

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 V of IX

Upper Marlboro, Maryland

Friday, February 15, 2008

BEFORE:

HONORABLE MICHAEL P. WHALEN, Associate Judge

(and a jury)

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

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Charles Walls	5-123	5-128	5-135	5-140
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3 - Photo of Marlo delivery truck			3-45	3-45
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P R O C E E D I N G S

(Jury not present upon convening.)

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

MR. MOOMAU: William Moomau present for the State, Your Honor.

MR. WRIGHT: Joseph Wright for the State.

MS. ZANZUCCHI: Raemarie Zanzucchi for the State.

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

MR. STARR: And Michael Starr, also for Mr. Washington, who is present.

THE COURT: Please come up.

(Counsel approached the bench and the following ensued.)

MR. WRIGHT: Good morning, Your Honor. The State -- we mentioned this, I think, the day before or yesterday. The State is interested in recalling Marilyn Clark to the stand. She was not allowed to go into her hiring of the attorney. It's been specifically crossed by of Robert White about his knowledge of the hiring of the attorney.

She -- and I would proffer -- she took care of everything dealing with the attorney. She has full knowledge. She has all the communications. So the State

1 wanted to recall her for that purpose and that purpose only.

2 MR. STARR: We object to it because it has nothing
3 to do with the cross-examination of Robert White. Marilyn
4 Clark is a representative of Mr. Clark's -- Brandon Clark's
5 estate and not of Mr. White. There's been testimony that
6 Mr. White signed a document with this attorney while he was
7 in the hospital. So why Marilyn Clark hired an attorney has
8 nothing to do with why Robert White separately hired an
9 attorney.

10 MR. WRIGHT: Your Honor, there has been testimony
11 that they are cousins. Mr. White lives in South Carolina
12 with his family. Marilyn Clark has taken care of this whole
13 civil lawsuit.

14 THE COURT: Let me understand. Are you saying that
15 Ms. Clark hired a lawyer for Mr. White as a result of her
16 familial relationship?

17 MR. WRIGHT: This is what happened, Your Honor.
18 Initially, she hired a lawyer because she was not allowed to
19 see her boys, essentially, Robert White and Brandon Clark, in
20 the hospital. So in order to gain access to the hospital,
21 she had to hire a lawyer and that lawyer was Michael
22 Winkelman.

23 She can also state that she wasn't sure what kind
24 of lawyer he was. She really thought he was more of a
25 criminal lawyer. She didn't realize he was a -- and to use

1 her words -- a lawsuit-type of lawyer. She hired him in
2 order to see Robert White and Brandon Clark because she was
3 being banned from seeing her children. He got involved. He
4 allowed her eventually to see her sons, and we didn't allow
5 her to go into that testimony. Eventually, though,
6 Mr. Winkelman tells her that he's actually a civil lawyer,
7 plaintiff's attorney, things of that sort, and --

8 THE COURT: My question is -- and I understand the
9 nature of the defense cross-examination of Mr. White, that he
10 didn't know anything about the lawsuit. What are you
11 proffering that Mrs. Clark is going to say about that aspect
12 of it?

13 MR. WRIGHT: She will say about that aspect that
14 she had all the dealings with Mr. Winkelman, not Robert
15 White. She was, in fact, instructed --

16 THE COURT: About Mr. White included as a
17 plaintiff; is that what you're saying?

18 MR. WRIGHT: What I'm saying is she dealt with
19 Michael Winkelman -- if I may hear your question again?

20 THE COURT: What is Mrs. Clark going to testify
21 specifically about the lawsuit filed on behalf of others and
22 Mr. White?

23 MR. WRIGHT: She had full knowledge. Robert White
24 did not have knowledge of the lawsuit. She dealt with
25 Mr. Winkelman pretty much solely in terms of this -- she had

1 discussed with Mr. Winkelman days leading up to the filing of
2 it, but she didn't even -- I don't even think she knew
3 exactly when the lawsuit was going to be filed. And she
4 knows that Mr. White had no contact with -- because she's
5 Mr. White's contact, and he had no dealings with the lawsuit
6 itself.

7 THE COURT: She hired Mr. Winkelman for Mr. White
8 and Mr. Clark?

9 MR. WRIGHT: She hired Mr. Winkelman for her to see
10 both of her sons initially -- well, her son and her nephew,
11 initially. I'm sorry. That's why she hired Mr. Winkelman,
12 because she was not allowed to see them at the hospital.
13 That testimony hasn't come out but, essentially, she was
14 banned from seeing them. Once the police arrest him, took
15 them into custody at the hospital, she was banned from seeing
16 her son and her nephew. She had to hire a lawyer in order to
17 see them, and that was Mr. Winkelman.

18 THE COURT: By whom was she prevented from seeing
19 her son and her nephew? What is she going to say?

20 MR. WRIGHT: She was banned from -- Prince George's
21 County police banned her from the seeing them. So she hired
22 Mr. Winkelman in order to let her see her son and nephew.

23 THE COURT: Okay. And then what do you proffer
24 that she's going to say about Mr. White and/or her son as it
25 relates to the lawsuit?

1 MR. WRIGHT: As it relates to the civil lawsuit
2 itself, she -- number one, she realized, eventually, that
3 Mr. Winkelman files lawsuits such as this. Number two, she
4 authorized Mr. Winkelman to file this lawsuit. Number three,
5 she dealt with Robert White, and Mr. White did not have
6 knowledge of the lawsuit being filed.

7 MR. MOOMAU: Well, she can indicate that she hadn't
8 communicated that information to Mr. White, and she would
9 testify that she was the front person on the lawsuit.

10 THE COURT: Okay. That she authorized the filing
11 of the lawsuit on behalf of her son and Mr. White, is what
12 you're saying, to Mr. Winkelman?

13 MR. MOOMAU: Yes. He got in the picture through
14 her early on. She thought it was just so -- she hired him so
15 she could see Robert and Brandon, and she didn't really
16 understand what all Winkelman did. She kind of thought he
17 might be a prosecutor too. She just didn't understand how
18 the system worked. He was her lawyer for allowing her to see
19 those two -- her sons. And then, after that, he just
20 continued to work on it. She would communicate with him, and
21 she was the front person as far as initiating the lawsuit,
22 filing it. She was his point of contact.

