

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 IV of IX

Upper Marlboro, Maryland

Thursday, February 14, 2008

BEFORE:

HONORABLE MICHAEL P. WHALEN, Associate Judge

APPEARANCES:

For the State of Maryland:

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

For the Defendant:

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

Cindy S. Davis, RPR
Official Court Reporter
Post Office Box 401
Upper Marlboro, Maryland 20773

T A B L E O F C O N T E N T S

STATE'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Steven Gorham	4-14	4-20	--	--
Michael Robinson (in camera)	4-27	--	--	--
Michael Robinson	4-34	--	--	--
Gary Taylor	4-55	4-62	--	--
Robert Taylor	4-66	4-70	--	--
Mohammad Ali Khan, M.D.	4-76	4-91	--	--
David Thompson	4-113	--	--	--
Paul Tucker	4-115	--	--	--
Monica Ammann	4-117	4-127	4-130	4-132
STATE'S EXHIBITS			MARKED	RECEIVED
1 - Photo of Brandon Clark			3-32	3-37
2 - Photo of stair railing			3-32	3-48
3 - Photo of Marlo delivery truck			3-45	3-45
4 - Service Inquiry Response Report			3-88	--
5 - Verification of AT&T records			3-125	3-136
6 - Marlo delivery document			3-125	3-134
7 - Lg. poster, hallway/stair railing			3-139	3-141
8 - Photo of blue jeans			3-146	3-147
9 - Photo of shirt			3-146	3-147
10 - Photo			3-202	3-203
11 - Photo			3-202	3-203
12 - Photo			3-202	3-203
13 - Photo			3-202	3-203

STATE'S EXHIBITS (cont.)	MARKED	RECEIVED
14 - Photo	3-202	3-203
15 - Photo	3-202	3-203
16 - Photo	3-202	3-204
17 - Photo	3-202	3-204
18 - Photo	3-202	3-204
19 - Photo	3-202	3-204
20 - Photo	3-202	3-204
21 - Photo	3-202	3-204
22 - Photo	3-202	3-204
23 - Photo	3-202	3-204
24 - Photo	3-202	3-204
25 - Photo	3-205	3-206
26 - Photo	3-205	3-206
27 - Photo	3-205	3-206
28 - Photo	3-205	3-206
29 - Photo	3-205	3-206
30 - Photo	3-205	3-206
31 - Photo	3-205	3-206
32 - Photo	3-205	3-206
33 - Photo	3-205	3-206
34 - Photo	3-205	3-206
35 - Photo	3-205	3-206
36 - Photo	3-205	3-206
37 - Photo	3-205	3-206

STATE'S EXHIBITS (cont.)	MARKED	RECEIVED
38 - Photo	3-205	3-206
39 - Photo	3-205	3-206
40 - Photo	3-205	3-206
41 - Photo	3-205	3-206
42 - Photo	3-205	3-206
43 - Photo	3-205	3-206
44 - Photo	3-205	3-206
45 - Photo	3-205	3-206
46 - Photo	3-205	3-206
47 - Photo	3-205	3-206
48 - Photo	3-205	3-206
49 - Photo	3-205	3-206
50 - Photo	3-205	3-206
51 - Photo	3-205	3-206
52 - Photo	3-205	3-206
53 - Photo	3-205	3-206
54 - Photo	3-205	3-206
55 - Marlo Furniture Document	3-205	3-217
56 - 9mm cartridge	3-208	3-211
57 - 9mm cartridge	3-208	3-211
58 - 9mm cartridge	3-208	3-211
59 - 9mm cartridge	3-208	3-211
60 - Sweater	3-210	--
61 - Pants and belt	3-210	--

STATE'S EXHIBITS (cont.)	MARKED	RECEIVED
62 - Black T-shirt	3-210	--
63 - Blood swabs	3-212	3-212
64 - Large poster	3-213	3-214
65 - Large poster	3-213	3-214
66 - Blood swabs	3-221	3-222
67 - Magazine	4-58	4-61
68 - 9mm casing	4-58	4-61
69 - 9mm cartridge	4-58	4-61
70 - Swabs	4-58	4-60
71 - 9mm handgun	4-58	4-60
72 - Photo	4-69	4-70
73 - Photo	4-69	4-70
74 - Photo	4-69	4-70
75 - Photo	4-69	4-70
76 - Photo	4-69	4-70
77 - Medical record	4-76	--
78 - X-ray	4-76	4-89
79 - Large poster	4-76	4-86
80 - Autopsy report	4-101	4-111
81 - Autopsy report	4-101	4-109
82 - Autopsy report	4-101	4-109
83 - Stipulation	4-101	--
84 - Stipulation	4-101	--
85 - Toxicology report	4-101	5-168

STATE'S EXHIBITS (cont.)	MARKED	RECEIVED
86 - Photo	4-113	4-116
DEFENDANT'S EXHIBITS		
1 - Media statement (Robert White)	3-154	--
2 - Civil lawsuit (Robert White)	3-158	--
3 - Letter from Attorney Winkelman	3-160	--
4 - Transcript, grand jury testimony (Robert White)	3-165	--
5 - Toxicology report (Robert White)	3-183	--
6 - Letter to Robert White	3-198	--
7 - Police report	3-222	--
8 - DNA report	4-132	--
9 - DNA report	4-133	--

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.

MR. WRIGHT: Joseph Wright on behalf of the State.

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

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

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

THE COURT: Good morning. Do we have any matters to take up prior to bringing the jury in?

MR. COHEN: There is one preliminary matter. It is our understanding that Mr. Michael Robinson, who is a Marlo Furniture employee, is going to testify this morning, and he is one of the witnesses which I believe the State is going to try to elicit hearsay testimony from, very similar to the statement that they tried to elicit from Mr. Rascoe yesterday.

I would like to, obviously, make an argument, before that witness takes the stand, regarding the hearsay that they're trying to elicit. And we need a proffer from

1 the State, obviously, of what it is going to be.

2 MR. WRIGHT: Are you ready to hear from the State,
3 Your Honor? Michael Robinson will make a statement. He is a
4 Marlo truck owner, essentially, and he was one of the
5 supervisors for Brandon Clark and Robert White. He made a
6 statement that he had a couple of phone calls with them, one
7 being that Brandon Clark called him and stated that Keith
8 Washington did not have the set of bed rails to facilitate
9 the exchange. Mr. Robinson also hears Mr. Washington in the
10 background, sounding angry about the situation. Mr. Robinson
11 made phone calls to Marlo in terms of what they can do or not
12 do in terms of bed rails.

13 Mr. Robinson also makes another statement that
14 Brandon Clark called back and Clark said this situation is
15 all messed up, referring to the fact that the bed rail
16 delivery was being dragged out. It should have been a
17 ten-minute job and it's really messed up.

18 Those are the statements that Mr. Robinson wants to
19 state in his testimony.

20 THE COURT: And what exception to the hearsay rule
21 are you --

22 MR. WRIGHT: We're using the present sense
23 impressions, 5-803(a)(1), as to all the statements.

24 MR. COHEN: Your Honor, just to maybe short circuit
25 this, the Court made a ruling on something very similar

1 yesterday regarding a witness, Mr. Rascoe, and we would
2 obviously just reiterate our argument.

3 The "sounding angry" is an opinion by Mr. Robinson.
4 There's no knowledge he even knows Mr. Washington or knows
5 what he would sound like angry or anything of that nature.
6 Your Honor would not allow it to come in yesterday with
7 Mr. Rascoe. We would ask that that be kept out.

8 With respect to the Brandon Clark statements being
9 present sense impressions, I wasn't aware of this, the second
10 statement that Mr. White references, because, in their notice
11 to us, that statement was not referenced. So if I could just
12 have the Court's indulgence for one moment.

13 THE COURT: Okay.

14 MR. WRIGHT: I would say that it was given to them
15 with the testimony itself.

16 THE COURT: Well, hold on a minute. They're saying
17 they didn't receive it and you're saying you did?

18 MR. WRIGHT: Yes, Your Honor.

19 THE COURT: How did you do that?

20 MR. WRIGHT: In discovery.

21 THE COURT: In what portion of the discovery do you
22 recall submitting that, so that we know and I can look at it?

23 MR. WRIGHT: Court's brief indulgence.

24 MR. COHEN: I can actually short circuit this, I
25 believe, as well. The grand jury testimony was given to us

1 with respect to Michael Robinson. I believe that statement
2 is in there. I was actually referencing the notice, the list
3 of the hearsay statements that they requested they were going
4 to elicit. It's not in there.

5 THE COURT: Well, I haven't heard any testimony
6 yet, so I don't know about the testimonial foundation,
7 assuming there is a proper one.

8 At the very least, I don't believe -- I would
9 certainly admit an opinion as to the nature of the angry or
10 not angry personification. I don't believe he can testify to
11 that. I believe if, in fact, the testimonial foundation is
12 met and I consider it proper, then he would be able to
13 testify as to what he heard.

14 But out of an abundance of caution, I think we
15 better do that out of the presence of the jury first, so I
16 can determine whether there is a proper foundation for it, as
17 opposed to doing it in front of the jury.

18 MR. COHEN: That's fine with the defense, Your
19 Honor.

20 THE COURT: Do you agree?

21 MR. WRIGHT: Yes, Your Honor.

22 THE COURT: Are you going to start with that
23 witness, or is that witness coming sometime later?

24 MR. WRIGHT: He is coming later, Your Honor.

25 THE COURT: Okay, that's fine. So we will do it in

1 that fashion when that witness --

2 MR. MOOMAU: Your Honor, can I move this? We're
3 not going to be using it this morning.

4 THE COURT: Certainly. Do you wish me to call the
5 jury back?

6 MR. MOOMAU: Your Honor, our first witness is here.
7 Could I be excused just to make sure that we're all lined up
8 and ready to go?

9 THE COURT: Do you want me to wait?

10 MR. MOOMAU: Please. Your Honor, we just would
11 continue to invoke the rule on witnesses.

12 THE COURT: The rule on witnesses is invoked.

13 MR. COHEN: Your Honor, just so the record is
14 clear. We were not given notice of Mr. Gorham making any --
15 or them trying to elicit any hearsay statement through
16 Mr. Gorham. We filed our motion to exclude based on what
17 notice we received.

18 I just want to make sure -- and I'm not sure that
19 they will, because, once it comes out, the damage is done. I
20 want to make sure whether the State does not intend to elicit
21 any information regarding Mr. Gorham's opinion of what Keith
22 Washington's voice sounded like, which the Judge has
23 obviously stated that they could not. I would like that
24 admonishment done prior to Mr. Gorham taking the stand. And
25 a proffer, Your Honor.

1 THE COURT: I agree. Does the State have any
2 difficulty with that?

3 MR. WRIGHT: No, Your Honor. I've actually
4 instructed Mr. Gorham to not make any generalities or
5 opinions about whether or not Mr. Washington appeared angry.
6 He may go into the specific situation of Mr. Washington.
7 There will be no characterization of his being angry,
8 agitated or the like.

9 MR. COHEN: Your Honor, could we get a proffer of
10 the hearsay, because I not sure I understand what that is.

11 MR. WRIGHT: Mr. Washington called into Marlo's
12 store. He called Mr. Washington back. Mr. Washington told
13 him he was expecting the delivery between 2:30 and five.
14 Mr. Washington also said to him that he was waiting --
15 because he was waiting so long for his bed, it was costing
16 him time and money, and that he had lost \$400 because of
17 having to wait, but that no one had called him about the
18 delivery status. The witness then made phone calls and
19 called him back, informed him that --

20 THE COURT: We only want a proffer of what the
21 statements were that he's going to testify to.

22 MR. WRIGHT: The first statement, if I may
23 reiterate. Mr. Washington told him he was expecting delivery
24 between 2:30 and five. He was waiting for so long for his
25 bed, it was costing him time and money, and that he had lost

1 \$400 because of having to wait, and that no one called him
2 about the delivery status.

3 The second statement, Mr. Washington asked who was
4 going to compensate him for the money he lost having to sit
5 at home.

6 Those are the two statements.

7 MR. COHEN: Ready to proceed, Your Honor, with our
8 statements on the record.

9 THE COURT: When the jury comes back, as I did the
10 other day, I intend to ask them if they have found themselves
11 in a position to either hear, see or read anything last
12 evening or this morning.

13 (The jury entered the courtroom at 9:20 a.m.)

14 THE COURT: Good morning, ladies and gentlemen.
15 Before we proceed this morning, I need to ask if any of you,
16 either last evening or this morning, found yourselves in the
17 position where you either heard anything that may have been
18 broadcast on the radio or saw anything that may have been
19 broadcast on television or read anything that may have been
20 portrayed in the newspaper about any of the events or
21 circumstances in this case?

22 THE JURY: No.

23 THE COURT: Is that unanimous amongst you?

24 THE JURY: Yes.

25 THE COURT: Thank you. Mr. State's Attorney.

1 MR. WRIGHT: The State would call Mr. Steven Gorham
2 to the stand.

3 **STEVEN GORHAM,**

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: Steven Gorham, G-o-r-h-a-m.

9 **DIRECT EXAMINATION**

10 BY MR. WRIGHT:

11 Q. Mr. Gorham, how are you this morning?

12 A. I'm fine.

13 Q. Make sure you keep your voice up so everybody can
14 hear you.

15 A. Okay.

16 Q. That is a microphone in front of you, but I'm not
17 sure if it's working or not. Now, you've already stated your
18 name, and that is Mr. Gorham, correct?

19 A. Yes.

20 Q. Where do you work?

21 A. Currently, I work at the Room Store.

22 Q. Where did you work last January, 2007?

23 A. I worked for Marlo Furniture.

24 Q. What did you do for Marlo Furniture?

25 A. I was a sales consultant.

1 Q. What duties are in that job?

2 A. Basically, I sell people furniture, tell them the
3 good parts of the furniture. Basically, I'm just a sales
4 person.

5 Q. Do you remember selling a bed to the defendant in
6 this matter?

7 A. Yes.

8 Q. What kind of bed?

9 A. It was a sleigh bed.

10 Q. Were there any issues with the sale of that bed?

11 A. As when he purchased the bed?

12 Q. Yes.

13 A. Not with me, no.

14 Q. When did you realize there was an issue that
15 Mr. Washington had with the bed itself?

16 A. In January.

17 Q. Was that January 24th of '07?

18 A. I believe so.

19 Q. How did this come to your attention?

20 A. I was walking by my front desk, inside the store,
21 and the front lady that's at the office, Ms. Roundtree --

22 MR. COHEN: Objection, Your Honor.

23 THE COURT: Want to approach?

24 (Counsel approached the bench and the following
25 ensued.)

1 THE COURT: Can I have a proffer?

2 MR. WRIGHT: The proffer is that Ms. Roundtree
3 transferred him a phone call.

4 THE COURT: She just transferred him a phone call.

5 MR. WRIGHT: Yes.

6 THE COURT: She had no conversation with him about
7 the phone call?

8 MR. WRIGHT: No.

9 MR. COHEN: Just for the record. The way the
10 question is being asked, the witness is giving a narrative,
11 and he sounded to us like that is what Ms. Roundtree told
12 him.

13 MR. MOOMAU: Can Mr. White just lead him through
14 that?

15 MR. COHEN: I don't have a problem with him leading
16 him through that part.

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

19 BY MR. WRIGHT:

20 Q. So did Ms. Roundtree transfer you a phone call?

21 A. Yes, she asked me to take this call.

22 Q. Did you take the call?

23 A. Yes.

24 Q. Do you remember what time it was?

25 A. Around seven.

1 Q. How do you remember that time?

2 A. Basically, I was getting ready to go home.

3 Q. Now, when Ms. Roundtree -- did she transfer the
4 call to you or did you receive a message?

5 A. No, she had put the customer on hold, I believe.

6 Q. Now, did you speak with that customer?

7 A. Yes.

8 Q. Who was that customer?

9 A. Mr. Washington.

10 Q. And what did Mr. Washington say to you?

11 A. Well, he said he was sitting at home. He expected
12 his deliver, they told him by five o'clock.

13 Q. Did he say anything else?

14 A. He just wanted to know -- nobody called him. He
15 wanted to know where was his delivery.

16 Q. What did you do when you received this information
17 from Mr. Washington?

18 A. I think I put him on hold again. I went to the
19 computer to pull up the ticket, to see what he was getting
20 delivered.

21 Q. And what did you find out when you pulled up the
22 ticket?

23 A. He was getting delivered bed rails, I believe.

24 Q. With that information, what did you do?

25 A. I told him -- when I see on the screen that he

1 supposed to have got his delivery, I believe, between two and
2 five, and since he called me at seven, I told him I'm going
3 to go to the warehouse, the manager, and find out what's the
4 delay with his delivery.

5 Q. Did you do that?

6 A. Yes, I did.

7 Q. Do you remember who you spoke with at that point?

8 A. A gentleman by the name -- he go by the name "Gee."

9 Q. Did you receive information from Mr. Gee regarding
10 the delivery?

11 A. Yes. I printed out the paper. I gave it to
12 Mr. Gee. He said --

13 MR. COHEN: Objection, Your Honor.

14 THE COURT: Sustained as to what he said. You
15 can't say what he said, sir. That's all right. He'll ask
16 you the next question.

