arrived -- I'm not asking you about  
24 what happened before you arrived now, but once you arrived,  
25 your goal is to preserve the scene as you find it, correct?

1 A. That's right.

2 Q. That's one of the reasons that you take the  
3 photographs you take, correct?

4 A. That's correct.

5 Q. So the goal of taking the photographs is to  
6 document how the things looked when you got there, correct?

7 A. Yes.

8 Q. Now, you talked about some clothing when the State  
9 was asking you questions; do you recall that?

10 A. Yes.

11 Q. Would you agree with me that, basically, when you  
12 arrived, you found two sets of clothing in different places,  
13 correct?

14 A. Yes.

15 Q. And one of these sets of clothing was close to the  
16 master bedroom door, correct?

17 A. Right.

18 Q. And the other set of clothing that you found was  
19 down at the other end of that hallway, correct?

20 A. Yes.

21 Q. And in your report you documented where those items  
22 were, correct?

23 A. That's correct.

24 Q. If you could look at the second page of your report  
25 and just tell me what was item CN4G?



1           A.    It was a one black Icon sports T-shirt, size 4  
2 extra large.

3           Q.    Where was that recovered from?

4           A.    That was recovered from the floor, just inside the  
5 master bedroom entrance.

6           MR. STARR: No more questions.

7           THE COURT: Mr. Moomau, anything further?

8           MR. MOOMAU: No, Your Honor.

9           THE COURT: Thank you very much. I appreciate it.

10          Alright, ladies and gentlemen, as we promised you,  
11 that was the last witness for today.

12          Again, before you leave for this evening, as I have  
13 to do every occasion, I need to admonish you that you're not  
14 entitled to speak to anyone, with whom you may come into  
15 contact this evening, about anything that transpired or any  
16 testimony that took place in this courtroom or any issue  
17 involving this case. That includes your spouses or any  
18 neighbors or anyone whatsoever.

19          I need to tell you again that you're not to put  
20 yourself in a position to be exposed to any television, news  
21 media, newspaper, radio projections of what has taken place  
22 in this trial, or any of those matters at all.

23          You're not to conduct any of your own  
24 investigations, as I mentioned to you before, by going on the  
25 internet or by going to the residence/location where it's

1 alleged that these incidents had taken place, and you're not  
2 to involve yourself in any fashion or capacity in attempting  
3 to find out anything having to do with this matter  
4 whatsoever, and all those matters need to be resolved with  
5 all of you here in this courtroom.

6           With those admonitions, I'm going to ask, again,  
7 that if you could get here tomorrow by 8:30. We appreciated  
8 this morning you doing that. We know how terrible it was  
9 last night, and we know that some locations were a little bit  
10 difficult this morning. That's why we appreciated you  
11 getting in here. We will have you in the courtroom as  
12 quickly as we can, sometime between 8:30 or nine.

13           The reason we get you in at 8:30 is so we can do  
14 any administrative matters without belaboring you with them  
15 and having you sit, and we figured that you could relax a  
16 little bit before we start, as well, if any delays occur.  
17 Sometimes they do. There may be a late witness or -- we just  
18 never know what may take place.

19           So with those admonitions, we thank you and we will  
20 see you back here tomorrow, hopefully at 8:30.

21           That's the main jurors' lounge?

22           THE BAILIFF: Right, the main jurors' lounge.

23           (The jury retired at 5:20 p.m.)

24           THE COURT: I would like to say to both the  
25 prosecution and the defense that, thus far, the way you have

1 conducted this trial has been tremendous for both sides and  
2 it's greatly appreciated.

3 MR. MOOMAU: Thank you, Your Honor.

4 MR. COHEN: Thank you. Your Honor, there's a  
5 scheduling issue. Mr. Moomau and I had spoken during the  
6 break, and I believe that, for scheduling purposes of the  
7 witnesses, Mr. Moomau thinks the State is going to close  
8 their case at around Friday, and I was hoping that -- and  
9 Mr. Moomau agrees, I believe -- that we could have leave to  
10 start our case on Tuesday, just for witness purposes, so I  
11 could let them know when they need to be available.

12 THE COURT: When do you think you're going to  
13 finish on Friday?

14 MR. MOOMAU: It's a prediction. I'm hopeful that  
15 we will finish late Friday afternoon, Friday afternoon  
16 sometime.

17 THE COURT: And that's what you reasonably  
18 anticipate will take place?

19 MR. MOOMAU: That's what I anticipate. I will know  
20 better, of course, tomorrow around noon.

21 THE COURT: Well, I was going to let you know that  
22 I had gotten hold of -- we normally do not conduct carry-over  
23 jury trials on Friday, but I cleared that away. So everyone  
24 is available and all the resources are available on Friday.  
25 So that's fine.

1           If the State concludes on Friday, whenever that may  
2 be, if you wish to proceed with your case on Tuesday, that's  
3 fine.

4           MR. COHEN: Thank you, Your Honor.

5           MR. MOOMAU: That way we could have our rebuttal  
6 Wednesday or Thursday.

7           THE COURT: Because there's another proceeding on  
8 Friday where Mr. Wright is going to be required to be there  
9 at 9:30?

10          THE DEPUTY CLERK: 8:30. There he is.

11          MR. MOOMAU: He has a hearing?

12          THE COURT: Well, he may or may not know it yet  
13 but, yes, he does. Mr. Wright, you have a hearing at 8:30 on  
14 Friday.

15          MR. WRIGHT: Yes, I do.

16          THE COURT: Are you handling any witnesses on  
17 Friday in this case?

18          MR. WRIGHT: On Friday? Let me double check the  
19 schedule. Yes, I may have a witness on Friday, but I can see  
20 if someone can handle my other matter for me.

21          MR. MOOMAU: We'll be ready to go, Your Honor.

22          THE COURT: I just didn't want any -- Judge McKee  
23 needs somebody there on your behalf, or you, to handle that  
24 proceeding at 8:30.

25          MR. COHEN: I'm sorry. One more housecleaning

1 matter. We have had exhibits delivered today. As you can  
2 see, they're quite large and it was quite a feat to get them  
3 here. To take them back and forth would be very --

4 THE COURT: Are we locking the courtroom?

5 THE DEPUTY CLERK: We can order it sealed.

6 THE COURT: The courtroom?

7 THE DEPUTY CLERK: We can order it sealed so they  
8 can't come in. We just have to set the trash cans outside.

9 THE COURT: Your question was can you leave those  
10 here and they'll secured?

11 MR. COHEN: Yes.

12 THE COURT: Sure.

13 (The trial was recessed at 5:25 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 13, 2008, before the Honorable Michael P. Whalen, Associate Judge.

I further certify that the page numbers 1 through 229 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 13th day of May, 2008.

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Cindy S. Davis, RPR

Official Court Reporter