23 MR. STARR: Okay, a number of things. First of
24 all, Ms. Clark witnessed the testimony of Robert White, and
25 we objected to her being allowed to witness that under the

1 rule on witnesses. So for that reason we're asking that her
2 further testimony be excluded. They got the Court -- the
3 argument that the State made was that she was their victim --
4 I don't know the exact term, but the person who had been
5 designated.

6 THE COURT: The family representative.

7 MR. STARR: Exactly. They have a half dozen or
8 more family members here every single day. The argument that
9 we made at that time was that we wanted her excluded. We
10 objected to it. We maintained that objection because there
11 were other people that could be the witness. And, now,
12 exactly what we tried to prevent with that objection is
13 happening.

14 THE COURT: There are other people that could be a
15 witness as to --

16 MR. STARR: I'm sorry, could be the representative.
17 Not the witness; the representative. So that has happened.
18 She's been allowed to witness testimony and will now be
19 allowed to testify, if the Court grants this, about the
20 testimony she witnessed, in direct violation of the rule on
21 witnesses.

22 The second thing is the Court has been clear,
23 throughout the trial, that one witness cannot say what's in
24 another witness's mind, and what the State wants Marilyn
25 Clark to do is come in and say Robert White didn't know

1 anything about the lawsuit. Robert White has said that.
2 That's for the jury to decide whether or not it's credible.
3 It's not for Marilyn Clark to say what Robert White knows or
4 doesn't know. He could know about it in a hundred different
5 ways that have absolutely nothing to do with Mrs. Clark. In
6 fact, the testimony that's on the record --

7 THE COURT: Well, number one, aren't we a little
8 bit premature? Isn't that a matter of rebuttal if it comes
9 in at all?

10 MR. STARR: That's exactly right. That was going
11 to be our next point.

12 MR. MOOMAU: This whole thing about the lawsuit, I
13 just felt that we were prevented, in direct examination, from
14 going into it with her about the dealings at the hospital.
15 That's what we meant to do.

16 THE COURT: I understand that part. Number one,
17 isn't this a matter of rebuttal if it were to be presented?

18 MR. MOOMAU: I don't see what we would be able to
19 rebut. They're not going to be introducing any evidence
20 about the lawsuit in their case.

21 THE COURT: That's true. Okay.

22 MR. STARR: Your Honor, in addition to the rule on
23 witnesses problem and the problem that she does not have a
24 basis of knowledge to say what Mr. White knows and doesn't
25 know --

1 THE COURT: I don't know that because I don't know
2 what the foundation is on those questions.

3 MR. STARR: Well, I don't see how one witness can
4 say that another witness doesn't know about something. She's
5 not with him every day. She's not with him every second of
6 every day. She can't say what he knows and doesn't know and
7 when he knew it.

8 Now, the testimony that's in the record at this
9 point is that Mr. White, along with his own mother, not
10 Brandon Clark's mother, signed a document with Mr. Winkelman
11 while Mr. White was still in the hospital. That's the
12 testimony that's in the record. His mother, Carrie Williams,
13 along with Robert White, signed that document in the
14 hospital. It's dated February 6th. So that is in the record
15 as well.

16 And it's also in the record, after he was released
17 from the hospital, Mr. White drafted his media statement with
18 Mr. Winkelman.

19 And, Your Honor, all of this shows that Marilyn
20 Clark can't say what Robert White knows and doesn't know.
21 She can't say what his dealings are with Mr. Winkelman, and
22 she can't waive Robert White's attorney-client privilege with
23 Mr. Winkelman.

24 I mean, I have to cross-examine now about all sorts
25 of dealings between White and Winkelman, and she can't talk

1 about those things.

2 THE COURT: All kinds of dealings about --

3 MR. STARR: What rebuts the -- the response to what
4 the State wants to present is that there have been all these
5 dealings between Robert White and Michael Winkelman that show
6 that Robert White is Michael Winkelman's client and that they
7 are connected to one another.

8 He gave notice of intent to sue while he was still
9 in the hospital, which also contradicts this proffered
10 testimony about Marilyn Clark, that she's the front person,
11 not knowing that there was going to be a lawsuit. It doesn't
12 add up. She sat here and watched the testimony --

13 THE COURT: The question of whether it doesn't add
14 up, that's all in the mind of jurors or factfinders on that.
15 I need to know your specific objections to Ms. Clark
16 testifying.

17 I have the first one, that she violated the rule on
18 witnesses because she was here listening to Mr. White's
19 testimony as a representative of the family of the deceased,
20 Mr. Clark, and is entitled by statute. Go ahead.

21 MR. STARR: And the second one I believe the Court
22 has is that she cannot testify as to what is in the mind of
23 Robert White, and that is the reason that the State wants to
24 call her, to say that Robert White has no knowledge of the
25 lawsuit, and she cannot say that. She has no factual basis

1 from which to say what another person knows about and doesn't
2 know about.

3 MR. MOOMAU: That's correct. What I propose is
4 just letting us put her on in camera. You hear what we
5 intend to ask her and then make a ruling.

6 MR. COHEN: Your Honor, there's one more issue that
7 I would like to bring to the Court's attention. She is going
8 to have to get into discussions, attorney-client privilege
9 discussions that she had with Attorney Winkelman, and she
10 needs to know that she will be waiving that if she testifies
11 and that it may affect her civil lawsuit if she talks about
12 conversations that she had with Mr. Winkelman.

13 MR. MOOMAU: I don't plan to ask her about her
14 conversations with Mr. Winkelman.

15 MR. COHEN: I thought the proffer was that they
16 were going to get into a discussion about when she talked to
17 Mr. Winkelman and what she talked to Mr. Winkelman about and
18 she hired Mr. Winkelman.