17 BY MR. WRIGHT:

18 Q. Did you call Mr. Washington back?

19 A. Yes.

20 Q. And this was after you spoke with Mr. Gee?

21 A. Yes.

22 Q. What did you inform Mr. Washington?

23 A. That his delivery was on its way as we speak.

24 Q. What did he say in response to that?

25 A. Well, he said he sat home and, you know, they

1 supposed to have been here at five o'clock and, you know, I
2 guess he lost money just sitting there, because he was
3 supposed to have been at work. That's what he told me.

4 Q. Did he say how much money he lost just sitting
5 there?

6 A. He said around \$400.

7 Q. Did he tell you how he came to this \$400 number?

8 A. No, he didn't.

9 Q. When he told you that he lost \$400, what did you
10 do?

11 A. I told him I'm not authorized to compensate
12 anybody; you'll have to talk to the manager of the store.

13 Q. And when you give him that information, did he
14 respond?

15 A. Yes. In fact, he just wanted to know what was the
16 problem. I said I don't have the delivery -- I don't know
17 nothing about the delivery department, so there's a variety
18 of things that could have happened.

19 Q. At that point did you stop talking to
20 Mr. Washington?

21 A. Yes. I apologized for the delay, and he said
22 appreciate me calling him back and thank you and good night.

23 Q. Then when did you hear about the shooting?

24 A. Around 11:30, 12:00 that night.

25 Q. And how did you hear about that?

1 MR. COHEN: Objection, Your Honor.

2 THE COURT: Approach the bench.

3 MR. WRIGHT: I can withdraw that question, Your
4 Honor.

5 THE COURT: Thank you.

6 BY MR. WRIGHT:

7 Q. So you spoke with him around seven?

8 A. Yes.

9 Q. How many times did you speak to Mr. Washington?

10 A. That evening? Once. Twice. The first time I
11 called -- he called, I talked to him. I told him I'd call
12 him back. So twice.

13 MR. WRIGHT: Thank you very much.

14 **CROSS-EXAMINATION**

15 BY MR. COHEN:

16 Q. Good morning, Mr. Gorham. How are you doing?

17 A. Okay.

18 Q. I just need to ask you a few questions.

19 A. Sure.

20 Q. The reason you took the call that was transferred
21 from Ms. Roundtree was because you sold Mr. Washington that
22 bed originally, correct?

23 A. I guess true.

24 Q. And that sale of the bed for Mr. Washington,
25 correct?

1 A. Yes.

2 Q. And once you told Mr. Washington -- you told
3 Mr. Washington that the delivery was supposed to arrive later
4 that evening. Do you remember testifying to that?

5 A. What you mean later that evening?

6 Q. That the delivery was going to come after the
7 second conversation that you had with Mr. Washington.

8 A. Yeah. I informed him that it was on its way as we
9 speak.

10 Q. So at the end of that conversation, Mr. Washington
11 expected the delivery to arrive at his home, correct?

12 A. Yes.

13 Q. Mr. Washington didn't use any profanity in his
14 telephone call with you; did he?

15 A. No.

16 Q. And didn't he thank you at the end of the call,
17 thank you for calling him back, and you hung up, friendly
18 with Mr. Washington?

19 A. Yes, he did.

20 Q. And didn't Mr. Washington actually ask you for some
21 form of discount or compensation regarding the fact that the
22 delivery was late?

23 A. Yes, he did.

24 Q. And then you referred him to Mr. Don Hossendorf
25 (phonetic), who is your manager, correct?

1 A. Yes.

2 Q. Thank you, Mr. Gorham. Nothing further.

3 MR. WRIGHT: Nothing based on that, Your Honor.

4 THE COURT: Mr. Gorham, thank you, sir.

5 MR. WRIGHT: Your Honor, may we approach?

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

8 MR. WRIGHT: Good morning, Your Honor. Our next
9 witness -- our next scheduled witness is Mr. Michael
10 Robinson. I'm not sure if he is present at this point. We
11 have to check and see. He was here all day yesterday. He
12 was instructed to be here at 8:30, but I'm not sure if he is
13 here right now. He was not here at ten minutes after nine,
14 when we went out. So I do need to check and see. If he is
15 not present, then we need to determine our next witness.

16 MR. MOOMAU: I just wanted to let the Court know
17 what is going on. We have a number of expert witnesses
18 today. Dr. Khan, we couldn't get him in until 11 o'clock
19 today. We have Monica Ammann, the DNA lady. She's flying in
20 from Boston. I think she's arriving at about 10 o'clock.
21 And then we have Dr. Locke, who couldn't be here until one
22 o'clock. Now we're just trying to make calls to hustle
23 people in.

24 THE COURT: In the event that Mr. Robinson isn't
25 here, is there any other small witness that we can do, or do

1 you just want me to put them in the jury deliberation room so
2 they're not sitting here.

3 MR. MOOMAU: That would be fine. We apologize. We
4 were relying on Robinson being here.

5 THE COURT: Why don't you check to make sure and
6 then, if you'd come back, then just nod at me, meaning he's
7 not here or he is here. Then I'll figure out what to do with
8 the jury. Do you have any problems with that?

9 MR. STARR: There is no problem with proceeding
10 that way. I just want to put one thing on the record. This
11 came up, actually, when we had the hearing about the dying
12 declaration issue.

13 Mr. Kevin King is the complainant in the other
14 pending case against Mr. Washington, the assault case, and
15 he's present here today and he's in the courtroom. He's been
16 here all morning, and he was here watching court all day
17 yesterday. I just forgot to come up here and say something
18 about that.

19 I raised a rule on witnesses issue about this at
20 that hearing and he was excluded. I didn't realize, because
21 the courtroom was packed yesterday, initially, that he was
22 here. But then I asked somebody, towards the end of the day,
23 when they had seen him, and they said that he had been here
24 early. So he's here today. He was here all day yesterday,
25 and this was an issue raised at the hearing and he was

1 excluded. I'm not asking for any relief right now, other
2 than excluding him further. That may be an issue down the
3 line.

4 THE COURT: Mr. State's attorney, exclude him?

5 MR. MOOMAU: Based on the Court's earlier ruling, I
6 mean.

7 THE COURT: What other ruling?

8 MR. MOOMAU: You had excluded him one time before.

9 THE COURT: Yes, but I don't remember. But if it
10 was some proceeding in one of other cases -- and I don't
11 remember if I did. But I mean --

12 MR. MOOMAU: His testimony really doesn't relate to
13 what he would be testifying to. You did exclude him under an
14 abundance of caution. You didn't want anything to come up
15 later.

16 THE COURT: It's up to you, but I'm saying that,
17 you know, I don't know what's going to come up. I mean, he
18 is not a witness or participant in this trial, correct?

19 MR. WRIGHT: That is correct.

20 MR. MOOMAU: No.

21 THE COURT: But I don't know what could come up in
22 any future proceeding with respect to Mr. Washington
23 potentially taking the stand in his case or -- I'm just
24 saying if they raise anything later on, I don't know what's
25 going to be raised, and I don't know what the setting may

1 possibly be.

2 MR. MOOMAU: I'll talk to him. Can I do that after
3 Mr. Wright comes back? If our witness isn't here and you
4 excuse the jury, can I talk to him?

5 THE COURT: Yes.

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

8 THE COURT: One moment, ladies and gentlemen.

9 MR. WRIGHT: The State would like to call Michael
10 Robinson to the stand.

11 **MICHAEL ROBINSON,**

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

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

16 THE WITNESS: My name is Michael Robinson, first
17 name M-i-c-h-a-e-l, last name R-o-b-i-n-s-o-n, middle initial
18 "L."

19 MR. WRIGHT: Your Honor, you mentioned having a
20 pretrial hearing with this witness.

21 THE COURT: Well, I'm assuming that -- okay.
22 Ladies and gentlemen, we're going to give you a ten-minute
23 recess. We will recall you in just a few moments.

24 (The jury was excused from the courtroom at
25 9:45 a.m.)

1 MR. COHEN: Your Honor, prior to this, may we
2 approach on a related issue?

3 THE COURT: Okay.

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

6 MR. COHEN: Your Honor, I just want to put on the
7 record that Mr. Moomau had I said to me that we were going to
8 approach before the witness was -- before, we said that there
9 was going to be a pretrial hearing and asked the Judge if he
10 wanted to have a pretrial hearing then. We're concerned with
11 the jury being told that we're going to have a pretrial
12 hearing before this witness testifying. It leaves room for
13 the jury to speculate about what we're doing at the pretrial
14 hearing.

15 THE COURT: Well, the jury is not going to think of
16 anything, in my view. But what I meant by the pretrial
17 hearing was before we got to the point of that, eliciting the
18 hearsay statement, that's when I was going to let them out.
19 But, upon their return, I'll just mention that many times we
20 have a lot of administrative matters before we proceed with
21 any witness, and I'll handle it that way.

22 If we have any other similar settings where we're
23 going to try to elicit statements from anyone about anything
24 that you want to maintain objections on, say, hearsay,
25 relevance, etc.; otherwise, we lay the foundation and then,

1 before you elicit anything, we'll let the jury out; I make a
2 determination. But this is fine too.

3 MR. MOOMAU: Your Honor, while Mr. Wright is
4 questioning the witness, I'm going to take care of the other
5 matter with Mr. King. Is that okay?

6 THE COURT: Yes.

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

9 **DIRECT EXAMINATION (In camera)**

10 BY MR. WRIGHT:

11 Q. Mr. Robinson, who do you work for?

12 A. I work for MDS, Marlo's Delivery Service.

13 Q. And what do you do for Marlo's MDS?

14 A. Make deliveries.

15 Q. Do you know Brandon Clark?

16 A. Yes, sir.

17 Q. How do you know Brandon Clark?

18 A. I know Brandon Clark through one of the other
19 drivers that used to drive for Marlo's.

20 Q. Did you ever use Brandon Clark in the delivery of
21 the furniture?

22 A. Yes, sir.

23 Q. On January 24 of 2007 did you use Brandon Clark?

24 A. Yes, sir.

25 Q. Did you also use Robert White?

1 A. Yes, sir.

2 Q. And, during the course of the day, did you have
3 telephone conversations with Mr. Brandon Clark and Robert
4 White?

5 A. Yes, sir, I did.

6 Q. Leading up to the Washington delivery, did you have
7 conversations with Brandon Clark?

8 A. Yes, sir; I had conversations with him all day.

9 Q. Why did you have a conversation with Mr. Clark when
10 he was on the way to Mr. Washington's house?

11 A. We had a conversation because they couldn't find
12 the address in the map. It wasn't on the map.

13 Q. Did you have that conversation with Mr. Clark once
14 he arrived at Mr. Washington's house?

15 A. Yes, sir.

16 Q. What did he say to you?

17 A. Well, he initially -- when he arrived at the
18 location, he gave me a call to let me know that, you know, he
19 was there, and then he was stating that there was an issue
20 because the paperwork wasn't adding up, because it was
21 supposed to be a piece inside of Mr. Washington's house.

22 THE COURT: I'm sorry, sir. I can't hear you.
23 Would you speak up, please.

24 THE WITNESS: Yes, sir.

25 BY MR. WRIGHT:

1 Q. Mr. Clark explained to you that there was a
2 problem?

3 A. Yes, sir.

4 Q. And what type of problem did he say that he was
5 experiencing?

6 A. Mr. Clark stated to me that Mr. Washington didn't
7 have the set of bed rails that he was supposed to have inside
8 of his home.

9 Q. Mr. Washington was supposed to have a set of rails
10 in his home?

11 A. Yes, sir.

12 Q. Why?

13 A. Because that was on the paperwork that we had, that
14 it was supposed to be an even exchange on the set of bed
15 rails, which we were supposed to drop off a set of bed rails
16 and then, upon that, we were supposed to bring back a set of
17 bed rails as well, that were supposed to be located inside
18 the home.

19 Q. Once Mr. Clark said this to you, what did you do?

20 A. I told Mr. Clark to give me a couple of minutes and
21 I'll get back with him. From that point, I hung up the phone
22 and I called Marlo's dispatch service, which handles those
23 type of issues.

24 Q. And did they give you any instruction?

25 A. Yes, sir.

1 Q. What instruction was that?

2 A. First, the guy, he looked at the paperwork and he
3 was like, you know, there is supposed to be a set of bed
4 rails in the home but due to the, you know, the time, we'll
5 go ahead and just make the delivery.

6 Q. Once you received that information, did you call
7 Mr. Clark back?

8 A. Yes, sir.

9 Q. At what time did you call Mr. Clark back?

10 A. I called Mr. Clark back on -- actually, on Robert's
11 phone because --

12 Q. Why did you call him on Robert's phone?

13 A. Brandon's phone died throughout the day, so the
14 only phone they had was Mr. Robert White's phone.

15 Q. But you spoke with Mr. Clark when you called him on
16 the phone?

17 A. Yes, sir, I spoke with Brandon.

18 Q. Now, with the information you received from Marlo
19 Dispatch Service, what did you say to Brandon?

20 A. I told Brandon that you can go ahead and make the
21 delivery now; you know, the liability won't fall back on us;
22 we go ahead and just make the delivery.

23 Q. What did Mr. Clark say to you in response to that?

24 A. He was glad. He said -- he was like good. He said
25 because this is all messed up, you know; it's taking too

1 long; ten minutes for just a set of bed rails.

2 Q. Did he explain any further as to why the situation
3 was messed up?

4 A. No. Basically, he was just stating that, you know,
5 a set of bed rail hookup only takes ten minutes, and they had
6 been there already for over 15 to 20 minutes.

7 Q. When he said that to you, did you give him any
8 instructions?

9 A. Yes, sir. I told Mr. Brandon to go ahead and --
10 Mr. Clark to go ahead and make the delivery.

11 Q. And when you told him to make the delivery, did you
12 tell him to go ahead and install the bed rails?

13 A. Yes, sir.

14 Q. Was that the end of your conversation with
15 Mr. Clark?

16 A. Yes, sir.

17 Q. Was that the last conversation you had with
18 Mr. Clark that day?

19 A. Yes, sir.

20 MR. WRIGHT: Nothing further.

21 MR. COHEN: Court's indulgence. No questions for
22 this witness now.

23 THE COURT: Okay.

24 MR. MOOMAU: Can we approach about the other
25 matter, Your Honor?

1 THE COURT: Yes.

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

4 MR. MOOMAU: Your Honor, the matter dealing with
5 Kevin King, I did speak to him. He maintains that he has a
6 right to observe this public proceeding. I recommended that
7 he leave just to avoid any issues later. I don't think I
8 have the power to exclude him. I mean how can I do that?
9 He's not even a witness in this case.

10 THE COURT: Okay. Just so the record is clear,
11 you've asked for a rule on witnesses and that I'm holding
12 both sides responsible for their witnesses, and Mr. King is
13 not a participant in this trial and not a witness in this
14 trial. I don't, however, know what issues may spring up in
15 the future because testimony is anticipated, during the
16 course of this trial, from Mr. Washington as well. So it's
17 all on the record.

18 I don't believe, because he's not a participant in
19 this case or a witness in this case, that I can exclude him,
20 but I think that's a decision that the state's attorney and
21 he are going to have to make about that.

22 MR. MOOMAU: Just one other issue, Your Honor. It
23 is something that came up yesterday and, since the jury is
24 not here, we may as well do this bench conference during
25 that.

1 During the testimony of Marilyn Clark, I wasn't
2 allowed to go into her visiting with Brandon at the hospital
3 and things like that. It was raised during the testimony of
4 Robert White. He was crossed about this lawsuit, and
5 Ms. Clark would have been able to testify, under direct,
6 about why they got the lawyers. She was party to that, and I
7 think the door is opened and, if I wanted to -- I think I
8 ought to be permitted to put her up there to explain that and
9 about the lawsuit, who signed what.

10 THE COURT: You have to do what you have to do and
11 I'll rule at the time.

12 One last thing, before we proceed with this
13 witness. Are you objecting to these statements as present
14 sense impression?

15 MR. COHEN: Yes. I don't think they are. For one,
16 he made a statement that said Mr. Clark was glad --

17 THE COURT: Well, again, that's not -- he is not
18 going to be entitled to give his impression or opinion that
19 Mr. Clark was glad, period. I mean he is to give no opinion
20 as to what he heard about the context or the mental state of
21 the defendant. If that's removed?

22 MR. COHEN: Yes, we withdraw our objection to the
23 statements, "this is all messed up; this should not have
24 taken more than ten minutes," or words to that effect.

25 THE COURT: And did not have beds rails to exchange

1 is the other statement, I believe?

2 MR. COHEN: Yes.

3 THE COURT: Instruct the witness, Mr. Robinson,
4 that he cannot provide his opinion or give his impression
5 that Mr. Clark was glad, angry, happy, upset, anything.

6 MR. WRIGHT: Thank you, Your Honor.

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

9 MR. WRIGHT: Permission to approach the witness,
10 Your Honor?

11 THE COURT: Yes, please.

12 (The jury returned to the courtroom at 10:00 a.m.)

13 THE COURT: Thank you, ladies and gentlemen. As
14 you've seen throughout the course of the trial, we have a lot
15 of administrative matters we need to do before a witness
16 takes the stands. We know you know about the delays and we
17 appreciate it. Thank you.

18 **DIRECT EXAMINATION**

19 BY MR. WRIGHT:

20 Q. I believe you already stated your name for the
21 record. Your name is Michael Robinson, correct?

22 A. Yes, sir.

23 Q. Who do you work for, sir?

24 A. I work for MDS, Marlo's Delivery Service.

25 Q. And what do you do for Marlo's MDS?

1 A. We deliver. We deliver -- make the deliveries for
2 the furniture.

3 Q. And did you work with Mr. Brandon Clark?

4 A. Yes, sir.

5 Q. In what capacity did you work with Mr. Brandon
6 Clark?

7 A. Could you --

8 Q. How did you work with Brandon?

9 A. Brandon actually -- Brandon actually drove the
10 truck for me.

11 Q. This was your truck, essentially?

12 A. Yes, sir. I'm the lessee of the truck.

13 Q. On January 24th of 2007, did you have Brandon Clark
14 driving the truck for you?

15 A. Yes, sir.

16 Q. And what were Brandon's duties that day?

17 A. Brandon's duties that day were to make all
18 deliveries.

19 Q. How is it that Brandon Clark came to being on the
20 truck?

21 A. Brandon Clark actually had experience inside of the
22 business through his, quote, unquote, Uncle Reds that I know,
23 that worked at the -- used to drive, be one of the drivers.

24 Q. And on that day were you going to make the
25 deliveries yourself?

1 A. Yes, sir.

2 Q. So what happened that day? How did Mr. Clark end
3 up making the deliveries?

4 A. The situation was that my fiance, her car had got
5 stolen, and me only having the vehicle, she had to go to real
6 estate classes twice that day, and it was really hard for her
7 to go to class and then to be out of class at seven to come
8 pick me up back from the Marlo's.

9 So what I did was I went on ahead and took off that
10 day and did a couple of things for the business, and she went
11 on and, you know -- she couldn't get to real estate class
12 that day. So I had to actually take off work, and I had to
13 get the guys to go make the deliveries.

14 Q. So you called Brandon Clark?

15 A. Yes, sir.

16 Q. And what time of morning was this?

17 A. It was about 3:50, 4:00 in the morning.

18 Q. And you had that conversation with him?

19 A. Yes, sir.

20 Q. And he agreed to do your deliveries that day?

21 A. Yes, sir.

22 Q. What did you do in order to prepare for the
23 deliveries that day?

24 A. What you have to do is get up, get on up inside the
25 warehouse, and you have your paperwork of all the routes that

1 you have to do on the day. So you make sure that you have
2 all your inventory inside the lanes so that, when you get to
3 the stop, you're not missing a piece or have too many pieces
4 on your truck. So you go through, do your inventory. From
5 that point, do a DOT sheet, you get your billing sheet, and
6 you go out and make your deliveries, load your truck and make
7 your deliveries.

8 Q. Who loaded the truck that day?

9 A. Me and Brandon.

10 Q. What time did you finish loading the truck?

11 A. We finished loading the truck maybe around about
12 6:30.

13 Q. And at that point what happened?

14 A. From that point me and Brandon, what I was going to
15 have to do is get Brandon to follow me to my home so I could
16 drop off my car to my girlfriend, because we couldn't get in
17 contact with Mr. White from that point, you know, from the
18 point that we walked inside of the warehouse, all the way up
19 until the point that we had the truck loaded.

20 Q. And when you say Mr. White, you mean Mr. Robert
21 White?

22 A. Yes, sir.

23 Q. Why were you trying to get in contact with Robert
24 White?

25 A. So Brandon could have someone to go out and make

1 the deliveries. If not, I would have had to go and help with
2 the deliveries.

3 Q. You were supposed to be delivering that day?

4 A. Yes, sir.

5 Q. What happened after you loaded the truck? What
6 happened?

7 A. After we loaded the truck, as I was filling out the
8 DOT sheet, to get the rest of our billing sheet, Mr. White
9 called back and said that, you know, he was up and he was
10 ready to go to work and he could come in.

11 Q. So what happened at that point?

12 A. From that point, gave the billing sheet to
13 Mr. Clark and, you know, he got on the truck. And Mr. White,
14 he lived in another location, so I got inside of my vehicle,
15 Mr. White got inside of the truck -- I mean Mr. Clark got
16 inside of the truck and he went to pick up Robert.

17 Q. Is that the last time you saw Brandon Clark?

18 A. Yes, sir.

19 Q. Did you speak to Brandon Clark throughout the day?

20 A. Yes, sir. I had conversations with him all day.

21 Q. Why?

22 A. Because the area that we were running that day, we
23 weren't too familiar with that. We didn't run that area
24 often. I maybe ran that area maybe once, twice every two
25 months. So --

1 Q. What area is that?

2 A. Accokeek. It was the Accokeek area.

3 Q. Were there other cities also you went to besides
4 Accokeek?

5 A. Yes, sir.

6 Q. Do you remember the delivery to Mr. Washington's
7 house?

8 A. Yes, sir.

9 Q. What happened leading up to that delivery?

10 A. Leading up to that delivery, we had -- we couldn't
11 find the first location before that delivery. So the problem
12 was that the guys couldn't get on the map and coordinate the
13 location that they were already at to Mr. Washington's house.

14 Q. Why is that?

15 A. Because it wasn't on the map.

16 Q. Why is that?

17 A. You know, they update maps pretty often, and I
18 guess it was a new development and it wasn't located inside
19 of the map.

20 Q. So they called you for assistance?

21 A. Yes, sir.

22 Q. What assistance did they need?

23 MR. COHEN: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MR. WRIGHT:

1 Q. After they called you, what did you do?

2 A. I got on Mapquest and I got the directions from off
3 of Mapquest.

4 Q. And you gave them directions to which location?

5 A. To Mr. Keith Washington's home.

6 Q. Did you speak to them that evening once they
7 arrived at the Washington home?

8 MR. COHEN: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. WRIGHT:

11 Q. What phone were you using to talk to Brandon Clark?

12 MR. COHEN: Objection, Your Honor.

13 THE COURT: Sustained. He hasn't said that he did
14 yet.

15 MR. WRIGHT: Okay.

16 BY MR. WRIGHT:

17 Q. Did you talk to Brandon Clark during the day?

18 A. Excuse me, sir?

19 Q. Did you talk to Brandon Clark during the day?

20 A. Yes, sir; I spoke with Brandon all day long.

21 Q. How did you speak with Brandon Clark?

22 A. I spoke with Brandon mostly throughout the day on
23 his cell phone and his cell phone actually went dead, so we
24 had to use Mr. Robert White's phone.

25 Q. So you were using Mr. Robert White's phone leading

1 up to the Washington delivery?

2 A. Yes, sir.

3 Q. Let me approach and show you what's been previously
4 marked as State's Exhibit Number 5. It was shown to defense
5 counsel earlier. Take a look at this. Do you recognize
6 that?

7 A. Yes, sir.

8 Q. What is it?

9 A. It's my billing -- it's my phone bill.

10 Q. What does State's Exhibit Number 5 show you?

11 A. State's Exhibit Number 5?

12 Q. That is the document here in your hands. What does
13 it show you?

14 A. It shows you the state that the call was made from
15 and telephone numbers.

16 Q. Do you see your number on there?

17 A. Yes. I see it more than once.

18 Q. Around 7:39, which I believe is 1939 hours, do you
19 see your number around that location?

20 A. Yes, sir.

21 Q. How many times did you speak to Brandon when he was
22 at the Washington home?

23 MR. COHEN: Objection, Your Honor. Assuming facts
24 not in evidence.

25 THE COURT: I can't hear you.

1 MR. COHEN: Assuming facts not in evidence.

2 THE COURT: Overruled.

3 THE WITNESS: How many times did I speak to
4 Mr. Clark at the residence?

5 BY MR. WRIGHT:

6 Q. Yes.

7 A. I spoke to him about three times.

8 Q. The first time you spoke with him, do you remember
9 that phone conversation?

10 A. Yes, sir.

11 Q. What was the nature of that phone conversation?

12 A. The nature of the conversation the first time was
13 to actually let me know that he did make it to the location
14 off the directions I did give him.

15 Q. And was that the whole first conversation?

16 A. No, sir.

17 Q. What did Mr. Clark say to you in that first
18 conversation?

19 A. He let me know that, yeah, Mike, I made it to the
20 location, but we have an issue because there is no bed rails
21 at Mr. Keith Washington's home. So he was stating to
22 Mr. Washington they can't make the delivery because the
23 paperwork is not adding up.

24 Q. Because there is no bed rails to exchange?

25 A. Yes, sir.

1 Q. Could you hear anyone in the background during your
2 conversation with Mr. Clark?

3 MR. COHEN: Objection, Your Honor.

4 THE COURT: Approach the bench.

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

7 THE COURT: And?

8 MR. WRIGHT: I proffer this time only that he heard
9 the homeowner in the back talking loudly, but he cannot tell
10 what he was saying.

11 THE COURT: Sustained.

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

14 BY MR. WRIGHT:

15 Q. After Mr. Clark told you about the exchange issue,
16 what did you do?

17 A. I told Mr. Clark give me a couple of minutes, let
18 me work on it and see what we can do, and I hung up the phone
19 with him and I called Marlo's dispatch service.

20 Q. When you called Marlo's dispatch service, what
21 happened?

22 A. I guess dispatch took a look inside the computer,
23 and they did verify that it was supposed to be an even --

24 MR. COHEN: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. WRIGHT:

2 Q. Once you received that information from Marlo
3 dispatch service, what did you do?

4 A. I called the store.

5 Q. No. Once they told you the situation, what did you
6 do? Did you call Mr. Clark back?

7 A. Yes, sir.

8 Q. What did you inform Mr. Clark?

9 A. I informed Mr. Clark that MDS say we can go ahead
10 and make the delivery.

11 Q. Did Mr. Clark say anything to you during this
12 conversation?

13 A. Yes, sir.

14 Q. What did Mr. Clark say to you?

15 A. He said that the situation was all messed up.

16 Q. Did Mr. Clark further explain why the situation was
17 all messed up?

18 A. Yes, sir.

19 Q. What did Mr. Clark say?

20 A. Mr. Clark said that it was, you know, that it was
21 taking a long time just for a 15-minute set of bed rails and
22 that, you know, the guy was pretty hostile --

23 Q. Well --

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

25 THE COURT: Approach the bench, please.

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

3 MR. WRIGHT: Your Honor, the witness has been
4 instructed numerous times not to make any characterizations
5 as to Mr. Washington or as to Mr. Clark.

6 MR. COHEN: Your Honor, at this point I think the
7 defense has to make a motion for a mistrial.

8 The witnesses are writing down what the witness
9 said. The reason for the motion and having it outside of the
10 jury was for this exact issue and, according to Mr. Wright,
11 the witness was admonished not to make the statement. He
12 made the statement, clearly, and at this point, Your Honor,
13 the jury is unfairly prejudiced by the statement, and there
14 is no limiting instruction the Court can do to cure that
15 problem.

16 MR. WRIGHT: A limiting instruction may be able to
17 cure the problem. It was one statement, and I may be able to
18 take care of that problem.

19 MR. COHEN: We took every precautionary measure we
20 could think of, Your Honor, to keep this from happening.
21 Every juror has written that statement in their book, from
22 what we can see, in their notes. There is no other option.

23 But there's also a problem that, with the way the
24 State examined the witness, left it open for him to be able
25 to add this statement at the last part of the other statement

1 that he made. It was the nature of the direct examination as
2 well.

3 MR. WRIGHT: I guess the question will become, then
4 I can go further into it with the witness --

5 THE COURT: And do what? What are you saying?

6 MR. WRIGHT: Whether Mr. Clark actually used that
7 word. I mean at this point he's testified about -- he used
8 the word "hostile." I think that that can be cured with an
9 instruction.

10 THE COURT: What I intend to do in this matter is
11 to tell the jury that -- let me think about it for a minute.

12 MR. STARR: While you think about it, Judge, there
13 is one more thing. Well, give me one moment, please.

14 THE COURT: Because of the defendant's objection
15 for the witness, earlier, giving any impression or his
16 opinion or impression, which I granted and which I
17 specifically instructed the State to advise the witness
18 before he testified, I feel that I have absolutely no choice
19 but to tell the jury, by way of a limited instruction, that
20 this witness had absolutely no basis for his impression
21 whatsoever by using the term hostile.

22 MR. STARR: And that he was advised not to say it.

23 MR. COHEN: Ordered by the Court not to say it.

24 MR. STARR: The problem with this issue, Your Honor
25 is --

1 THE COURT: I understand.

2 MR. STARR: Your Honor, by suggesting language in
3 the instruction, we don't abandon our request for a mistrial
4 because we don't think a limiting instruction can cure this
5 and, frankly, we took every possible precautionary measure,
6 including having a pretrial hearing moments before the man
7 testified, to deal with precisely this kind of issue.

8 MR. COHEN: We request leave, Your Honor, to brief
9 the issue so the Court can have a comprehensive record in
10 front of him to make the decision on the mistrial. It's very
11 difficult to brief this kind of issue on our feet, to argue
12 the issue on our feet.

13 THE COURT: What are you asking for?

14 MR. COHEN: Leave to brief.

15 THE COURT: Are you talking about a lengthy period
16 of time?

17 MR. COHEN: Your Honor, we're not going to hold up
18 the trial at this point. We made our request. We hold up
19 our objection. We may do some research on our own time, not
20 on the Court's time, and file something if we need to.

21 MR. WRIGHT: I guess the State would also want to
22 be able to reply, respond to their brief. If we want to do
23 one overnight, that is fine with the State. We can both
24 submit.

25 THE COURT: I'm not pausing at this moment, which I

1 believe would cause more troubles than not.

2 What I intend to do is to tell this jury that this
3 witness had absolutely no basis for his impression for using
4 the term "hostile" in reference to what he heard on the
5 phone, and that he was ordered not to use any term like that
6 prior to his testimony by the Court.

7 MR. STARR: And that they're instructed, Your
8 Honor -- again, without abandoning our mistrial request --
9 that they're not to consider it whatsoever.

10 THE COURT: Do you have any other --

11 MR. WRIGHT: No, Your Honor.

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

14 THE COURT: Ladies and gentlemen of the jury, you
15 have heard Mr. Robinson use the term "hostile." I am telling
16 you and instructing you that this witness has absolutely no
17 basis for the impression that he made or to use the term
18 hostile, and that he was ordered by the Court, prior to his
19 testimony, not to use any terms or impressions, period, with
20 regard to this matter, and that I am instructing you that you
21 cannot consider that part of his testimony whatsoever, under
22 any circumstances or any conditions, and you need to strike
23 that from your mind.

24 If any of you cannot do that, I need you to come to
25 the bench and tell me.

1 Mr. Foreman, I would like you to pass around a
2 note, please, and ask if there was anyone who could not
3 strike that from their mind.

4 (The foreman circulated a note to all jurors.)

5 THE COURT: Is there any member of this jury panel
6 who would like to approach the bench on that issue? Thank
7 you.

8 Mr. State's Attorney.

9 MR. WRIGHT: Thank you, Your Honor.

10 BY MR. WRIGHT:

11 Q. After Mr. Clark informed you that the situation was
12 all messed up, did you give him any instructions?

13 A. Yes, sir.

14 Q. What did you tell him to do?

15 A. I told him, no matter what, to go ahead and make
16 the delivery.

17 Q. Did you give him any instructions as to the bed
18 rails?

19 A. Yes, sir. I told him that we won't be charged for
20 the ones that were supposed to be picked up from the home
21 already; we wouldn't be charged for that no matter what; go
22 ahead; the ones that we have in the truck, make the delivery
23 for them.

24 Q. Did you give any instruction as to the set up of
25 the bed rails?

1 A. No, sir. I mean that -- sorry, sir.

2 Q. Yes?

3 MR. COHEN: Objection, Your Honor. There's no
4 question.

5 THE COURT: Sustained, please.

6 BY MR. WRIGHT:

7 Q. Did you give any instructions as to the set up of
8 the bed rails?

9 A. The only way to make the bed rails work are to go
10 ahead and assemble the bed rails.

11 Q. So did you instruct them to go ahead and assemble
12 the bed rails?

13 A. Yes, sir.

14 Q. Going back to State's Exhibit Number 5, at 1942
15 hours, is your number listed as the number called?

16 A. No, sir.

17 Q. Is your number listed as the calling number?

18 A. Yes, sir.

19 Q. So you called -- you last spoke with them at 1942?

20 MR. COHEN: Objection.

21 THE COURT: Sustained.

22 BY MR. WRIGHT:

23 Q. When did you last speak with Brandon Clark?

24 A. I can't be exact. I can't be exact with the time.
25 It's military time on the sheet, but I can't be exact. I

1 know it was after seven o'clock.

2 Q. Can you look at the military time listed on the
3 sheet?

4 A. Yes, sir. It's 1-24-2007, 1942.

5 Q. Now, after your last phone conversation with
6 Brandon Clark, what did you do?

7 A. After the last phone conversation?

8 Q. Yes.

9 A. I waited and I waited and I waited for them to call
10 me back.

11 MR. COHEN: Objection, Your Honor. Relevance.

12 THE COURT: Overruled.

13 BY MR. WRIGHT:

14 Q. Did you ever get news that there was a larger issue
15 at the Washington house?

16 MR. COHEN: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. WRIGHT:

19 Q. When did you hear -- did you get any information
20 about Brandon Clark later that evening?

21 MR. COHEN: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. WRIGHT:

24 Q. Did your truck ever come back?

25 A. No, sir. That's -- no, sir, my truck never came

1 back. They had another delivery to make, and we don't get
2 paid unless we make all our deliveries. So I was waiting for
3 him to get back with it.