19 MR. MOOMAU: When did she hire him, who did she
20 hire, you know, why did she hire him.

21 MR. COHEN: Attorney-client privilege, Your Honor.

22 MR. MOOMAU: I don't see how that's attorney-client
23 privilege.

24 MR STARR: Well, there's one more point, Your
25 Honor. One of the reasons why we're having this discussion

1 about whether or not this is rebuttal is that the proper time
2 to deal with this was in redirect examination of Robert
3 White. Because the issue is what Robert White knows, and
4 redirect examination was the time to say, Mr. White, you
5 know, who is your -- whatever, whatever questions. I'm not
6 going to supply them to the State. But that was the time to
7 deal with it because it's about his state of mind.

8 They want to basically redirect Mr. White about his
9 state of mind through another witness, that doesn't have a
10 basis to testify --

11 THE COURT: I don't believe she can testify what
12 was in Robert White's mind. I believe she can testify that
13 she had no conversation with Robert White about the filing of
14 any lawsuit.

15 MR. STARR: But that's not relevant because the
16 testimony that's in the record is that Robert White was
17 having direct dealings with Mr. Winkelman, and that Robert
18 White and his mother signed documents while he was in the
19 hospital.

20 THE COURT: My understanding of what is in the
21 record is that he signed a February 6th notice of intent --
22 well, actually, I don't know if -- because the phraseology of
23 it was just --

24 MR. STARR: He's asserting his right to have
25 counsel, Mr. Winkelman, present.

1 THE COURT: On February 6th, and that he released a
2 media statement with Mr. Winkelman on -- I can't remember the
3 date.

4 MR. STARR: February 21st, approximately.

5 MR. WRIGHT: If I may, Your Honor?

6 THE COURT: Yes.

7 MR. WRIGHT: The State's position is when she
8 initially hired him, it had nothing to do with a civil
9 lawsuit. It had to do with letting her see her boys.

10 Number two, when he released his statement, that
11 had nothing to do with filing a lawsuit. It just had to do
12 with the fact that I'm not comfortable giving a statement to
13 police officers, and he's hearing everything going on.

14 None of these -- the media statement, the initial
15 hiring, none of them have to do with the civil lawsuit.
16 That's the State's issue. The media statement, the initial
17 hiring of counsel have nothing to do with the civil lawsuit.
18 He may have been aware of those; however, that has nothing to
19 do with the fact of whether he was aware of the civil lawsuit
20 filed 11 months later. Because, 11 months later, the person
21 who is dealing with the civil lawsuit is Marilyn Clark.

22 MR STARR: And, Your Honor, those questions should
23 have been asked of Robert White because they all -- the only
24 reason that this is coming up is the cross-examination of
25 Robert White about what he knew and did not know, and

1 redirect examination is the time to have that explained.

2 It cannot be -- another witness can't come in here
3 and explain what Robert White's state of mind and basis of
4 knowledge was. All of this stuff that we're hearing now on
5 this proffer about, well, he released a media statement
6 because he didn't want to talk to the police, that's a
7 redirect examination question for Robert White.

8 THE COURT: Let me go through this one by one, if I
9 can. Number one, Ms. Clark did provide testimony initially
10 in this case. She was the first witness who was called.

11 In addition, we were alerted in advance that she
12 was designated as the family representative to be present
13 throughout the trial, as she may be entitled to do under the
14 victims' rights statute.

15 The State put her on the stand first, I think in
16 our earlier conversations, and correct me if I'm wrong, to
17 alleviate any potential problem of her sitting and listening
18 to testimony. I prevented the State from eliciting
19 information about her being precluded to visit her sons in
20 the hospital as a result of objections that you made at the
21 time.

22 It would be my belief that her just overhearing
23 Mr. White's testimony, saying that he didn't know anything
24 about the lawsuit, is relatively harmless, in my mind, and
25 doesn't add or subtract to what she may or may not say if, in

1 fact, the State is entitled to call her back for the sole and
2 specific purpose of saying that she dealt with Mr. Winkelman
3 and had no conversations with Mr. White about what
4 Mr. Winkelman was or wasn't doing with any potential lawsuit.
5 He has testified that he didn't know anything about it. And
6 I think, under the circumstances, that it's limited to that.
7 Now --

8 MR. STARR: May I respond to what the Court said?
9 There is one thing. The reason that the Court sustained the
10 objections --

11 THE COURT: I'm going to address that, and then I
12 think I know what you're going to say. If I haven't, stop me
13 and we'll put it on the record.

14 Now, Mr. Wright, I don't believe under the
15 circumstances of my limiting your direct examination -- or
16 Mr. Moomau's of Mrs. Clark before, about the hospital stay,
17 that it is necessary for the State to elicit that she was
18 precluded from seeing her sons at the hospital by any Prince
19 George's County Police Department or any other agency, and I
20 think you can excise that from any examination of Ms. Clark.

21 MR. MOOMAU: Will she be able to say that the
22 initial hiring was to see her son and Robert, or should she
23 just stay away from that?

24 THE COURT: Well, I don't know what the purpose
25 would be. What does that do to --

1 MR. MOOMAU: Okay.

2 THE COURT: I'm asking you. What does that do to
3 further the State's line of questioning about --

4 MR. MOOMAU: Well, it just establishes the time
5 period that the hiring took place and the circumstances, to a
6 degree.

7 THE COURT: Well, I believe you can ask her
8 directly when she hired Mr. Winkelman.

9 MR. MOOMAU: Okay.

10 MR. WRIGHT: Your Honor, I guess the other question
11 becomes can the State elicit -- we know when she hired, but
12 why she hired?

13 THE COURT: Well, once again --

14 MR. WRIGHT: Because then the State's concern is
15 that, if we can only do that, then that means the defense
16 should also be limited as to any type of cross-examination as
17 to the media statements put out or the initial reasons for
18 the hiring also.

19 THE COURT: I can't rule in advance to things that
20 I don't know may or may not take place based on the
21 questioning. But what I am saying is that it would be my
22 belief that Ms. Clark would be able to testify when she hired
23 Mr. Winkelman.