4 Q. Did you hear what happened to your truck?

5 MR. COHEN: Objection, Your Honor.

6 THE COURT: Approach the bench.

7 (Counsel approached the bench and the following
8 ensued.)

9 THE COURT: Number one, what are you trying to
10 elicit? Number two, what exception to hearsay rule is it?
11 And, number three, what is the relevance?

12 MR. WRIGHT: What I'm trying to elicit, Your Honor,
13 is that, once he heard of a shooting, he actually went to
14 inform Ms. Marilyn Clark of the shooting itself.

15 THE COURT: And what relevance does that have to
16 anything that you are trying to elicit in this matter?

17 MR. WRIGHT: It just adds to the timing of when she
18 found out, when he found out of the shooting itself.

19 THE COURT: You mean with respect to when she may
20 have gone and done what, if anything?

21 MR. MOOMAU: Your Honor, there are other incoming
22 phone calls made, shown on that phone record that has been
23 admitted as a State's exhibit. It will help explain those
24 calls coming in, because people were calling, trying to find
25 out if it was them.

1 THE COURT: People were calling who?

2 MR. MOOMAU: Robert White's cell phone.

3 THE COURT: What relevance is that to any issue in
4 the case?

5 MR. MOOMAU: Well, is the defense going to raise
6 what are all these calls coming in after?

7 MR. STARR: You know --

8 THE COURT: I'm sorry. I don't mean to interrupt.
9 You mean, specifically, all of the calls made to Mr. White's
10 cell phone?

11 MR. MOOMAU: Yes, after that --

12 THE COURT: After the --

13 MR. MOOMAU: 7:42 that he testified about.

14 MR. COHEN: They should be redacted anyway, Your
15 Honor, before the exhibit goes back. There is really no
16 relevance to the calls.

17 MR STARR: We're not going to raise an issue about
18 the calls at all.

19 MR. COHEN: Your Honor, my concern, again, is this
20 witness seems to want to continually answer questions that
21 are not being asked to him, and the questions are stated in a
22 nature --

23 THE COURT: You're objecting to the leading nature
24 of the questions then?

25 MR. COHEN: I am.

1 THE COURT: Which you have a proper right to do.

2 MR. COHEN: Yes, Your Honor. I was hoping to get a
3 proffer about what is coming up next.

4 MR. WRIGHT: The State may be finished or have one
5 last question.

6 THE COURT: What would that question be?

7 MR. WRIGHT: I have to go back and check my notes.
8 The State may be finished at this time.

9 THE COURT: You do not recall what the question
10 would be or the issue would be?

11 MR. WRIGHT: The State may be finished with this
12 witness, Your Honor. The State is finished.

13 THE COURT: Okay.

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

16 MR. WRIGHT: The State is done.

17 MR. COHEN: No questions, Your Honor.

18 THE COURT: Thank you, Mr. Robinson. You're free
19 to step down, sir.

20 THE WITNESS: Yes, sir.

21 MR. MOOMAU: Your Honor, the State would call Gary
22 Taylor.

23 **GARY TAYLOR,**

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

DIRECT EXAMINATION

1
2 THE DEPUTY CLERK: Please state and spell your
3 first and last name for the record.

4 THE WITNESS: Yes, ma'am. Gary Taylor, first name
5 G-a-r-y, last name T-a-y-l-o-r.

6 BY MR. MOOMAU:

7 Q. Good morning, Mr. Taylor. How are you?

8 A. Fine, sir.

9 Q. What is your occupation, sir?

10 A. I'm employed with the Prince George's County Police
11 Department. I'm assigned to the forensics services division
12 as an evidence technician.

13 Q. How long have you been employed in that capacity?

14 A. Coming up this November will be 19 years.

15 Q. On January 24, 2007, did you have occasion to
16 respond to 1513 Shellford Lane in Accokeek?

17 A. Yes, sir, I did.

18 Q. Approximately what time did you respond there?

19 A. I arrived on the scene at 9:00 p.m.

20 Q. While you were at the scene, did you take any
21 action in reference to the defendant Keith Washington?

22 A. Yes, sir, I did.

23 Q. Now, how long after you were there did you do that?

24 A. Probably within 10 to 15 minutes of being on the
25 scene.

1 Q. And you arrived at the scene, you said, around
2 nine, did you say?

3 A. Yes, sir.

4 Q. And when you arrived on the scene, where was the
5 defendant at as far as the house? Inside? Outside?

6 A. I didn't know who the defendant was at the time
7 because I had never met the defendant, I had never seen the
8 defendant. So at the time I didn't know where he was. He
9 was later pointed out to me by a couple of officers on the
10 scene.

11 Q. Where was he at?

12 A. When I saw him, he was outside.

13 Q. Now, the person that I'm referring to as the
14 defendant, and you've mentioned that word, is he present in
15 the courtroom?

16 A. Yes, sir, he is.

17 Q. And just point to him and just tell us the clothing
18 that he's wearing.

19 A. Gray jacket, striped shirt. I can't tell --
20 dark-colored tie.

21 Q. Sitting at the end of the table?

22 A. Yes, sir.

23 MR. MOOMAU: The record reflect he's identified the
24 defendant, sir.

25 THE COURT: The record will so reflect.

1 BY MR. MOOMAU:

2 Q. Now, did you take any action as far as the
3 defendant Mr. Washington, as far as any items that were in
4 his possession?

5 A. Yes, sir, I did.

6 Q. And what action was that that you took?

7 A. I recovered his semiautomatic pistol.

8 Q. Where did you recover that from or where did he
9 retrieve that from on his person?

10 A. From his waistband area, and we were standing right
11 around the garage area of the residence.

12 Q. So when you say waistband, you mean like down the
13 pants, in the front?

14 A. Yes, sir.

15 MR. STARR: Objection to leading.

16 THE COURT: Sustained.

17 BY MR. MOOMAU:

18 Q. Tell us what you mean. If you could just stand up
19 and tell us what you mean as far as in he waistband.

20 A. He had a shirt on the outside of his clothing. He
21 reached under his shirt and removed the weapon and handed me
22 the weapon.

23 Q. When you say waistband, what do you mean?

24 A. I'm not sure because the shirt was covering. I
25 didn't see exactly where it was.

1 Q. Okay. Now, when you took possession of that
2 handgun, did you have any -- how were your hands?

3 A. I had a glove on when I took possession of the
4 weapon, sir.

5 Q. And what type of glove?

6 A. It's a latex rubber glove.

7 THE DEPUTY CLERK: State's Exhibits 67 through 71
8 marked for identification.

9 (State's Exhibit Nos. 67 through 71
10 were marked for identification.)

11 BY MR. MOOMAU:

12 Q. The handgun that you took possession of, do you
13 know what caliber, manufacturer?

14 A. Yes, sir, I do.

15 Q. What was that?

16 A. It's a Beretta nine millimeter, 92FS.

17 Q. This particular handgun, was it loaded or was there
18 any -- just tell us about that. Did you check that?

19 A. Pardon me?

20 Q. Did you check to see if it was loaded?

21 A. Yes, sir, I did. Once I recovered the weapon from
22 Mr. Washington, I went to my vehicle, at which time I
23 inspected the weapon. I removed the magazine. There were 11
24 cartridges in the magazine. As I pulled the slide back,
25 there was one expended casing in the chamber area of the

1 weapon.

2 Q. The magazine, the firearm and the expended casing
3 that was, I guess, in the chamber, is that what you said?

4 A. Yes, sir.

5 Q. What did you do with those items, including the
6 handgun?

7 A. Those items were packaged and forwarded to the
8 firearms examination unit.

9 Q. Now, did you do anything to the handgun before
10 sending it on to the firearms examination unit?

11 A. Yes, sir, I did.

12 Q. What did you do?

13 A. I swabbed it for DNA.

14 Q. Tell us what you mean by swabbing.

15 A. Took a sterile swab, distilled water, couple drops
16 on, shake the excess water off, and then you swab the
17 exterior of the weapon, then let them air dry, place them in
18 an envelope, and forward them on to the DNA lab for
19 examination.

20 Q. Now, did you use one swab for the handle, one swab
21 for the barrel, one swab for the -- I guess the middle of the
22 gun? Tell us how you do it.

23 A. No, sir. I used one swab and I swab the entire
24 gun. Per our laboratory, that's how they wanted it done.

25 Q. Sir, showing you what's been marked as State's

1 Exhibit Number 71. Do you recognize that?

2 A. Yes, sir, I do.

3 Q. What is State's Exhibit Number 71?

4 A. State's Exhibit 71 is a nine millimeter
5 semiautomatic pistol, brand make is a Beretta. The serial
6 number is BER056652.

7 Q. Is that the handgun you recovered from
8 Mr. Washington as you've testified to?

9 A. Yes, sir, it is.

10 Q. State's Exhibit Number 70.

11 A. May I open this?

12 Q. I don't think it's necessary. Do you have any --
13 at least according to the evidence tag.

14 A. Okay. The evidence tag is swabs that I had taken
15 from the gun, the exterior surface of the gun.

16 Q. After you took those swabs, did you place them in
17 envelopes and send them on to the DNA lab?

18 A. Yes, sir, I did seal it and my I.D. number is
19 across the seal.

20 MR. MOOMAU: The State would move for the admission
21 of State's Exhibits 70 and 71.

22 MR. STARR: No objection.

23 THE COURT: Seventy and 71, State, admitted without
24 objection.

25 (State's Exhibit Nos. 70 and 71,

1 officers following police officer shootings, correct?

2 A. Yes, sir.

3 Q. And when you arrived at the scene, Mr. Moomau asked
4 you some questions about seeing a Marlo truck. Were other
5 police vehicles there when you arrived?

6 A. Yes, sir.

7 Q. And there were a number of police officers there,
8 correct?

9 A. Yes, sir.

10 Q. And was there any ambulances or fire trucks at that
11 time?

12 A. I believe there was an ambulance there. I believe
13 so, yes, sir.

14 Q. And you saw people going in and out of the house?

15 A. I saw a lot of people everywhere, sir. There was
16 quite a few people at the scene, that's correct.

17 Q. And this -- when you recovered the gun, this was
18 the same night, this was January 24th of '07, correct?

19 A. Yes, sir.

20 Q. Now, a couple of questions about the actual
21 evidence that you recovered. You indicated that there were
22 11 cartridges in the magazine, correct?

23 A. Yes, sir.

24 Q. And just so that it's clear, a cartridge, when you
25 use that language, you're referring to, basically, a complete

1 bullet, correct? An unfired bullet; is that right?

2 A. Yes, sir.

3 Q. And those were in the magazine of the gun, correct?

4 A. Yes, sir.

5 Q. And when you refer to expended cartridge, you said
6 there was an expended casing in the chamber, correct?

7 A. Yes, sir.

8 Q. And an expended casing comes from a round that has
9 been fired, correct?

10 A. Yes, sir.

11 Q. So there were 11 unfired cartridges inside of the
12 gun when you recovered it?

13 A. Inside the magazine, yes, sir.

14 Q. Inside the magazine.

15 A. Yes.

16 Q. Now, you said that you asked Mr. Washington -- the
17 way that you recovered the weapon is that you asked
18 Mr. Washington for it and he handed it to you, correct?

19 A. That's correct.

20 Q. You testified, when Mr. Moomau was asking you
21 questions, about putting on rubber gloves.

22 A. Yes.

23 Q. You did that on the scene, correct?

24 A. Yes.

25 Q. And the reason that you did that is so, when you

1 handle the evidence, in this case the gun, you don't want to
2 contaminate it with, for example, your own DNA, correct?

3 A. Correct.

4 Q. And the reason that you did the swab that you did
5 was because you knew that the gun -- there could be a DNA
6 test conducted because people can leave DNA on guns, correct?

7 A. No.

8 Q. Okay. You swabbed and the swabs were ultimately
9 tested for the presence of DNA, correct?

10 A. Correct.

11 Q. And you testified that the way that you did the
12 swab was you swabbed the entire weapon with one swab?

13 A. Two swabs. There was two swabs together.

14 Q. You swab the entire weapon with two swabs?

15 A. Yes.

16 Q. And you did that, instead of swabbing piece by
17 piece, and you said that the reason for that is that's how
18 you're told to do it by the lab?

19 A. Our DNA lab. I did that once before, where I did
20 it piece by piece. The DNA lab said they don't do it that
21 way --

22 Q. I'm not taking issue with it.

23 A. That's the way we do it.

24 Q. The DNA lab told you to do it that way.

25 A. Yes.

1 Q. And when you were doing the swabs or when you were
2 handling the gun, you never saw any blood on the gun; did
3 you?

4 A. No.

5 MR. STARR: No more questions.

6 THE COURT: Any redirect?

7 MR. MOOMAU: No, Your Honor. The witness is free
8 to go.

9 THE COURT: Thank you, sir.

10 MR. MOOMAU: Robert Taylor.

11 **ROBERT TAYLOR,**

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

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

16 THE WITNESS: Corporal Robert Taylor, R-o-b-e-r-t,
17 T-a-y-l-o-r, I.D. 2039.

18 **DIRECT EXAMINATION**

19 BY MR. WRIGHT:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. Sir, what is your occupation?

23 A. I am a sworn police officer, assigned to the
24 Forensic Services Evidence Division, Prince George's County
25 Police.

1 Q. Your duties at that position?

2 A. I'm responsible for the identification,
3 preservation, processing, and collection of evidence in crime
4 scenes.

5 Q. How long have you been doing that?

6 A. I've been doing that full time for nine years.

7 Q. And before that?

8 A. I was a beat processing officer for three years,
9 which I did it on a part-time basis.

10 Q. And you were employed in that capacity on January
11 24, 2007?

12 A. Yes, sir, I was.

13 Q. Did there come a time on that date that you went to
14 a location relevant to this case?

15 A. Yes, sir.

16 Q. And do you know what that address was?

17 A. I don't recall the house number. I believe it was
18 Shellford, in Accokeek.

19 Q. What did you observe at the location when you went
20 there? When you pulled up outside.

21 A. When I pulled up outside, I was directed by an
22 officer on the scene to the inside of the house. There were
23 several -- I went to second level. There were some blood
24 stains on the carpeting and some shell casings. I took
25 placards and identified them with -- the placard as being

1 possible items of evidence.

2 Q. You mean the little yellow-type labels?

3 A. Yes, sir.

4 Q. What time did you arrive on the scene?

5 A. It was approximately 9 p.m.

6 Q. Did anyone come there with you? Any other persons
7 who work in the same capacity as you do?

8 A. Yes, sir. I was on evening shift, and I believe
9 there were two other evidence technicians on duty, and we all
10 went to the scene.

11 Q. When you went inside, were there other people
12 inside?

13 A. Yes, there were.

14 Q. Just tell us about how many people, what people
15 were doing.

16 A. I don't know exactly how many were present in the
17 house. When you walk in, there was a staircase right in
18 front of the front door that led to the second level. I
19 believe to the right there was a living room and, to the left
20 of the staircase, there was like a crooked hallway and a
21 family room, kitchen, and people were in the back of the
22 house. I could tell that.

23 Q. At anytime did you have contact with an individual
24 identified as Keith Washington?

25 A. Yes, sir.

1 Q. What part of the house was that in?

2 A. I don't recall whether that was the upper level or
3 the lower level, but it was inside the house.

4 Q. Did you take any action as far as the person Keith
5 Washington?

6 A. Yes, sir.

7 Q. Is that person present in the courtroom today?

8 A. Yes, sir, he is.

9 Q. Just identify him for the record.

10 MR. STARR: We'll stipulate, Your Honor.

11 MR. MOOMAU: The stipulation that he's been
12 identified just like the other witnesses.

13 THE COURT: The record will reflect.

14 BY MR. MOOMAU:

15 Q. What action did you take as far as the defendant
16 Mr. Washington?

17 A. I photographed Mr. Washington.

18 THE DEPUTY CLERK: State's Exhibits 72 through 76
19 marked for identification.

20 (State's Exhibit Nos. 72 through 76
21 were marked for identification.)

22 BY MR. MOOMAU:

23 Q. Sir, I'd like to show you photographs marked as
24 State's Exhibits 72 through 76. Can you identify those?

25 A. Yes, sir. These are the photographs that I took

1 the night of January 24, 2007.

2 Q. Do those photographs look as he appeared to you?

3 A. Yes, sir, they do.

4 MR. MOOMAU: Your Honor, the State would move for
5 the admission of State's Exhibits 72 through 76.

6 MR. STARR: No objection.

7 THE COURT: Seventy-two through 76 admitted, State,
8 without objection.

9 (State's Exhibit Nos. 72 through 76,
10 previously marked for
11 identification, were received in
12 evidence.)

13 MR. MOOMAU: The State would ask to be able to
14 publish all of these to the jury. Court's indulgence.

15 Your Honor, that's all the questions I have on
16 direct. I was just allowing the jury to examine them.

17 THE COURT: Cross-examination, counsel.

18 MR. STARR: I do have some cross, Your Honor. I
19 wanted to wait. Thank you.

20 **CROSS-EXAMINATION**

21 BY MR. STARR:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. You testified that you arrived at the address on
25 Shellford Lane around 9 p.m., correct?

1 A. Yes, sir.

2 Q. And it's fair to say that there were many other
3 police officers there when you arrived, correct?

4 A. There were several, yes, sir.

5 Q. Was there any medical personnel there? Ambulance?
6 Fire trucks?

7 A. I didn't see any when I got there.

8 Q. Now, Mr. Moomau asked you a couple questions about
9 what you did when you got there, and I just want to show you
10 a photo that I'm just using as an example. This is State's
11 Exhibit Number 36. Now, that's a photo that shows a pile of
12 clothing, correct?

13 A. Yes, sir.

14 Q. And the pile of clothing is sitting in the entrance
15 to the master bedroom, correct? The bedroom with the double
16 doors?

17 A. That looks like the master bedroom.

18 Q. And when you said you placed down these placards,
19 are any of those depicted in this photograph?

20 A. Yes, sir; number 3 and number 4.

21 Q. So the yellow numbers that we see next to some of
22 the evidence at the scene --

23 A. Items.

24 Q. Items of evidence, you put those there, right?

25 A. Yes, sir.

1 Q. To indicate where evidence was, correct?

2 A. Yes. To indicate where they were and to identify
3 them by number.

4 Q. Now, when you arrived, you saw two separate piles
5 of clothing, correct?

6 A. Yes, sir.

7 Q. And there was one sitting in the doorway of this
8 master bedroom, the bedroom with the double doors, correct?

9 A. Yes, sir.

10 Q. And then there was a separate pile of clothing down
11 at the other end of that hallway, correct?

12 A. Yes, sir.

13 Q. And you indicated where both of those piles of
14 clothing were, correct?

15 A. Yes, sir.

16 Q. Now, you don't have any knowledge of whether
17 Mr. Washington received an ice pack for any facial injuries
18 before you arrived; do you?

19 A. No, sir.

20 Q. And you don't have any knowledge of any medical
21 treatment or diagnosis that he received later that evening;
22 do you?

23 A. No, sir.

24 MR. MOOMAU: No redirect, Your Honor.

25 THE COURT: Thank you, officer. I appreciate it.

1 MR. MOOMAU: Your Honor, can we approach?

2 THE COURT: Certainly.

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

5 MR. MOOMAU: Dr. Khan is supposed to be here at 11.

6 THE COURT: He's not here yet?

7 MR. MOOMAU: Mr. Wright was going to go check on
8 him. He has some things scheduled this afternoon. I just
9 wanted to --

10 THE COURT: Okay.

11 MR. MOOMAU: I would need a minute to set up for
12 him because I have an x-ray thing.

13 THE COURT: Do you want to give them five or ten
14 minutes to stretch their legs?

15 MR. MOOMAU: Yes, sir. I know Monica Ammann is
16 here. I just wanted to -- since she is up in Boston, I was
17 hoping to do her after lunch, but if I could just have a few
18 minutes with her.

19 THE COURT: For purposes of the record, I just
20 wanted to put on that I had denied the -- which you presumed
21 from my curative instruction, but at this point denied the
22 defense motion for mistrial. I gave the instruction that I
23 did, and I asked any of the jurors, by the question I did,
24 whether or not there would be anyone among them who could not
25 strike that from their mind and there was no response from

1 anyone saying they could not do that. I just wanted that on
2 the record.

3 A note was also passed around by the foreman, and
4 there was no affirmative response on the note. Just for
5 purposes of the record, and I have that note right here, and
6 I'm going to make it part of the case.

7 MR. MOOMAU: Want us to initial it or anything?

8 THE COURT: Yes, please.

9 (All counsel initial note.)

10 THE COURT: I'll still look at anything anyone
11 wants to provide.

12 MR. COHEN: Your Honor, I would just preserve our
13 motion.

14 THE COURT: Yes.

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

17 THE COURT: Ladies and gentlemen, we're going to
18 take a ten-minute recess so you can stretch your legs, use
19 the restrooms, and we can prepare for the next witness.

20 (A brief recess was taken at 11:05 a.m.)

21 MR. MOOMAU: Your Honor, we're ready to proceed.
22 Our next witness will be Dr. Khan.

23 THE COURT: Would counsel please approach the bench
24 for one moment.

25 (Counsel approached the bench and the following

1 ensued.)

2 THE COURT: I don't believe this is of any
3 consequence, but the foreman of the jury approached Sheila,
4 my bailiff, and indicated that it just came to his attention
5 at some point that not all of the jurors may have had the
6 opportunity to view the jury orientation film.

7 I'll explain that to you. It's a small film when
8 you're called to jury service. It gives them the basics of
9 the functions of a variety of the people performing in trial.
10 My experience is I've presented that many times over the
11 years, and some jurors watch it; some jurors don't. So I
12 think it's of no consequence.

13 He didn't say or relate that anyone was going to
14 have any specific problem. He just related that that came to
15 his attention. I don't think it's of any consequence
16 whatsoever, but I just wanted to point out to you that that's
17 what was brought up.

18 MR. COHEN: Thank you.

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

21 MR. MOOMAU: The State's next witness will be
22 Dr. Khan.

23 **MOHAMMAD ALI KHAN, M.D.,**
24 a witness produced on call of the State, having first been
25 duly sworn, was examined and testified as follows:

1 THE DEPUTY CLERK: State's Exhibit Numbers 77
2 through 79 marked for identification.

3 (State's Exhibit Nos. 77 through 79
4 were marked for identification.)

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

7 THE WITNESS: My first name is Mohammad,
8 M-o-h-a-m-m-a-d, middle name is Ali, A-l-i, last name is
9 Khan, K-h-a-n.

10 **DIRECT EXAMINATION**

11 BY MR. MOOMAU:

12 Q. Good morning, Dr. Khan.

13 A. Good morning.

14 Q. Sir, what type of work do you do?

15 A. I'm a surgeon.

16 Q. And where is your office located?

17 A. Greenbelt.

18 Q. You say surgeon. Just describe to the members of
19 the jury the types of surgery that you perform.

20 A. I am a general surgeon and, mostly, I do abdominal
21 surgery, and I also do trauma surgery in which, essentially,
22 you have to deal with in an emergency situation anything you
23 come up with and you have to handle it.

24 Q. Do you have any arrangements with hospitals where
25 you go, like, to their emergency rooms and do surgeries?

1 A. Yeah. We have a group of surgeons at Prince
2 George's Hospital and we take rotations. We are eight of us
3 and we take turns taking calls.

4 Q. Just talking a little bit about your
5 qualifications. Are you licensed to practice medicine in any
6 states?

7 A. I am licensed to practice in Maryland.

8 Q. When and where did you graduate from medical
9 school?

10 A. I graduated from Dow Medical College in Karachi in
11 1973.

12 Q. How long have you had your practice here in Prince
13 George's County?

14 A. I have been in practice since 1981.

15 Q. Now, what does board certification mean?

16 A. Board certification is a set of exams you have to
17 clear to be board certified.

18 Q. Are you board certified in any particular area?

19 A. I'm board certified in general surgery.

20 Q. Have you ever testified as an expert witness in the
21 field of surgery, general surgery?

22 A. Yes, I have.

23 Q. In what courts?

24 A. I have testified in P. G., P. G. County and
25 Washington, D.C.

1 MR. MOOMAU: First of all, I'd ask that he be
2 admitted to testify as an expert in the area of general
3 surgery.

4 THE COURT: Voir dire?

5 MR. COHEN: Your Honor, if we could approach
6 briefly.

7 THE COURT: Okay.

8 (Counsel approached the bench and the following
9 ensued.)

10 MR. MOOMAU: As far as opinions, I do not intend to
11 elicit any opinions; more as to what he testified to at the
12 motions hearing.

13 MR. COHEN: That was the point of approaching. I
14 just want to make sure there will be no opinion testimony.
15 He is a treating physician. If they want him as an expert,
16 we'd object to any opinion testimony.

17 THE COURT: What is intended to be -- just the fact
18 that he attended the surgery and what he did and what he
19 performed?

20 MR. MOOMAU: Well, that Brandon Clark died and --

21 THE COURT: I'm just asking.

22 MR. MOOMAU: That would be the only opinion, what
23 was going on when he died.

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

25 THE COURT: Okay. Thank you.

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

3 MR. MOOMAU: Was that motion --

4 THE COURT: I don't believe there was a motion. I
5 think they said they withdrew.

6 MR. MOOMAU: Okay.

7 BY MR. MOOMAU:

8 Q. Sir, working in the ER at Prince George's Hospital
9 Center, do you have occasion to treat gunshot victims?

10 A. Yes, I do.

11 Q. And after the initial -- I guess your initial work
12 in the trauma center with these patients, do you continue to
13 monitor them afterwards?

14 A. Yes, I do.

15 Q. Now, sir, while you were working at the hospital,
16 did you come in contact with a young man, Brandon Clark?

17 A. Yes, I did.

18 Q. Do you know the date?

19 A. I believe it was 24th of January, if I'm not wrong.
20 Twenty-third.

21 Q. Excuse me?

22 A. Twenty-third of January.

23 Q. Well, that's okay. Doctor --

24 A. Twenty-fourth, yes. It says 24th. I'm sorry.

25 Q. And what year?

1 A. 2007.

2 Q. And just for the record, you do have copies of
3 records for Brandon Clark in front of you?

4 A. Yes, I do.

5 Q. And did Brandon Clark have any injuries and, if so,
6 what were the nature of the injuries when you saw him?

7 A. Brandon Clark had suffered two gunshot wounds, one
8 in the abdomen was in front, in the abdomen, slightly to the
9 left of the midline, and it has gone inside his abdomen and
10 has lacerated his stomach, his mesentery, his small
11 intestine, large intestine, and blood vessels in his pelvis,
12 and he also had a fracture of his left thigh bone, femur.

13 Q. When you say a fracture of his left femur, was
14 there any wound associated with that?

15 A. With the gunshot wound. It was associated with the
16 gunshot wound.

17 Q. And where on the -- femur is part of the upper leg?

18 A. Yeah. It was close to the knee. The fracture
19 involved the part of the joint surfaces of the femur bone.

20 Q. Now, this particular wound, was it in the front
21 part of the, I guess, the thigh or the back?

22 A. If I remember, it was more in the front than the
23 back.

24 Q. And on that particular date when you first saw him,
25 what was his condition at that time?

1 A. He was in a shocky state. He was brought in, and
2 it was quite clear that he's in distress and he was in need
3 for emergency surgery.

4 Q. Was emergency surgery done?

5 A. Yes, sir.

6 Q. And just explain briefly to the jury what you did.

7 A. Well, when he arrived, we have a whole team of
8 doctors and nurses and other helpers who get involved in the
9 assessment and management of the patient. We have an
10 anesthesiologist present at that time, and Mr. Clark required
11 an immediate intubation; that is, to put a tube down in his
12 throat to help him breathe, so that we have good airway and
13 we can oxygenate him. We also started some IV lines so that
14 we can start giving him blood, blood products, fluids, and we
15 call the operating room, and we alerted them that we were
16 coming down.

17 Q. Explain to the jury his course of treatment after
18 the initial surgery.

19 A. The initial surgery, as you know, it required
20 repair of the stomach and the blood vessels to the stomach,
21 the control of bleeding of different areas inside the
22 abdomen, removing section of the intestines, small and large
23 intestines, and the bullet had gone into the right side of
24 the pelvis and the blood vessels -- many of the blood vessels
25 were injured, so had to stop the bleeding and repair the

1 blood vessels. In the meantime, he received antibiotics, he
2 received blood and fluids, and we supported him.

3 And then, afterwards, we transferred him to the
4 intensive care unit where he continued to receive respiratory
5 support from the ventilator, and he was closely monitored for
6 his blood pressure, for his requirement of any continued
7 bleeding or any other anticipated things.

8 Like we were worried about he would develop a clot
9 in his legs. So we did tests to make sure there were no
10 clots in the legs and we continued support.

11 And then he improved to a point that we were able
12 to get him off the respirator and he was breathing on his
13 own. Unfortunately, he couldn't breathe on his own for too
14 long. He had to be reintubated, put back on the respirator.
15 At that point we thought maybe he has some problem with his
16 lungs, maybe a blood clot to his lungs or a pneumonia.

17 We had a thoracic surgeon come in and he checked
18 his airways, and we also did a CAT scan of his chest to make
19 sure that there is no blood clot to his lung or heart. In
20 the meantime, he continued to receive support and antibiotics
21 and fluids.

22 But then he continued to deteriorate, and we did a
23 CAT scan of his abdomen, and it showed that there was a
24 blockage and infection and abscess in the abdomen, and we
25 took him to surgery and, at the time of surgery, as soon as

1 we started, his heart rate dropped, his oxygenation got worse
2 and he went into cardiac arrest. We tried to resuscitate him
3 at that time but we couldn't resuscitate him.

4 Q. And what date was the day of his passing?

5 A. I have to look in here. If you have it, you know.

6 MR. MOOMAU: Can we stipulate? We have a
7 stipulation that it was February 2nd, Your Honor.

8 THE WITNESS: Yes, that about sounds right. It was
9 actually early hours of February 2nd. We took him to surgery
10 on the 1st. It was late, like around eleven o'clock and,
11 when we pronounced him, it was just after midnight.

12 BY MR. MOOMAU:

13 Q. The condition that caused his death, what relation
14 did that bear to his gunshot wound to his abdomen?

15 A. His death was secondary to the injuries caused by
16 the gunshot wound, yes.

17 Q. Now, sir, on that same date, the first date,
18 January 24, 2007, did you also come into contact with a man
19 named Robert White?

20 A. Yes, I did.

21 Q. And was that also at the hospital?

22 A. Yes. The trauma center.

23 Q. What was Mr. White's condition?

24 A. Actually, Mr. White arrived prior to Mr. Clark, and
25 he had also suffered gunshot wound to his chest, to his

1 abdomen, and to his knee, and he also required similar
2 intervention. The team got to work on him, and he had a tube
3 put in to support him immediately, and then we proceeded to
4 do testing for his injuries.

5 He had bleeding in his lungs, so we put a tube in
6 his chest, and we did the necessary x-rays and CAT scans to
7 see what extent of injuries he has and how we are going to
8 proceed.

9 Q. Just describe the course of treatment for Robert
10 White over the days that followed.

11 A. Mr. White, after we finished with the initial
12 testing, we took him to surgery. His injury to the chest was
13 injury to the lung, which had caused the bleeding in the
14 chest, and the abdominal gunshot wound had gone through his
15 abdominal wall, into his portion of the body we call
16 perineum. It's between the legs, and it went over the pelvic
17 bone and down the perineum, down the one side, on the left
18 side. And we did look inside his abdomen to make sure there
19 is no internal injuries and there was none.

20 His main injury was mostly abdominal wall and
21 perineum and his lung injury and the patella fracture. And
22 he also required respiratory support. And a doctor, an
23 orthopedic doctor took him to surgery for --

24 Q. That word you just used, that was to his --

25 A. Kneecap. And he also had stomach wounds. He

1 required respiratory support for several days. He required
2 antibiotics and, at one point, his condition was quite
3 critical. But he recuperated and he was able to come off the
4 respirator and was started on diet and started eating and his
5 wounds started to heal.

6 There was some infection in the wounds which had
7 required drainage. When he was able to get up, move around,
8 got some therapy, and his wounds were healing and he was
9 doing well, we discharged him.

10 Q. Doctor, do you know if any projectiles were
11 recovered from the bodies of either of the individuals,
12 Brandon or Robert?

13 A. I remember removing some projectiles, yes.

14 Q. Do you know, just from right now, which one of them
15 it was?

16 A. I remember removing from probably both of them but,
17 you know, it's hard to remember the details. I do remember,
18 from Clark, I had a projectile removed from his right pelvic
19 wall, and maybe some fragments from Mr. White as well.

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

21 THE COURT: Sure.

22 BY MR. MOOMAU:

23 Q. Dr. Khan, I'm going to show you the first exhibit
24 marked as State's Exhibit Number 77. Does this document look
25 familiar to you?

1 A. Yes.

2 Q. And what is State's Exhibit Number 77?

3 A. This is part of his record.

4 Q. And which patient is that?

5 A. This is Mr. Robert White.

6 Q. And I want to show you another exhibit, State's
7 Exhibit Number 79. Does this appear to relate to the exhibit
8 you're looking at now?

9 A. Yes, it does.

10 Q. And does this appear to be a copy or blowup of a
11 portion of it?

12 A. Yes, it does.

13 Q. This blowup, as well as the document that it was
14 taken from, are those part of the records from the hospital
15 as far as the treatment of Robert White?

16 A. Yes.

17 MR. MOOMAU: Your Honor, the State would move into
18 evidence State's Exhibit Number 79.

19 MR. COHEN: No objection, Your Honor.

20 THE COURT: Seventy-nine admitted, State, without
21 objection.

22 (State's Exhibit No. 79, previously
23 marked for identification, was
24 received in evidence.)

25 MR. MOOMAU: Your Honor, I'm going to need the

1 easel for this.

2 THE COURT: Okay.

3 BY MR. MOOMAU:

4 Q. Dr. Khan, could you step down from the stand?

5 A. Sure.

6 Q. Now, Doctor, looking at the exhibit which, as you
7 testified, pertains to Robert White, would you show the jury
8 the location of the gunshot wounds to the body of Robert
9 White.

10 A. This is the one on the chest, right here, and it
11 had gone inside the chest and caused the bleeding in his
12 chest.

13 Q. And where did that bullet end up at?

14 A. It went through the chest and it stayed within his
15 chest wall.

16 Q. What I would like for you to do, would you be able
17 to place an "X" and your initials on the location where you
18 believe the projectile ended up on the diagram?

19 A. This is the right side. So it was more around this
20 area, approximately. This is a rough estimate. Around this
21 area. It went from front to back. So that's why I'm showing
22 the back picture.