24 The reasons why she hired Mr. Winkelman are -- I'm
25 not sure -- but when she hired him and testimony indicating

1 from Mrs. Clark that she did not -- if it's true. I mean, I
2 don't know what the setting is -- that she did not -- if it's
3 true -- inform or advise Mr. White about any lawsuit. I
4 mean, I don't know how else you can --

5 MR. WRIGHT: That's fine, Your Honor.

6 THE COURT: And nothing about her opinion of
7 whether he did or did not know.

8 MR. STARR: Your Honor, since we're going to be
9 getting into when Mr. Winkelman was hired, I think what this
10 opens the door to is the text of the document that Mr. White
11 signed with Mr. Winkelman while he was in the hospital.
12 Because this all goes to -- the State is going to take this
13 and argue that Mr. White did not know about the lawsuit and
14 did not have a connection with Mr. Winkelman --

15 THE COURT: I haven't seen the text of the
16 document.

17 MR STARR: I proffered it, but I can show it to
18 you. This is the document we redacted --

19 MR. WRIGHT: However, the State would also suggest,
20 in response, that we're not going to have Ms. Clark go back
21 into, as you ruled, the state of mind of Robert White signing
22 some document with Mr. Winkelman.

23 THE COURT: Well, listen, you can't -- your
24 argument is that he didn't know, and their argument that he
25 did know.

1 MR. WRIGHT: No. My argument is that he didn't
2 know about the civil lawsuit.

3 MR. MOOMAU: We're not going to get into the reason
4 why the lawyer was hired. This document is going to get into
5 the reason, because that document, the document Robert
6 signed, and her son signed one too, saying, you know, we
7 don't want to talk to police without our attorney present,
8 and that the reason was --

9 THE COURT: Is there anything in that document that
10 says anything or infers anything about a civil lawsuit? I
11 don't know. I haven't seen it.

12 MR. MOOMAU: No.

13 MR. WRIGHT: No.

14 MR. COHEN: Court's indulgence.

15 (Counsel hands document to the Court.)

16 MR. STARR: I'd like the exact language put on the
17 record because the document says that he invokes his right to
18 counsel in all matters related to the event on January 24th,
19 and that clearly is a document indicating that that clearly
20 encompasses civil matters as well. And they gave notice,
21 Your Honor.

22 What the Court is holding -- can we put on the
23 record the exhibit number there?

24 THE COURT: I'll do all that in a minute. Let me
25 read this.

1 Okay. For purposes of the record, the document is
2 listed as Defendant's Exhibit Number -- and I think that's
3 number 6; is that what that is?

4 MR. STARR: It looks like a six, yes.

5 THE COURT: And the document is on the letterhead
6 of the law firm of McCarthy and Winkelman, L.L.P., and the
7 signature is purportedly of Mr. Robert White and a witness,
8 Carol W. Williams -- or Carrie W. Williams, and the body of
9 the document, which is, "I, Robert White, hereby invoke my
10 right to counsel in all matters which may relate to the
11 incident which occurred on January 24, 2007, at Shellford
12 Lane in Accokeek, Maryland. I request my attorney be present
13 before any police office or other individual question me
14 about the incident of January 24th, 2007."

15 MR. WRIGHT: If I may, Your Honor. We also have a
16 companion document that has Mr. Brandon Clark's signature on
17 it. I think we may want to also read that into the record
18 since it is a companion document. We're marking it right now
19 at this time.

20 MR. MOOMAU: Just so you can see the entire
21 circumstances. If one of these comes in, then it's going to
22 open the door to Ms. Clark being able to testify as to why
23 she did what she did, and the reason was -- and she will say
24 it -- her sons shot by a police officer; the police wouldn't
25 let her see her sons, and she wanted to see her sons, and by

1 sons, she means both of them.

2 MR. STARR: It's not her son. Mr. White's mother
3 was there. Mr. White has acknowledged, during
4 cross-examination, that that's his signature on what's been
5 marked as Defense 6 and his mother's signature on that
6 document.

7 MR. MOOMAU: That's correct, but Robert didn't know
8 who hired, and Ms. Clark has testified that she's the one
9 that made the contact. I'm willing just to not even get into
10 any of that.

11 MR. STARR: I'm sure he is, Your Honor, but --

12 THE COURT: It would be my belief that the State
13 has a right to elicit that information. It is my view that
14 Ms. Clark learned nothing from the testimony of Robert White
15 that would impinge or impair her ability to testify as a
16 witness in this case concerning the fact of when she hired
17 Mr. Winkelman and the fact that she did not have -- if it's
18 true, have any conversations with Mr. White about any civil
19 lawsuit related, and that the issue is whether or not he knew
20 about the civil lawsuit, which he said he doesn't, and I
21 believe the representations made in State's Exhibit Number 6,
22 you should be permitted to cross-examine about.

23 MR. COHEN: Just to correct, Your Honor, you said
24 State's Exhibit Number 6.

25 THE COURT: I'm sorry; Defendant's Number 6. If

1 that's the case, I think it is, likewise, relevant and the
2 State will be able to elicit information concerning State's
3 Exhibit Number 99 and, in fact, be able to bring up the
4 reasons why she hired Mr. Winkelman in the first place.

5 MR. STARR: And this is the road that this places
6 us on. Because, first of all, the State cannot proffer that
7 Mr. Washington did anything to prevent Marilyn Clark from
8 seeing her son.

9 THE COURT: Say that again.

10 MR STARR: Mr. Washington did nothing to prevent
11 Marilyn Clark from seeing her son, absolutely nothing, and
12 the State cannot proffer that he did.

13 What we will now have to introduce, Your Honor, is
14 the fact that police officers, who were investigating this
15 case, concluded that Robert White and Brandon Clark assaulted
16 Mr. Washington and were drafting warrants for their arrest.
17 Every search warrant, every document in this case, up to a
18 certain date -- and I don't know what it is -- the probable
19 cause for all of the searches that yielded the evidence that
20 the State has introduced is that Robert White and Brandon
21 Clark assaulted Keith Washington and, if the police were
22 acting on that basis, then that's admissible.

23 THE COURT: I'll make my rulings as I see them as
24 we go through this process. Both of you have to make up your
25 minds what it is you want to elicit, and I'll make the

1 appropriate rulings as we go along.

2 MR. STARR: We would like that in-camera hearing,
3 Your Honor.

4 THE COURT: With Mrs. Clark?

5 MR. STARR: With Mrs. Clark, yes.

6 MR. COHEN: We need an admonishment, Your Honor,
7 subsequent to that on the record.

8 MR. STARR: Yes, with the Court directly
9 admonishing the witness.

10 THE COURT: I'm not admonishing the witness. This
11 is the state's attorney's proffer what they're going to do,
12 and the state's attorney will admonish Ms. Clark accordingly,
13 and I will hear the foundation questions laid and I will rule
14 appropriately.

15 MR. COHEN: Thank you, Your Honor.

16 MR. MOOMAU: Is the jury coming out now.

17 THE COURT: No. Bring her out now. We'll do it
18 before we bring in the jury.

19 THE DEPUTY CLERK: Your Honor, State's Exhibits 87
20 through 99 marked for identification, and also Defense
21 Exhibit 10 marked for identification.

22 (State's Exhibit Nos. 87 through 99
23 and Defense Exhibit No. 10 were
24 marked for identification.)

25 **MARILYN CLARK (in camera),**

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

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

5 THE WITNESS: Marilyn Clark, M-a-r-i-l-y-n,
6 C-l-a-r-k.

7 **DIRECT EXAMINATION**

8 BY MR. MOOMAU:

9 Q. Good morning. For the record, just state your name
10 again.

11 A. Marilyn Clark.

12 Q. Ms. Clark, you're the mother of Brandon Clark?

13 A. Yes.

14 Q. Did there come a time when you hired an attorney in
15 reference to this matter?

16 A. Yes.

17 Q. And who did you hire that attorney for?

18 A. Who -- I'm sorry?

19 Q. Strike that. What relation are you to Robert
20 White?

21 A. I'm his cousin.

22 Q. Did there come a time when you hired an attorney
23 after your son and Robert had been shot?

24 A. Yes.

25 Q. Who was that attorney?

1 A. Michael Winkelman.

2 Q. And do you know approximately when you retained the
3 services of Mr. Winkelman in relationship to your son and
4 Robert being shot?

5 A. January 25, 2007.

6 Q. And who did you retain the services of
7 Mr. Winkelman to represent? Who did you hire him to
8 represent?

9 A. Brandon and Rob.

10 Q. Now, there was a lawsuit that was filed as a result
11 of -- are you aware of a lawsuit that was filed as a result
12 of your son being killed and Robert also being shot?

13 A. Yes.

14 Q. I want to show you what's been marked as Defense
15 Exhibit Number 2. You can look through the document. Does
16 that appear to be a copy of the lawsuit papers?

17 A. Yes.

18 Q. Had you seen that before today?

19 A. Yes.

20 Q. What were the circumstances of you seeing that
21 before today?

22 A. Mr. Winkelman came to my house on the anniversary
23 date of the shooting, which is January 24th, and he brought
24 me some roses, and he told me he had filed the lawsuit.

25 Q. I want to show you the last page of the document.

1 Are there some signatures on there?

2 A. Yes.

3 Q. Is your signature on there?

4 A. No.

5 Q. Robert White, is his signature on there?

6 A. No.

7 Q. Where does Robert White live?

8 A. Robert White lives in South Carolina.

9 Q. Did you ever tell Mr. White about the filing of the
10 lawsuit?

11 A. No.

12 MR. MOOMAU: That's it, Your Honor.

13 MR. STARR: Court's indulgence.

14 **CROSS-EXAMINATION**

15 BY MR. STARR:

16 Q. Good morning, Mrs. Clark.

17 A. Good morning.

18 Q. Now, you said that you hired Mr. Winkelman on
19 January 25th, correct?

20 A. Yes.

21 Q. And that's the day after the shooting?

22 A. Yes.

23 Q. Now, you said that Robert White is your cousin?

24 A. Yes.

25 Q. And you know a person by the name of Carrie

1 Williams, correct?

2 A. Yes.

3 Q. And that's Mr. White's mother, correct?

4 A. Yes.

5 Q. And Carrie Williams was present at the hospital
6 while Robert White was in there, correct?

7 A. Part of the time.

8 Q. And you saw her there, right?

9 A. Yes.

10 Q. And she visited with Mr. White, correct?

11 A. Yes.

12 Q. I'm going to show you a document marked Defense
13 Exhibit 6 for identification, and this is on the stationery
14 of the law firm McCarthy and Winkelman, correct?

15 A. Yes.

16 Q. And Michael Winkelman's name is listed as one of
17 the attorneys in the upper, left-hand corner?

18 A. Yes.

19 Q. And there are signatures on the document of Robert
20 White and Carrie Williams, correct?

21 A. Yes.

22 Q. Now, you were not present when this was signed,
23 correct?

24 A. I wasn't in that particular area when that was
25 signed.

1 Q. Meaning you weren't -- your signature is not on the
2 document, correct?

3 A. No.

4 Q. You're not listed as a witness, correct?

5 A. I'm not listed -- yes.

6 Q. Well, Carrie Williams is listed as the witness on
7 the document, correct?

8 A. Yes.

9 Q. You are not listed as a witness, correct?

10 A. Yes.

11 Q. And you were not present when Robert White and
12 Carrie Williams signed this document, correct?

13 A. Right.

14 Q. Let me show you another document. This has been
15 marked as Defense Exhibit 3 for identification purposes.
16 This is also on that same letterhead, McCarthy and Winkelman,
17 correct? Well, forget about whether it's the same. This is
18 on the letterhead of the law office of McCarthy and
19 Winkelman, correct?