23 Q. Upwards? Downwards?

24 A. It was more of a downward track.

25 Q. Now, the other gunshot wound.

1 A. Yes. These -- there are two wounds here. What I
2 believe happened is the abdominal wall of Mr. White had a
3 little -- what should I call it -- appendage. It was
4 drooping, and the bullet went in and out and then went back
5 in. So it went in and then, from here, it went in this part
6 and over his pubic bone and then on the side of the inner
7 aspect of his left thigh. And this was the injury to the
8 kneecap.

9 Q. So on the diagram, I mean there's two -- it says
10 GSW, and then there's a picture with like lines going to
11 both. The initial entrance wound would have been the top
12 one?

13 A. Yeah. More than likely it was the top one, and
14 then it went in and out and then went back in.

15 Q. And then the other gunshot wound is the --

16 A. This one here and here.

17 Q. Did you have an occasion to observe or look at any
18 x-rays or CT scans for Mr. White?

19 A. Yes, I did.

20 Q. I'm going to show you what has been marked as
21 State's Exhibit Number 78. Do you recognize this? And you
22 can compare the patient number with the State's Exhibit
23 Number 77, if that would be helpful. Is it 10879354?

24 A. 10879354.

25 Q. And you're reading that number off of State's

1 Exhibit Number 77?

2 A. Yes.

3 Q. Is this an x-ray or a CT scan?

4 A. Well, this is what we call a scout film. Before we
5 do the CT scan, the whole body just goes through the tunnel,
6 the CAT scan tunnel, and we just take a scout film. That's
7 the initial step before getting a CAT scan.

8 Q. And, from this document, would you be able to show
9 the jury -- I have a light -- the location of the entrance
10 wound, as well as to where the projectile ended up for the
11 chest wound?

12 A. Yeah. This is -- you have a light?

13 MR. MOOMAU: Well, first, Your Honor, the State
14 would move for the admission of State's Exhibit Number 78.

15 MR. COHEN: No objection.

16 THE COURT: State's 78 admitted without objection.

17 (State's Exhibit No. 78, previously
18 marked for identification, was
19 admitted in evidence.)

20 BY MR. MOOMAU:

21 Q. Could you just stand to the side so --

22 MR. MOOMAU: Your Honor, could the Court inquire to
23 make sure all the --

24 THE COURT: Can everyone see, ladies and gentlemen,
25 the diagram?

1 THE JURY: Yes.

2 BY MR. MOOMAU:

3 Q. On that exhibit, Your Honor [sic], could you show
4 the jury the location of the entrance of the chest wound for
5 Robert White?

6 A. Okay. This is the chest part. This is the abdomen
7 part. The pelvis here. In the chest, you see this dark area
8 is the area in the lung. In the left side, you see dark
9 shadow here. That's the lung. Up on the right side you
10 notice that this is white out here. So that's indication
11 that the lung is injured or there is blood in the lung or
12 around the lung. And if you notice that this looks like
13 approximately where the bullet has lodged. The bullet had
14 entered in the part of the chest and then had gone across,
15 down, to the side right here.

16 MR. MOOMAU: Court's indulgence.

17 BY MR. MOOMAU:

18 Q. Doctor, what I'd ask you to do, if you could, could
19 you, with this piece of tape, mark the location of the
20 entrance wound for the projectile you identified?

21 A. Very hard. There's another part of the CAT scan
22 that shows that. That probably would be more accurate. It's
23 somewhere in here, approximately. I would say in this area.
24 This is part of bone. This is the midline. So it was
25 somewhere in this area.

1 And then you come down. This is the contrast to
2 the large intestine. See this white thing? We had put that
3 contrast to highlight the large intestine. We put in
4 contrast because the location and trajectory of the bullet
5 was potential injury to his intestine and rectal. So before
6 we did the CAT scan, we gave him some contrast to see if
7 there was any leakage when we do the CAT scan.

8 Then, if you see these white spots, these are
9 fragments of the projectile, and they go from here.
10 Somewhere in here is the entry point, and they go down the --
11 this is the thigh bone, and they go on the inner aspect of
12 his thigh bone. This is the area of the perineum. It's kind
13 of going down this way.

14 (The witness resumes the witness stand.)

15 BY MR. MOOMAU:

16 Q. Dr. Khan, do your records indicate the date that
17 Robert White was discharged?

18 A. The -- can you -- if you have the chart, if you
19 have the dates, if you can stipulate that. I have to go
20 through the whole chart. Around 2:10, February 10, 2007.

21 MR. MOOMAU: That's all the questions I have on
22 direct, Your Honor.

23 THE COURT: Cross-examination, sir?

24 MR. COHEN: Court's indulgence.

25 **CROSS-EXAMINATION**

1 BY MR. COHEN:

2 Q. Good afternoon, Dr. Khan.

3 A. Good afternoon.

4 Q. This will be very brief. The gunshot to the
5 abdomen that you described, just to make sure that I
6 understand, that was one gunshot wound, correct?

7 A. On whom?

8 Q. On Robert White.

9 A. Robert White. Yes, I think that was one gunshot
10 wound.

11 Q. Let me grab the government's exhibit. I'm showing
12 you what's been marked as State's Exhibit Number 79,
13 Dr. Khan.

14 A. There are actually two wounds, but I believe this
15 was caused by the same projectile. There are two wounds, but
16 they were caused -- the way I explain it is that he has a
17 fold. His body has a fold, like that. So the bullet went
18 into the fatty tissue, came out and went in.

19 Q. Went back in?

20 A. Back in.

21 Q. So it's one gunshot wound?

22 A. One gunshot wound.

23 Q. Two injuries?

24 A. Two entries. There are two wounds, two gunshot
25 wounds but, most likely, they have been suffered by one

1 gunshot.

2 Q. I understand.

3 MR. COHEN: That's my only question. Thank you,
4 Doctor.

5 THE COURT: Any redirect, Mr. State's attorney? I
6 think he said he was finished.

7 MR. MOOMAU: Oh, that's all? No other questions,
8 Your Honor.

9 THE COURT: Dr. Khan, thank you very much.
10 Appreciate it.

11 I think this is a good time to recess for the noon
12 lunch recess.

13 MR. MOOMAU: We could, Your Honor. Unless you want
14 me to see if we have some short witnesses, but I don't care
15 one way or the other.

16 THE COURT: Ladies and gentlemen, would you like to
17 recess for lunch?

18 THE JURY: Yes, please.

19 THE COURT: Again, I have to admonish you that you
20 are not entitled to speak to anybody about anything you may
21 have heard during the course of this trial. You can't even
22 converse about it amongst yourselves. Please don't put
23 yourself in a position to either hear anything, see anything
24 or read any account that may be portrayed in the press during
25 the lunch recess. And if you see any of the witnesses or

1 parties or lawyers in this case in Upper Marlboro when you're
2 at lunch, please remove yourself from them so you don't hear
3 anything that they may be talking about.

4 With those admonitions, we're going to ask you to
5 come back again at 1:30, at the main jury lounge, and Sheila
6 will bring you back down to the jury deliberation room.

7 Thank you.

8 (The jury was excused from the courtroom at
9 12:10 p.m.)

10 THE COURT: See everybody back at 1:30. Thank you.

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

12 THE COURT: Yes.

13 MR. MOOMAU: One thing I wanted to bring up is
14 timing. We're probably going to finish -- we can do it two
15 ways. We can finish pretty much on time today. If we do,
16 we're going to finish real early tomorrow, at least the
17 State's case.

18 THE COURT: Okay.

19 MR. MOOMAU: And that means -- because we weren't
20 planning on doing the defense until Tuesday.

21 THE COURT: When do you want to finish; did you
22 say?

23 MR. MOOMAU: I don't want to finish the whole thing
24 today.

25 THE COURT: But when do you want to quit today?

1 MR. MOOMAU: Well, right now we have Dr. Locke, we
2 have Monica Ammann, and then we have a couple short witnesses
3 dealing with the Marlo truck, the search of that, in which
4 nothing was found. I can bring in the firearms examiner
5 today to make it longer today. That will make it real short
6 tomorrow.

7 MR. STARR: We have no objection to balancing it
8 out a little bit and finishing a little early today and a
9 little earlier tomorrow.

10 MR. MOOMAU: Okay, we'll do that. I just didn't
11 want the Court to get upset because we're going to have some
12 early time.

13 MR. STARR: Mr. Moomau reminded everybody today is
14 Valentine's Day.

15 THE COURT: And I just want you all to know I
16 blamed every one of you for that. Just let me know when you
17 are finished for the day or wish to finish so I can alert the
18 jury, and they'd probably be just as happy. We'll play it by
19 ear and see how far you get.

20 MR. COHEN: Your Honor, just as a preliminary
21 matter. Dr. Locke, I understand, is going to testify. He's
22 an M.E., a medical examiner, and he has tendered a report
23 titled "Postmortem Examination." It's the autopsy report.

24 In that report, in two places, on the first page
25 and on what is the sixth page of the report, there are two

1 references made to the term "homicide." It reads, "cause of
2 death, complications of gunshot wound," and then there's a
3 line checked next to homicide. And then, on the last page,
4 it reads "the manner of death is homicide."

5 I assume Mr. Moomau is going to be using this
6 exhibit or moving this report as an exhibit, and we just
7 wanted to, ahead of time, object to the portions that are
8 referenced here that say "homicide" on both those pages.
9 It's an irrelevant fact. It's actually an administrative
10 opinion that these medical examiners make. It has nothing to
11 do be criminal culpability or anything of that nature.

12 The thing that concerns us is that it's going to be
13 viewed by the jury prejudicially as a decision made already
14 by someone as to Mr. Washington's innocence or guilt. If he
15 redacts it, we won't have an objection.

16 MR. MOOMAU: Doesn't that same line of argument
17 apply to your witness, Dr. Arden?

18 MR. COHEN: I can almost assure you that Dr. Arden
19 is not going to say that his findings was that a homicide was
20 committed. I can tell you that. He's not going to use the
21 word homicide when he testifies.

22 MR. MOOMAU: We'll deal with it when he comes here.

23 THE COURT: So you will redact those two references
24 to homicide that's on the first page and the sixth page?
25 Because I'm assuming that he's going to testify to manner and

1 cause of death.

2 MR. MOOMAU: I mean, the manner, he really doesn't
3 even have to do that. Cause of death is what's important.

4 THE COURT: Right, exactly. So do you have any
5 difficulty with that? Because I'm assuming you're going to
6 ask for the admission of the autopsy report, and if you do,
7 they're asking you to --

8 MR. MOOMAU: Just redact the whole thing.

9 THE COURT: Right. Before we do the autopsy
10 photographs, I think we need to approach the bench so that I
11 can at least look at them, figure out which --

12 MR. MOOMAU: The only one I'm going to use is the
13 first one. If any, that's the only one I'm going to use. I
14 mean, I'll have it marked.

15 And just for the record, it's showing a --

16 THE COURT: Well, I'll put it on the record. How
17 many autopsy photographs are there in that package?

18 MR. MOOMAU: Three.

19 THE COURT: Let me have them for a minute. Under
20 the autopsy report involved in this case, the date of which
21 is Wednesday, February 7, 2007, there are three photographs
22 which -- actually, four photographs, which can be typically
23 described as autopsy photographs. They are black and white.
24 One autopsy photograph shows the torso of the decedent with
25 stitching scar from below his naval, up to the midline of the

1 stomach.

2 The second is a head shot of the deceased in death,
3 showing no injuries or wounds, just a faceless shot with eyes
4 closed.

5 The third is a length-wise, full body shot of the
6 drapings, I believe, and trappings of the medical attention
7 that he had been provided when he was first brought over to
8 the medical examiner's office.

9 And the last is simply a photograph of what appears
10 to be the right leg and a portion of a left thigh, with what
11 seems to have markings on the right knee to some extent.
12 That photograph certainly, out of the four portrayed, is what
13 the State intends to use. Do you have any objection to that
14 autopsy photograph?

15 MR. COHEN: No objection, Your Honor. I can speak
16 for both of us.

17 MR. STARR: We're in agreement.

18 MR. COHEN: Not often, but we are this time.

19 THE COURT: What we need to do is take those out,
20 and we're going to seal them in another envelope and put not
21 admitted.

22 MR. MOOMAU: Okay.

23 MR. COHEN: Just so I'm sure the ruling has been
24 made, we are going to redact those two portions of it?

25 THE COURT: Yes.

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

3 THE COURT: Are you ready for me to bring the jury
4 in?

5 MR. MOOMAU: We're ready, Your Honor. Can I
6 approach the clerk and have some items marked?

7 THE COURT: Certainly.

8 MR. MOOMAU: Your Honor, can we approach on one
9 other photograph? I apologize.

10 THE COURT: Okay.

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

13 (The jury returned to courtroom at 1:45 p.m.)

14 MR. MOOMAU: Your Honor, when I was looking at the
15 photograph, I made a mistake. I said there were three.
16 There's actually four.

17 THE COURT: Four. I put them on the record.

18 MR. MOOMAU: Well, I wasn't listening. Because I
19 would like to use the one there that does show the location
20 of the wound.

21 MR. COHEN: Court's indulgence. May I see it
22 closer, Your Honor?

23 Your Honor, the location of the wound is not in
24 dispute. We'll actually stipulate that that is the location
25 of the wound. Those photos are inflammatory.

1 MR. MOOMAU: To me, it does show on the body where
2 it is, and Dr. Locke will be able to explain that. I think
3 that's important for the jury to know, so they don't have to
4 guess at that. We did take the ones out -- the ones that did
5 show the face.

6 THE COURT: I have reviewed, again, all four
7 photographs, two of which the State does not intend to
8 introduce. Again, they are both -- one is a head shot of the
9 defendant that does not show any injuries on that.

10 The other one is -- he is clad in a number of
11 medical apparatus and other sheeting and bedding material,
12 bandages, etc., and the State does not intend to use that.

13 They will be sealed separately and will not be
14 admitted.

15 Of the two photographs the State wishes to use, the
16 first, as I mentioned earlier, is a depiction of the right
17 leg and left thigh of the deceased, without face or remainder
18 of the body. The design of it is showing what appears to be
19 a wound to the knee.

20 The other is a torso shot only, no head, no legs,
21 photograph, which has some stitching from below the naval, up
22 the midline, and shows what appears to be another injury, in
23 addition to the stitching.

24 Reviewing those photographs in the context of how
25 they are to be utilized, showing the gunshot, allegedly,

1 wounds on the parts of the body associated, I believe they
2 are relevant to the case.

3 Viewing the photographs in the context of their
4 probative value versus any unfair prejudice, I find that the
5 photographs, the probative value outweigh any prejudicial
6 impact they may have on the jury. They are photographs that
7 show wounds. They are not extraordinary wounds, in terms of
8 how they are viewed, and would not seem to inflame, out of
9 the sequence, the minds of the jury, and I note your
10 objection.

11 MR. MOOMAU: Thank you.

12 THE DEPUTY CLERK: Your Honor, for the record, I
13 have marked State's Exhibits 80, 81 and 82 for
14 identification.

15 (State's Exhibit Nos. 80, 81 and 82
16 were marked for identification.)

17 MR. MOOMAU: The State would call Dr. Laron Locke.

18 THE DEPUTY CLERK: Your Honor, for the record, I
19 did mark State's Exhibits 83, 84 and 85 for identification.

20 (State's Exhibit Nos. 83, 84 and 85
21 were marked for identification.)

22 **JAMES LARON LOCKE, M.D.,**

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: Sir, for the record, can you

1 please state your full name and spell it.

2 THE WITNESS: James Laron, L-a-r-o-n, Locke,
3 L-o-c-k-e.

4 **DIRECT EXAMINATION**

5 BY MR. MOOMAU:

6 Q. Good afternoon, sir.

7 A. Good afternoon.

8 Q. Sir, what's your occupation?

9 A. I'm an assistant medical examiner for the State of
10 Maryland.

11 Q. And as an assistant medical examiner for the State
12 of Maryland, what are your duties and responsibilities?

13 A. My duties essentially are to perform autopsies, in
14 those cases that fall under the jurisdiction of the State,
15 and determine what the cause and manner of death is in those
16 cases.

17 Q. Just briefly tell us what an autopsy is.

18 A. An autopsy is an examination in which we look at
19 the external surface of the body to see if there is any
20 natural disease present or if there is any injuries present.

21 It then consists of a series of incisions on the
22 body that will allow us to take a look at the internal
23 structures of the body, the internal organs, to see if there
24 is any natural disease or any injuries. Those injuries that
25 we find on the inside of the body, we then correlate with

1 what we found on the outside of the body.

2 We then take specimens, various specimens, fluids,
3 for toxicology purposes, and that's to see if there is any
4 substances in the body at the time of death.

5 Q. Just tell us a little bit about your educational
6 background.

7 A. I received my bachelors degree from Frostburg
8 University in Frostburg, Maryland. I received my medical
9 degree from Howard University in Washington, D.C. I did my
10 training in pathology at Temple University Hospital in
11 Philadelphia, Pennsylvania, and I did my advanced training or
12 my fellowship training in forensic pathology at the medical
13 examiner's office in Philadelphia, and I came on board here
14 in the State.

15 Q. In addition to your formal education, have you
16 attended any, I guess, continuing education in your
17 particular field?

18 A. Yes, I have.

19 Q. Can you just tell us some of that?

20 A. Well, we have a series of conferences in our
21 office. We also have several seminars that we do attend.
22 There are conventions that we attend that, again, are
23 advanced courses in the field of forensic pathology and,
24 also, in other disciplines of forensics.

25 Q. You're using the term "forensic pathology." What

1 does that mean?

2 A. Well. Pathology is the study of disease and how it
3 affects the body. Forensic pathology is a subspecialty of
4 pathology in which we attach the medical-legal significance
5 of those diseases.

6 Q. And have you ever testified as an expert witness in
7 the field of forensic pathology in any court?

8 A. Yes, I have.

9 Q. What courts are those?

10 A. Well, Prince George's County, the rest of the
11 counties in the State of Maryland, Baltimore City,
12 Washington, D.C., Pennsylvania, New Jersey, and West
13 Virginia, and also in the federal court system.

14 MR. MOOMAU: Your Honor, I would move that
15 Dr. Locke be permitted to testify as an expert witness in the
16 field of forensic pathology.

17 MR. COHEN: No objection, Your Honor.

18 THE COURT: Thank you. He will be so accepted.

19 BY MR. MOOMAU:

20 Q. Dr. Locke, did there come a time when you performed
21 an autopsy on the body of Brandon Clark?

22 A. Yes.

23 Q. And when was that?

24 A. It was performed on February 2, 2007.

25 Q. And where was that done at?

1 A. It was done at our office in Baltimore, Maryland.

2 Q. The height and weight of the body?

3 A. Mr. Clark's height was 6'7", and his weight was 331
4 pounds.

5 Q. Did you find any evidence of medical intervention
6 or medical therapy to the body?

7 A. Yes, we did.

8 Q. What was that?

9 A. There was several tubes in his mouth. One of the
10 tubes was what we refer to as an oral-gastric tube. That is
11 a tube essentially going from the mouth, into the stomach, to
12 either remove things from the stomach or to put things into
13 the stomach.

14 There was an endotracheal tube also noted in his
15 mouth, and this is a tube that's used -- to put into the
16 mouth, that will go into the airway to allow breathing.

17 There were several catheters noted in his left
18 subclavian area. That's the area just below the collarbone,
19 on the left side.

20 His left arm was bandaged.

21 There was also a catheter noted in his right
22 forearm. There were several puncture sites -- needle
23 puncture sites on the front of his wrist.

24 There was a device called a pulse oximeter, which
25 was noted on the right, second finger. What that pulse

1 oximeter does is it measures the amount of oxygen that's
2 flowing in the blood.

3 There was a Foley catheter noted in his urethra,
4 and that's to remove urine from his bladder.

5 There was an eight-and-a-half-inch sutured incision
6 on the right side of his abdomen, and that was there from
7 surgical intervention as a result of his injuries.

8 There was also a twelve-and-a-half-inch incision
9 noted to his mid-abdomen, again, as a result of surgery for
10 his injuries.

11 And there was an eight-inch stapled incision noted
12 on his right knee, again, in reference to his injuries.

13 Q. Did you notice any -- did you observe any evidence
14 of injuries to the body?

15 A. Yes, I did.

16 Q. What were those injuries and where were they
17 located?

18 A. There were two gunshot wounds noted to his body.
19 One of the gunshot wounds was noted on the left side of his
20 upper abdomen. It was located 23 inches below the top of his
21 head and three inches left of the front of the midline of his
22 body. There was evidence of healing noted in that wound in
23 the form of what we refer to as granulation tissue, which
24 just means that the wound is starting to heal. There was no
25 evidence of close-range firing noted on the skin surrounding

1 that wound.

2 Per the hospital report, the bullet had injured the
3 small and large bowel and some areas inside the abdomen, what
4 we refer to as the mesentery, or some connective tissue
5 inside the abdomen. There was no exit wound noted.

6 Again, according to records, a bullet had been
7 removed at surgery. The wound path was directed from front
8 to back. A determination of whether it was going up or down
9 or to the left or to the right could not be made because of
10 the surgery that had been done.

11 The remaining gunshot wound was to the right leg.
12 This wound was located 23 inches above the bottom of his
13 heel. It was located slightly above the knee.

14 Similar to the wound that I mentioned before, there
15 was some evidence of healing in this gunshot wound in the
16 form of granulation tissue. There was no evidence of
17 close-range firing noted on the skin surrounding that wound.

18 Per the hospital report, the bullet had injured the
19 right distal portion of the femur, which is the long bone in
20 the leg. There was no exit wound noted, and a bullet had
21 been recovered during surgery.

22 Again, the bullet was directed from front to back;
23 however, determination of up and down or left to right could
24 not be made because of the surgery.

25 Q. I'd like to show you two exhibits marked for

1 identification as State's Exhibit Numbers 81 and 82. Do you
2 recognize those?

3 A. Yes, I do.

4 Q. Starting with 81, what does 81 show?

5 A. Eighty-one shows the left side of Mr. Clark's
6 abdomen, and in this photograph you can see the surgical
7 incision that was made, that now has staples in it to hold it
8 together. And just to the right of that stapled incision is
9 a hole which represents the gunshot wound.

10 Q. Are there any other, like, reference points on the
11 body for that particular photograph?

12 A. Yes. When looking at the photo and looking at the
13 surgical incision, you'll see where the surgical incision
14 slightly deviates to the left, and that's because it's going
15 around the naval or the belly button.

16 Q. The next photograph?

17 A. State's Exhibit Number 82 shows Mr. Clark's right
18 leg and in it, just below the number mark that we put in the
19 photograph, there would be a hole that represents the gunshot
20 wound, and just below that hole you'll see a dark area on the
21 leg which represents his knee.

22 Q. Do these photographs accurately depict what you
23 observed during the autopsy procedure?

24 A. Yes, they do.

25 Q. Your Honor, the State would move for the admission

1 of State's Exhibit 81 and 82.

2 MR. COHEN: No objection, outside the discussion,
3 Your Honor.

4 THE COURT: Thank you. Admitted, 81 and 82.
5 (State's Exhibit Nos. 81 and 82,
6 previously marked for
7 identification, were received in
8 evidence.)

9 BY MR. MOOMAU:

10 Q. Dr. Locke, did you come to a determination from
11 your autopsy as to the cause of death of Brandon Clark?

12 A. Yes.

13 Q. And what was that?

14 A. That Mr. Clark died from complications of gunshot
15 wounds.

16 Q. Tell us what you mean by that.

17 A. Well, in examination of the gunshot wound of the
18 abdomen, it was noted that once the abdomen was opened, that
19 there was an extensive amount of what is referred to as
20 purulent material in the abdomen. Purulent is just a medical
21 term for, essentially, pus, which means that there was an
22 ongoing infection in the abdomen.

23 When individuals suffer injuries to the abdomen,
24 penetrating injuries to the abdomen that strike portions of
25 the intestines, it's not uncommon or unusual to get an

1 infection in the abdomen simply because there's a release of
2 a tremendous amount of bacteria, feces, etc., into the
3 abdominal cavity. So there is a tremendous chance for
4 infection in that region, and that was noted once we opened
5 it up.

6 Q. I didn't ask you -- I didn't use the terminology,
7 but is that your opinion, the complications as a result of
8 the gunshot wounds, to a reasonable degree of medical
9 certainty?

10 A. Yes, it is.

11 Q. Did you perform or was a toxicology test performed
12 upon Brandon Clark, his body fluids or in some manner?

13 A. Yes.

14 Q. How was that done?

15 A. It was done by taking various specimens that we
16 had, blood, bile, bile from the gallbladder, and running
17 those specimens to see if there was any alcohol present or if
18 there were any drugs present.

19 Q. What was the result of that?

20 A. The result was that the test for alcohol was
21 negative, and the test for drugs showed that there was a drug
22 referred to as metoclopramide, m-e-t-o-c-l-o-p-r-a-m-i-d-e,
23 and, essentially, it's a drug that's given for nausea,
24 vomiting, to help the intestines become more mobile.

25 Q. Did you perform a -- did you prepare a written

1 report setting forth your findings and the cause of death?

2 A. Yes.

3 Q. I'd like to show you what's been marked as State's
4 Exhibit Number 80. Do you recognize that?

5 A. Yes, I do.

6 Q. And what is State's Exhibit 80?

7 A. It's a notarized copy of the autopsy report on
8 Mr. Brandon Clark.

9 MR. MOOMAU: Your Honor, the State would move for
10 the admission of State's Exhibit Number 80.

11 MR. COHEN: May I see it?

12 MR. MOOMAU: Subject to what we discussed earlier.

13 MR. COHEN: No objection, Your Honor. Thank you.

14 THE COURT: Thank you. Eighty admitted without
15 objection, State.

16 (State's Exhibit No. 80, previously
17 marked for identification, was
18 received in evidence.)

19 MR. MOOMAU: That's all the questions I have of
20 this witness.

21 THE COURT: Thank you.

22 MR. COHEN: Court's indulgence.

23 **CROSS-EXAMINATION**

24 BY MR. COHEN:

25 Q. Good afternoon, Dr. Locke.

1 A. Good afternoon.

2 Q. When you testified that there was no evidence of
3 close-range firing, you're only referring to the skin of
4 Brandon Clark, correct?

5 A. That's correct.

6 Q. You did no testing, regarding the clothing of
7 Mr. Clark, to determine whether there was any evidence of
8 close-range firing, correct?

9 A. That's correct.

10 Q. And taking your attention to State's Exhibit 80 and
11 the toxicology report you just referenced, was a toxicology
12 testing done on February 7, 2007, regarding the results of
13 this toxicology report?

14 A. You said February 7th?

15 Q. February 7, 2007.

16 A. That's when this report was printed out, but it was
17 prior to that.

18 Q. Do you know the date it was done?

19 A. After the autopsy. The autopsy was done February
20 2nd, so it would have been done between that time, that
21 period.

22 Q. So would it be fair to say that some day after
23 February 2nd the testing was done for this toxicology report?

24 A. That's correct.

25 MR. COHEN: Thank you, Dr. Locke. Nothing further.

1 THE COURT: Any redirect from the State?

2 MR. MOOMAU: No.

3 THE COURT: Doctor, thank you, sir.

4 MR. MOOMAU: Your Honor, I would ask that he
5 remain, subject to potential recall later.

6 THE COURT: Do you understand that, Dr. Locke?

7 THE WITNESS: Yes.

8 THE COURT: You're used to it.

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 MR. MOOMAU: David Thompson.

12 THE DEPUTY CLERK: Your Honor, State's Exhibit
13 Number 86 is marked for identification.

14 (State's Exhibit No. 86 was
15 marked for identification.)

16 **DAVID THOMPSON,**

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

19 THE DEPUTY CLERK: And, sir, for the record, can
20 you please state your name, spelling your name for the court
21 reporter.

22 THE WITNESS: Detective David Thompson,
23 T-h-o-m-p-s-o-n, I.D. 2393, Prince George's County police,
24 District 4.

25 **DIRECT EXAMINATION**

1 Q. Good afternoon, sir.

2 A. Good afternoon.

3 Q. How long have you been employed with the Prince
4 George's County Police Department?

5 A. Just over ten years.

6 Q. Were you on duty January 24, 2007?

7 A. I was.

8 Q. On that night did you respond to 1513 Shellford
9 Lane in Accokeek?

10 A. I did.

11 Q. Did you notice any vehicles in the front of the
12 residence?

13 A. I did.

14 Q. What vehicle did you notice?

15 A. When I first pulled up, I noticed in the middle of
16 the roadway, in front of the residence was a large Marlo
17 Furniture truck.

18 Q. Did you take any action in relation to the, I
19 guess, removal and impounding of that truck?

20 A. Yes, I did. I had the vehicle impounded at our --
21 towed to our District 3 evidence bay.

22 MR. MOOMAU: That's all the questions I have of
23 this witness.

24 MR. STARR: One moment, please, Judge. No
25 questions for this witness, Your Honor.

1 THE COURT: Thank you, Detective.

2 MR. MOOMAU: Your Honor, he would remain under
3 subpoena, if necessary, for recall.

4 THE COURT: Okay.

5 MR. MOOMAU: The next one will be Officer Tucker.

6 **PAUL TUCKER,**

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: If you can, please state your
10 name, spelling your name for the court reporter.

11 THE WITNESS: Detective Paul Tucker, T-u-c-k-e-r.

12 **DIRECT EXAMINATION**

13 BY MR. MOOMAU:

14 Q. Good afternoon, sir.

15 A. How you doing, sir?

16 Q. I am doing fine. What's your occupation?

17 A. I'm currently employed with the Prince George's
18 County Police Department, assigned to the Oxon Hill station
19 as the evidence technician.

20 Q. How long have you been employed with the police
21 department?

22 A. I'm in my 20th year of service, sir.

23 Q. Sir, at any time relevant to this case, did you
24 take any action as far as a Marlo moving truck?

25 A. Yes, sir. Actually, on January 30th of '07 I

1 executed a search warrant at the request of Detective Dave
2 Thompson.

3 Q. Where was the truck located when you executed the
4 search warrant?

5 A. It was at headquarters, which is 7600 Barlowe Road,
6 which is in Landover.

7 Q. I'd like to show you a photograph marked as State's
8 Exhibit Number 86.

9 A. This would be the truck, yeah, that I processed,
10 sir -- or, actually, that I executed the search warrant on.

11 Q. Were photographs taken of it that day?

12 A. Yes.

13 Q. Was that one of them?

14 A. Yes, sir. Let me go back to my originals here that
15 I printed out. Yes, sir, that would correspond to this
16 photograph right here.

17 Q. The license plate number matches up?

18 A. Yes, sir.

19 MR. MOOMAU: The State would move for the admission
20 of State's Exhibit Number 86.

21 MR. STARR: No objection.

22 THE COURT: Eighty-six admitted, State, no
23 objection.

24 (State's Exhibit No. 86, previously
25 marked for identification, was

1 received in evidence.)

2 BY MR. MOOMAU:

3 Q. Did you search the interior of the truck, I guess
4 the front and back?

5 A. Yes, sir, both the cab and the rear portion.

6 Q. What was the result of that?

7 A. I recovered manifests, some papers, a South
8 Carolina drivers license, and a D.C. map book.

9 Q. Any weapons or drugs?

10 A. No, sir.

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

12 MR STARR: No questions, Your Honor.

13 THE COURT: Thank you, sir.

14 MR. MOOMAU: The next witness would be Monica
15 Ammann.

16 **MONICA AMMANN,**

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

19 THE DEPUTY CLERK: Please state your full name,
20 spelling your name for the court reporter.

21 THE WITNESS: My name is Monica Ammann,
22 A-m-m-a-n-n.

23 **DIRECT EXAMINATION**

24 BY MR. MOOMAU:

25 Q. Good afternoon.

1 A. Hi.

2 Q. Ms. Ammann, how are you employed?

3 A. Currently employed by the Boston Police Department
4 Crime Laboratory in Boston, Massachusetts.

5 Q. What type of work do you do there?

6 A. I'm a DNA analyst.

7 Q. How long have you worked there?

8 A. Since July of 2007.

9 Q. And before July of 2007, where did you work and
10 what kind of work did you do?

11 A. I worked for the Prince George's County Police
12 Department, the DNA laboratory, and I was a DNA analyst for
13 them, and what I did was accept evidence and then analyze the
14 evidence and testify on the findings in a court of law.

15 Q. How long did you work for the Prince George's
16 County Police Department DNA forensic serology lab?

17 A. I had been with the police department since 2001,
18 and I started in the drug lab and then I transferred over to
19 the DNA lab.

20 Q. When you were at the DNA lab, what were your job
21 duties?

22 A. To accept evidence, to analyze the evidence and
23 then testify on those findings in a court of law.

24 Q. Just tell us a little bit about your educational
25 background.

1 A. I have a chemistry degree from the University of
2 St. Thomas, in St. Paul, Minnesota, and a masters degree in
3 forensic science from George Washington University.

4 Q. Do you belong to any professional organizations in
5 that particular field, meaning DNA analysis?

6 A. I'm a member of the American Academy of Forensic
7 Science and the Mid-Atlantic Association of Forensic
8 Scientists.

9 Q. Other than your education, do you have any training
10 that you've, I guess, completed as far as DNA testing?

11 A. I've had quite a bit of training in DNA analysis.
12 I had a year of training at the Prince George's County DNA
13 laboratory, in which I conducted tests on all sorts of
14 evidence, just like actual evidence that we receive. I also
15 went to countless meetings and all sorts of training where we
16 learned how to operate the instrumentation and things like
17 that.

18 Q. What is proficiency testing?

19 A. A proficiency test is when an outside agency sends
20 us a test and, just like any test, they know the answers; we
21 don't. We then complete the test and send it to them. Each
22 analyst has to perform two proficiency tests a year to be
23 certified, and I have taken those two and have passed both of
24 them.

25 Q. Have you previously testified as an expert witness?

1 A. Yes, I have.

2 Q. A question I skipped, but I wanted to ask you, are
3 there like FBI standards for DNA labs?

4 A. There are what we call the FBI quality assurance
5 standards. To be a recognized DNA laboratory, you have to
6 adhere to all these standards. And the Prince George's
7 County DNA laboratory, at the time that I worked there, did
8 adhere to those standards and was recognized by the Federal
9 Bureau of Investigation.

10 Q. Now the question I was going to ask. Have you ever
11 testified as an expert witness?

12 A. Yes, I have.

13 Q. Where at?

14 A. Actually, here in Prince George's County, both in
15 circuit and district court, and also for the Boston Police
16 Department.