20 A. Yes.

21 Q. And Michael Winkelman's name is listed in the
22 upper, left-hand corner, correct?

23 A. Yes.

24 Q. Now, this document says, "Please accept this letter
25 as notice under Section 5-304 of the Courts and Judicial

1 Proceedings Article of the Annotated Code of Maryland on
2 behalf of Mr. Brandon Clark and Mr. Robert White," correct?

3 A. Yes.

4 THE COURT: Is that marked as an exhibit?

5 MR STARR: Yes, Your Honor. This is Defense 3 for
6 identification.

7 BY MR. STARR:

8 Q. It says that, right?

9 A. Yes.

10 Q. And it says, "The incident that gives rise to this
11 notice occurred on the evening of January 24, 2007, when
12 Messrs. Clark and White were delivering furniture to the home
13 of Keith Washington," correct?

14 A. Yes.

15 Q. And it goes on to say, "a member of the Prince
16 George's County Police Department," right?

17 A. Yes.

18 Q. And it says, "The delivery and surrounding events
19 occurred between 7 p.m. and 8:30 p.m.," correct?

20 A. Yes.

21 Q. It says, "As the gentlemen were making the
22 delivery, Mr. Washington discharged his police-issued firearm
23 several times," correct?

24 A. Yes.

25 Q. "Striking Messrs. Clark and White," correct?

1 A. Yes.

2 Q. "Both men were taken to Prince George's Hospital
3 Center, where they remain in critical condition," correct?

4 A. Yes.

5 Q. And there's some other language in there. I'm not
6 going to read every word, but it also says location,
7 Shellford Lane, Accokeek, Maryland, correct?

8 A. Yes.

9 Q. And it's signed by Mike Winkelman, correct?

10 A. Yes.

11 Q. And it's addressed to Mrs. Stephanie Anderson,
12 acting county attorney, correct?

13 A. Yes.

14 Q. And that's in the County Administration Building in
15 Upper Marlboro, correct?

16 A. Yes.

17 Q. Now, on January 31, 2007, through this document,
18 Defense Exhibit 3 for identification purposes, Attorney
19 Michael Winkelman provided notice of intent to file a lawsuit
20 on behalf of your son, correct?

21 A. A lawsuit on January 31st? I don't know.

22 Q. So your testimony is that you did not know that
23 Mr. Winkelman provided that notice on January 31st?

24 A. I didn't know.

25 Q. So Mr. Winkelman then provided this notice without

1 your consent, correct?

2 MR. MOOMAU: Objection.

3 THE COURT: If she knows.

4 THE WITNESS: I'm sorry?

5 THE COURT: You may answer that question, if you
6 know, ma'am.

7 THE WITNESS: I don't know.

8 BY MR. STARR:

9 Q. Well, did he tell you he was going to file the
10 notice on January 31st?

11 A. No. I don't remember. I really don't.

12 Q. You don't remember?

13 A. At that time my son was in the hospital. That was
14 my main concern was my son.

15 Q. So a lawsuit -- well, let me ask you this.
16 In-between January 31st of 2007 and January 24th of 2008, you
17 and Mr. Winkelman discussed the fact that he was going to
18 file a lawsuit on your behalf, correct?

19 A. Initially, yes.

20 Q. So when Mr. Winkelman filed a lawsuit on January
21 24th, you knew that he was going to do that, correct?

22 A. Yes.

23 Q. And, in fact, you and Mr. Winkelman discussed the
24 filing of the lawsuit within days of the shooting, correct?

25 A. No.

1 Q. Well, is it your testimony that as of this day,
2 January 31st of 2007, you and Mr. Winkelman had never
3 discussed the issue of a lawsuit?

4 A. No, I don't recall discussing a lawsuit on January
5 31, 2007.

6 Q. Or you don't recall discussing a lawsuit with him
7 at any time prior to that?

8 A. Not between January and February or even March or
9 April, to be exact.

10 Q. Now, Robert White, he's 37-years old, right?

11 A. Yes.

12 Q. And he has a mother, right?

13 A. Yes.

14 Q. And you would agree that there have been
15 conversations between Mr. White and Mr. Winkelman that you
16 were not present for, correct?

17 A. Apparently.

18 MR. MOOMAU: Objection.

19 THE COURT: If she knows.

20 THE WITNESS: Apparently so.

21 BY MR. STARR:

22 Q. I'm going to show you the same document Mr. Moomau
23 showed you, Defense Exhibit Number 2 for identification
24 purposes. Looking at this, this is a copy of your lawsuit,
25 correct?

1 A. Yes.

2 Q. And Robert White is listed as a plaintiff, correct?

3 A. Yes.

4 Q. Turning your attention to -- I'm not sure where the
5 pages are numbered. I'm going to show you what is -- it says
6 page 10 in the upper, right-hand corner. Do you see where
7 this says, "Wherefore, Robert White demands judgment against
8 the defendants, jointly and severally, in the amount of \$20
9 million in compensatory damages and \$20 million in punitive
10 damages, with interest and costs." Do you see that?

11 A. Yes.

12 Q. And that's under count 1, correct?

13 A. Yes.

14 Q. And I'll show you count 2 on page 11, and there's
15 some numbers listed there. You see 58 through 63?

16 A. Yes.

17 Q. And on the next page it says, "Robert White demands
18 judgment against the defendants, jointly and severally, in
19 the amount of \$20 million in compensatory damages and \$20
20 million in punitive damages, with interest and costs,"
21 correct?

22 A. Yes.

23 Q. And you know that there's a number of other counts
24 in the lawsuit, right?

25 A. Yes.

1 Q. And this lawsuit is filed -- one of the attorneys
2 whose signature appears on the final page is Michael
3 Winkelman, correct?

4 A. Yes.

5 Q. And Mr. Winkelman has been coming and watching this
6 trial; hasn't he?

7 MR. MOOMAU: Objection.

8 THE COURT: Sustained.

9 BY MR. STARR:

10 Q. You saw Mr. Winkelman here on the day that Robert
11 White was testifying, correct?

12 MR. MOOMAU: Objection.

13 THE COURT: I'm sorry, she --

14 MR. STARR: Saw Mr. Winkelman present in the
15 courtroom on the day that Robert White was testifying,
16 correct?

17 THE COURT: Approach the bench, please.

18 (Counsel approached the bench and the following
19 ensued.)

20 THE COURT: Is that related to whether or not
21 Mr. White was aware of a lawsuit filed or intended to be
22 filed in January of 2007? How does that relate to it?

23 MR. STARR: It was filed in January of 2008.

24 THE COURT: That's why I'm saying. How would that
25 relate to the specific issue that you're trying to -- that

1 you brought up in terms of whether or not --

2 MR. STARR: If this witness is going to be allowed
3 to present this testimony, so the State can argue that
4 Mr. White didn't know about the lawsuit, then Mr. White's
5 dealings with Mr. Winkelman are relevant to whether or not he
6 had knowledge. Mr. Winkelman came here to watch his
7 client --

8 THE COURT: Okay. Well, I don't think it's
9 relevant because we're way after the time period in question.
10 So I believe that it is not relevant. The time period in
11 question is relevant, not anything that may have occurred
12 after some year or so later is not relevant to the issue of
13 whether he knew about the lawsuit during the time period in
14 which he testified. So you're restricted.

15 MR. WRIGHT: Thank you, Your Honor.

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

18 BY MR. STARR:

19 Q. Now, Ms. Clark, you were sitting in here watching
20 when Robert White testified, correct?

21 A. Yes.

22 Q. And you heard the questions and the answers about
23 whether or not Mr. White had knowledge of a lawsuit, correct?

24 A. Yes.

25 Q. And after you heard those things in court, you

1 talked about that with the prosecutors, correct?

2 MR. MOOMAU: Objection.

3 THE COURT: Overruled.

4 BY MR. STARR:

5 Q. Isn't that true?

6 A. Yes.

7 MR. STARR: No more questions.

8 MR. MOOMAU: No redirect, Your Honor.

9 THE COURT: Are we ready to bring the jury back in?

10 Do you want to approach the bench for a moment?

11 MR. MOOMAU: Yes.

12 THE COURT: Ms. Clark, you can stay right there,
13 ma'am.

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

16 THE COURT: You want to put your grounds again
17 for --

18 MR. STARR: Yes, Your Honor. We object for a
19 number of reasons. First, the rule on witnesses issue that I
20 raised. It was my understanding of the victims' rights
21 statute that the Court is citing is that it does not allow
22 for this type of breach of the rule on witnesses to take
23 place. We raised this issue and objected to it pretrial and
24 did everything possible to prevent exactly this thing from
25 happening, and now, despite our efforts, it has happened. So

1 we object on those grounds.

2 THE COURT: Okay.

3 MR. STARR: We object on the grounds that this
4 witness has testified that she is not present for all
5 communications between Mr. Winkelman and Mr. White, and that
6 she, therefore, has no basis of knowledge to state that
7 Mr. White did not know about the lawsuit.

8 THE COURT: And that's not the testimony I recall
9 that she provided. Her testimony was specifically that she
10 did not tell Mr. White of any lawsuit with Mr. Winkelman.

11 MR STARR: Well, what I -- I'm sorry. I guess I
12 blended -- I'll concede that I blended testimony with
13 argument. The testimony was that she's not privy to all of
14 their dealings, Mr. Winkelman and Mr. White.

15 THE COURT: That's correct.

16 MR. STARR: And that fact, that testimony makes the
17 inference -- it defeats the inference that the State wants to
18 draw in front of the jury, which is that Mr. White didn't
19 know about the lawsuit.

20 THE COURT: You're entitled to cross-examination on
21 that aspect, the fact that she wasn't privy to all of the
22 conversations that were had, but she is, in my view, able to
23 testify that she had no conversation with Mr. White with
24 respect to the lawsuit filed and that she is the one that
25 hired Mr. Winkelman at the time period in which she did. She

1 provided no other testimony.

2 MR. STARR: She cannot say, Your Honor, that
3 Mr. White did not, and his mother did not, independently hire
4 Mr. Winkelman. She does not know that.

5 THE COURT: I agree. You can cross-examine her on
6 that aspect of it, which you did, and you'll be able to do in
7 front of a jury. Do you have anything more you'd like to
8 add?

9 MR. STARR: Yes. Your Honor, I'd also rely on the
10 arguments I made prior --

11 THE COURT: Absolutely.

12 MR. STARR: -- to the hearing, because I do think
13 that the testimony has borne out our arguments. I think that
14 it is highly prejudicial for the jury to have repeated
15 testimony and contact with the mother of the decedent in this
16 case when --

17 THE COURT: Say this again.

18 MR. STARR: It is prejudicial for there to be
19 repeated contact with the mother of the decedent in this
20 fashion. She's now testified twice. She's allowed to --

21 THE COURT: No, she's testified once at this point.

22 MR STARR: Well, if the Court rules that she's
23 allowed to testify, that will make two, and that's
24 prejudicial.

25 And the State has been trying to get in -- you

1 know, there's been references to the decedent's dreams and
2 aspirations; there's been, you know --

3 THE COURT: I thought this witness comported
4 herself very well on the stand. She shed not one tear. She
5 had not one quiver in her voice, and her testimony was
6 specifically limited, on my direction, by the state's
7 attorney when she first testified in this case. There was,
8 in my view, no extraneous information, no emotional outburst,
9 no nothing having to do with it.

10 I believe the State has the right to reopen the
11 testimony of this witness because, in fact, of the issue
12 concerning whether or not Mr. White knew about the lawsuit,
13 which you brought out in your examination properly; that my
14 belief is that her having had the opportunity to hear
15 Mr. White testify, in terms of his not knowing about the
16 lawsuit and her testimony limited to that specific aspect,
17 violates no principle, that I know of, in terms of the rule
18 on witnesses because her testimony is limited solely to that
19 specific issue and nothing more.

20 All of us worked very hard to preclude any
21 possibility of anyone overhearing any testimony that may or
22 may not play a part in this, and what her testimony is
23 expected to be on this issue, from what she testified out of
24 the presence of the jury, is limited to that aspect of it,
25 and I find no inherent, true, palpable violation of that

1 particular rule.