17 Q. And is that as a DNA analyst?

18 A. Yes.

19 MR. MOOMAU: Your Honor, at this time I would move
20 to permit Ms. Ammann to testify as an expert witness as a DNA
21 analyst.

22 THE COURT: Voir dire?

23 MR. COHEN: No voir dire, Your Honor; no objection.

24 THE COURT: So accepted. Thank you.

25 BY MR. MOOMAU:

1 Q. Ms. Ammann, just briefly tell us what DNA is.

2 A. DNA stands for deoxyribonucleic acid, and what it
3 is is basically your genetic blueprint. It determines your
4 eye color, your hair color, and it makes you you, so the
5 person sitting next to you doesn't look like you. It can be
6 found in your saliva, your skin cells and your blood.

7 Q. Now, as far as DNA, when you hear DNA and identical
8 twins, what does that mean; how does that relate?

9 A. So you have this DNA, this genetic blueprint, and
10 the only two people -- or three, depending if it's an
11 identical sibling -- that have this identical DNA are twins
12 that are identical, twins or siblings.

13 Q. Just briefly tell us how you do a DNA analysis.

14 A. So when we receive the evidence, we first have to
15 extract the DNA from the items. So we have the -- the DNA is
16 located in the nucleus of our cells. So we first extract the
17 DNA out of the cells. We then quantify, to see how much DNA
18 we have there. We then amplify, which means we make a whole
19 bunch of copies of it, and then we analyze it to determine a
20 profile.

21 Q. I want to talk about swabs. Have you ever analyzed
22 swabs that have been taken from a firearm?

23 A. Yes.

24 Q. Tell us that procedure, how a firearm, in your
25 opinion, is to be swabbed, or are there any standards or

1 practices relating to that?

2 A. The common practice for the Prince George's County
3 DNA laboratory is to have one or two swabs to do the whole
4 gun, so not to do a separate area. That way we can
5 concentrate the DNA. Because, if we were to do just one
6 area, we might not get enough DNA that we can detect. So our
7 practice is, when the evidence technicians do swab a gun, we
8 ask them to do one or two, with the swabs being together, and
9 to swab the whole gun.

10 Q. Now, can you tell us the ways that DNA can be
11 transferred from a person to an item?

12 A. There is a lot of different ways. Basically, if
13 you, your skin or one of your body fluids comes in contact
14 with an item, you could be depositing your DNA on there.

15 So if I shook your hand, I might be transferring
16 DNA to you, but it might not be enough for us to actually
17 test, because there's so much more of you. Or if you spit
18 any type of body fluid or contact could transfer that DNA to
19 another item.

20 Q. Now, did there come a time in this case where you
21 analyzed some swabs that had been provided to you from a
22 firearm in this case?

23 A. Yes, sir.

24 Q. And did you compare those swabs with known DNA
25 samples from the defendant Keith Washington and an individual

1 by the name of Brandon Clark and an individual by the name of
2 Robert White?

3 A. May I refer to my notes?

4 MR. COHEN: Sure.

5 THE COURT: Yes. Thank you.

6 THE WITNESS: Yes, sir.

7 BY MR. MOOMAU:

8 Q. Just tell the jury how you conduct comparisons in a
9 case such as this.

10 A. In this case we would -- or in any case, we do the
11 evidence, we run the evidence, and then we, as I mentioned
12 before, we get a profile off the evidence. We then take our
13 two or three standards that we have, and we see if any of the
14 numbers in the profile match the known standards.

15 Q. What were your conclusions as far as the swabs that
16 I just mentioned from the handgun, as well as from the three
17 individuals?

18 A. DNA from more than one individual was obtained from
19 the swabs of the gun. Keith Washington and Robert White
20 cannot be excluded as contributors to this mixture.

21 Using combined probability of exclusion
22 calculation, more than 99.99 percent of individuals in the
23 Caucasian, African-American and southeast Hispanic
24 populations would be excluded as contributors.

25 There are two types present which could not have

1 originated by Keith Washington or Robert White, and Brandon
2 Clark can be excluded as a source of DNA.

3 Q. So you have DNA that doesn't excuse White or
4 Washington, but excludes a pretty big part of the population
5 besides them, correct?

6 A. Correct.

7 Q. And you said DNA from two other types or persons
8 or --

9 A. So we obtained a mixture on this gun, so there was
10 more than two individuals on the gun. Robert White and Keith
11 Washington cannot be excluded, but 99.99 percent of the
12 population can in these three groups.

13 There are two types which cannot fit into Robert
14 White or Keith Washington or are of some individual that we
15 did not test and we don't know who those are. So there are
16 two types that we cannot attribute where they came from.

17 Q. And those two types aren't Brandon Clark either.

18 A. Correct.

19 Q. Is there any way for you to say, as a DNA analyst,
20 how that DNA arrived at being on the firearm?

21 A. I would say that either, just like I was mentioning
22 before, a body fluid or contact had to have occurred with the
23 gun. So either body fluid or contact from Keith Washington
24 and Robert White would have had to have occurred.

25 Q. Now, did you also analyze two items that were

1 identified as CN11 and CN12?

2 A. Yes.

3 Q. And what were these items?

4 A. CN11 was the swab of the stain of the second level
5 hallway floor in front of the master bedroom.

6 Q. Did you, likewise, conduct a comparison with the
7 known standards that you had or the known samples?

8 A. Yes. So the swab from the stain of the second
9 level hallway floor, in front of the master bedroom, which is
10 CN11, matched the known DNA profile of Brandon Clark.

11 Then CN12 was a swab from the stain on the second
12 level hallway floor, near the bathroom, and that's CN12, and
13 that matched the known DNA profile of Robert White.

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

15 THE COURT: Certainly.

16 BY MR. MOOMAU:

17 Q. And did you, likewise, analyze samples that had
18 been taken from some clothing items identified -- just the
19 first three letters -- as CN4 and CN8?

20 A. CN4 and CN8, yes, I have multiple pieces. I have
21 CN8A, CN8B, CN8G, CN4H.

22 Q. Right. But without going into all those items of
23 clothing that made up those piles, CN4, was there any DNA
24 extracted from those items and, if any, whose DNA could you
25 attribute that to?

1 A. The DNA profiles obtained from stain 1, on the
2 white T-shirt, 2XL, to CN4H and stain 1 from the blue
3 trousers, which was CN4J, matched the known profile of
4 Brandon Clark to a reasonable degree of scientific certainty.

5 The DNA profiles obtained from stains 1 through 9
6 on the dark blue sweater, CN8A, stains 1 and 2 from the black
7 T-shirt, 6XL, CN8B, and stain 1 from the jeans B/C, match the
8 known DNA profile of Robert White to a reasonable degree of
9 scientific certainty and in the absence of an identical
10 sibling.

11 Q. Now, can DNA be transferred to a firearm as a
12 result of the firearm touching somebody?

13 A. Can it --

14 Q. From it being fired at close range?

15 A. I'm not quite sure I understand your question. So
16 DNA --

17 Q. DNA can be transferred to a firearm by someone
18 touching the firearm, right?

19 A. Yes. If they've had enough contact and enough skin
20 cells get on there, we can find that DNA.

21 Q. Likewise, it would be transferred if the --

22 MR. COHEN: Object to the leading, Your Honor.

23 THE COURT: Sustained.

24 BY MR. MOOMAU:

25 Q. Are there other scenarios that a person's DNA could

1 be transferred to a firearm?

2 MR. COHEN: Objection, Your Honor. Asked and
3 answered.

4 THE COURT: Overruled.

5 THE WITNESS: So with any item, contact can occur
6 through the actual contact with it and enough of your skin
7 cells slough off, we could possibly detect your DNA, if there
8 is enough of them there. Or if some way your saliva got on
9 an item, we would possibly be able to detect that DNA. Or in
10 your sweat you have skin cells. If some of your sweat got on
11 an item and there was enough skin cells in your sweat, we
12 could detect DNA from that.

13 Q. Now, the DNA that you found on the handgun, the
14 swabs from the handgun, do you know whether that was from
15 skin cells, saliva, blood or --

16 A. I do not know what type of DNA it came from. We
17 just know that the DNA -- the profile that we detected. We
18 don't know if it's skin cells or saliva or a really small
19 amount of blood. We don't know that.

20 MR. MOOMAU: That's all the questions I have.
21 Thank you.

22 THE COURT: Cross?

23 MR. COHEN: Yes.

24 **CROSS-EXAMINATION**

25 BY MR. COHEN:

1 Q. Good afternoon.

2 A. Hi.

3 Q. Referring your attention to swabs that you spoke
4 about earlier, that you use for the testing.

5 A. The gun swabs?

6 Q. Yes.

7 A. Yes, sir.

8 Q. You did not see any blood on the swabs that you
9 used for testing, correct?

10 A. No. We had no indication from the evidence tech,
11 nor was there any reddish stain visible to us. If there
12 were, we would have done presumptive testing for blood.

13 Q. And taking your attention to the report that you
14 just referenced, page 3 of 6, there's an item CN4D. Do you
15 see that item?

16 A. The screw driver, orange?

17 Q. Yes, the screw driver. You didn't do a DNA test of
18 the screwdriver; did you?

19 A. No.

20 Q. And you weren't requested to do a DNA test of the
21 screwdriver, correct?

22 A. When items are submitted to us, we go through and
23 determine which ones to be analyzed. At that time that was
24 not analyzed for DNA.

25 Q. Your determination was that it should not be

1 analyzed for DNA?

2 A. We actually work with the investigators and talk to
3 them and determine which ones to be analyzed.

4 Q. And from your conversations with the investigators,
5 you decided not to do a DNA test of the orange screwdriver,
6 correct?

7 A. I believe so.

8 Q. The report that you referenced, could you tell me
9 at what stage of the testing process the report is generated?

10 A. The final report?

11 Q. Yes. The report that you referenced when you were
12 responding to one of Mr. Moomau's questions.

13 A. This was completed on March 25, 2007, and that is
14 when all of these items had been analyzed. It then is peer
15 reviewed and sent off.

16 Q. And going to the last page, page 4 of 6. Your
17 signature is on page 4 of 6 of this document, correct?

18 A. Four of six? Yes.

19 Q. And it's dated March 25, 2007?

20 A. Yes.

21 Q. And is this a report kept in the normal course of
22 business? Do you finalize and review this report in
23 furtherance -- after you do DNA tests?

24 A. Do we do -- oh. The report is done after the DNA
25 analysis has been completed.

1 Q. And do you do tests or reports after all of the
2 tests are completed?

3 A. Yes.

4 MR. COHEN: Nothing further. Thank you.

5 **REDIRECT EXAMINATION**

6 BY MR. MOOMAU:

7 Q. Ms. Ammann, you were asked a question about a
8 screwdriver. Tell us how you consult with investigators in
9 deciding what items to test.

10 A. In a case like this, we have multiple pieces of
11 evidence, quite a few pieces, and we sit down with the
12 detectives, whoever is in charge of the case, and discuss
13 which pieces would be most probative to the case and would
14 help to determine what happened during the crime. So some
15 piece of evidence might not be analyzed because they were not
16 in close proximity or various different reasons on why we
17 might not analyze something.

18 Q. Did you ever have any information that the
19 screwdriver was relevant to anything?

20 MR. COHEN: Objection, Your Honor.

21 THE COURT: Sustained. Rephrase it.

22 BY MR. MOOMAU:

23 Q. Why wasn't the screwdriver tested or analyzed?

24 A. May I refer to my notes?

25 Q. Yes.

1 A. In our discussion, it was never brought up as a
2 piece of evidence that needed to be analyzed.

3 Q. As far as observations about blood, can blood cells
4 be present like, say, on a swab or an item?

5 MR. COHEN: Your Honor, I am going to object to the
6 leading nature of the question.

7 THE COURT: Sustained.

8 BY MR. MOOMAU:

9 Q. In looking at an item -- is a visual test a hundred
10 percent, I guess, accurate in dealing with the presence of
11 any types of DNA?

12 A. No.

13 Q. And what types of DNA would that include?

14 A. Just by seeing something, you cannot know, by
15 looking at it, whether it has DNA on it. We use our eyesight
16 to determine if we should do a presumptive test for blood,
17 but just because we didn't observe a reddish stain does not
18 mean that the blood is not present.

19 The same thing with saliva. We don't know if it is
20 saliva. You can't tell by looking at something if it is
21 saliva, as you guys, I'm sure, also know.

22 So with these cases we use our eyesight. If we
23 don't see any red stains, we go forward with the DNA
24 analysis. This way, then we can determine if there is any
25 DNA present on the swab or swabs.

1 MR. MOOMAU: That's all the redirect.

2 MR. COHEN: Your Honor, if I may?

3 THE COURT: Please.

4 **RECROSS-EXAMINATION**

5 BY MR. COHEN:

6 Q. I'm sorry, Ms. Ammann. We had been talking about
7 the report. I just wanted to make sure we were speaking
8 about the same one.

9 MR. COHEN: I'm sorry. Can I have this marked?

10 THE DEPUTY CLERK: Defendant's Exhibit Number 8 is
11 marked for identification.

12 (Defendant's Exhibit No. 8 was
13 marked for identification.)

14 BY MR. COHEN:

15 Q. Ms. Ammann, if you could take a look at Defendant's
16 Exhibit 8 for a second, please. Thumb through that and look
17 up when you're done. Just take a look at that. You said
18 this page 4 of 6 on the last page of that document?

19 A. Yes.

20 Q. Indulge me for one moment.

21 MR. COHEN: Your Honor, I'm sorry. If I could have
22 another document marked.

23 THE COURT: Certainly.

24 THE DEPUTY CLERK: Defendant's Exhibit Number 9 is
25 marked for identification.

1 (Defendant's Exhibit No. 9 was
2 marked for identification.)

3 BY MR. COHEN:

4 Q. Ms. Ammann, thank you. We can try that again. I'm
5 giving you what's been marked as Defendant's Exhibit Number
6 9. Can you take a look at that.

7 A. Yes, sir.

8 Q. Is that a copy of the report that you referred to
9 during Mr. Moomau's questions?

10 A. Yes, sir.

11 Q. Is that a copy of the report that was the report
12 that you generated after the DNA tests that you just
13 testified to?

14 A. Yes.

15 MR. COHEN: Thank you. Nothing further, Your
16 Honor.

17 MR. MOOMAU: No other, Your Honor. She's free to
18 go.

19 THE COURT: Thank you, Ms. Ammann.

20 MR. MOOMAU: Can we approach, Your Honor?

21 THE COURT: Certainly.

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

24 MR. MOOMAU: That's all we have for today.

25 THE COURT: Do you want me to tell them we have

1 more administrative matters so that they are --

2 MR. COHEN: I think that's fine, Your Honor.
3 Present it to them as a good thing. They get to go home
4 early on Valentine's Day.

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

7 THE COURT: Ladies and gentlemen, we have a number
8 of further administrative matters we have to deal with for
9 the rest of the day. So as not to hold you up, sitting back
10 in that relatively uncomfortable deliberation room, we
11 thought that we would offer you a Valentine's Day gift and
12 send you home. Otherwise, you'd just be sitting there for a
13 little while, and we don't want to do that on occasions when
14 we don't have to.

15 So, again, I have to admonish you. Please do not
16 put yourself in a position this evening or this afternoon or
17 tomorrow morning to be exposed to any radio, television or
18 newspaper accounts of any of the circumstances that have
19 taken place during this trial.

20 You are not permitted to speak to anyone about what
21 is taking place during trial, and you are not allowed to
22 respond to any inquiries, regardless of how miniscule they
23 may seem from anyone about this trial.

24 You can't even discuss this matter amongst
25 yourselves and, again, you cannot conduct any of your own

1 investigation, and you know what I had mentioned to you about
2 the details of that before.

3 With those admonitions, I'd ask that you return
4 tomorrow at 8:30 again, and we'll get you back into the -- to
5 the main juror's lounge, and we'll get you back into the
6 courtroom by nine as quickly as we can. Thank you.

7 (The jury retired at 2:50 p.m.)

8 THE COURT: Can you come up and direct me on where
9 we're going tomorrow so that I know what to expect. You may
10 want to do that at the bench.

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

13 THE COURT: I'm just trying to get an idea so I
14 know what perils we may be facing.

15 MR. MOOMAU: We're going to have the firearms
16 examiner first thing tomorrow morning. We have some medical
17 personnel that examined Mr. Washington. I think that's it
18 for witnesses. We moved fast.

19 THE COURT: So a couple of hours maybe? Less?

20 MR. MOOMAU: No more than.

21 THE COURT: That's all right. I'm just figuring
22 what to tell the jury on that one.

23 MR STARR: We may have some issues to deal with
24 after that.

25 MR. COHEN: As you may imagine.

1 THE COURT: You mean issues that have already have
2 happened or --

3 MR. STARR: All of the above.

4 THE COURT: You probably have several issues too,
5 I'm assuming.

6 MR. MOOMAU: Well, once they bring some stuff up,
7 I'm sure we'll have some issue.

8 THE COURT: We'll deal with that one when it comes.
9 So we'll just see everybody tomorrow.

10 THE COURT: We stand in recess.

11 (The trial was recessed at 2:50 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, CT07-1664X, on February 14, 2008, before the Honorable Michael P. Whalen, Associate Judge.

I further certify that the page numbers 1 through 136 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 4th day of June, 2008.

Cindy S. Davis, RPR

Official Court Reporter