2 The way the questions were limited, according to my
3 review, there was nothing that was brought out about the
4 purpose or the fact that she couldn't get into the hospital,
5 etc., etc.

6 So I believe that her testimony limited
7 specifically to what she testified to out of the presence of
8 the jury is proper, and you will be able to cross-examine her
9 in front of the jury about that issue.

10 MR. WRIGHT: The State had one other concern.
11 During this portion of the in-camera hearing, we did not
12 object to defense counsel's cross-examination, i.e., reading
13 from the lawsuit itself for Mrs. Clark. The State feels that
14 is inappropriate.

15 The language of the lawsuit is not Ms. Clark's
16 language. The language of the lawsuit has no relevance on
17 this case at all. Yes, it was filed a few weeks ago, but we
18 feel that the terms of the lawsuit really are not probative
19 of any value to this case and really just highly prejudicial
20 at this point. So the State would request limiting as to
21 that cross in terms of the actual language of the lawsuit.

22 Because if so, the State, then do we turn around
23 and cross on other language within the lawsuit itself, and
24 the State feels as though we do not want to; we should not
25 want to. However, the defense should be limited to using the

1 \$40 million term in front of the jury, crossing on the exact
2 language, because it is not.

3 THE COURT: Well, number one, there was no
4 objection in opening statement when Mr. Cohen mentioned that
5 there was a \$450 million lawsuit. There was no objection
6 from the State. So that is before the jury already. Whether
7 or not that plays a part in their --

8 As to the exact language of the lawsuit, I think
9 it's unnecessary, but you will certainly be able to
10 cross-examine her about her knowledge of a lawsuit, about
11 the -- you can show her the document and go through pretty
12 much what he did at the time of the examination that was had
13 out of the presence of the jury.

14 The issue of the money is already in play by
15 opening statement, with no objection of the State.

16 MR. WRIGHT: Your Honor, the lawsuit does go into
17 other facts.

18 THE COURT: Well, he just went into those two
19 areas, and since the money issue, quite frankly, is already
20 before the jury in opening statement, with no objection,
21 that's the way it is.

22 MR. MOOMAU: Your Honor, I'm going to have
23 Mr. Wright talk to her about limiting her answers to the
24 specific questions and not go beyond that.

25 MR. STARR: Can that be done on the record, Your

1 Honor, at this time?

2 MR. MOOMAU: I was going to call another witness,
3 while he did that, so we could get it moving.

4 MR. WRIGHT: But if the defense wishes it to be on
5 the record, the State has no problem with that.

6 THE COURT: Are you going to conduct the
7 examination?

8 MR. WRIGHT: Yes.

9 THE COURT: And you're going to limit your
10 questions to the ones that you did before, that brought those
11 answers?

12 MR. MOOMAU: Yes.

13 THE COURT: Then she needs to be instructed that
14 she is limited -- she cannot give any reason why she hired
15 Mr. Winkelman in terms of not being able to see her sons at
16 the hospital, and that she cannot testify that she knew -- or
17 whether or not Mr. White knew or didn't know about the
18 lawsuit, in her opinion, in any way.

19 The only thing she can testify to is what was
20 brought out and the fact that she hired Mr. Winkelman, the
21 date she did, and that she didn't discuss a lawsuit with
22 Mr. White. I mean that's what I recall, essentially, about
23 the testimony.

24 Obviously, your objections are noted.

25 MR. STARR: Thank you.

1 MR. COHEN: Your Honor, there's one more issue.

2 Mr. Moomau, did you want to call Ms. Susan Lee first?

3 MR. MOOMAU: Yes.

4 MR. COHEN: I think we need to discuss the
5 stipulation being read to the jury before Susan Lee testifies
6 in order for her testimony to make any sense. I wanted to
7 talk to you about that before, but we had to move on.

8 MR. MOOMAU: I don't care. I mean, I've got the
9 pictures and have it marked on there what was White's and
10 what was Clark's.

11 THE COURT: We have to get the jury in here at some
12 point.

13 MR. COHEN: But read to the jury though, Your
14 Honor.

15 THE COURT: You tell me. You write it out what you
16 want me to say --

17 MR. COHEN: It's typed already.

18 MR. MOOMAU: Can we get started with Susan Lee?
19 Mr. Wright can talk to her and make sure he limits her, and
20 then, so we can get her going, we can read the stipulation?

21 THE COURT: That's fine with me. Now, do I need to
22 do something about Ms. Lee before I bring the jury back in,
23 or what are you going to give me?

24 MR. COHEN: Once the stipulation is read, I think
25 we're fine.

1 MR. STARR: We have a signed stipulation.

2 THE COURT: Who is reading the stipulation?

3 MR. MOOMAU: I can read it. We had some
4 stipulations we signed yesterday, and I never even read them.
5 I'll read all three of them.

6 THE COURT: You never read them?

7 MR. MOOMAU: I've read them. We didn't read them
8 into the record.

9 MR. STARR: We stipulated that Marilyn's Clark's
10 testimony would be inadmissible. Mr. Moomau just agreed.

11 MR. WRIGHT: For the record, that's a joke.

12 THE COURT: I know. For the record, we know what
13 that is.

14 MR. COHEN: I'm not necessarily interested in all
15 the skips, but at least that one before she testifies.

16 MR. MOOMAU: What we stipulated to was what items
17 of clothing --

18 THE COURT: That's okay. Are you going to read it?
19 Are you going to say that you have reached a stipulation with
20 counsel and read it to the jury? Do you want me to read it
21 to the jury? What do you want me to do?

22 MR. MOOMAU: If you want to read it. Would you
23 just read the other ones from yesterday too, that were
24 already marked?

25 THE COURT: Did we stipulate to some things

1 yesterday that I don't know about?

2 MR. MOOMAU: Well, we didn't admit them, but we
3 both signed them.

4 MR. COHEN: Let's just get Susan Lee, to get the
5 jury in, because that's the only one we need before she
6 testifies.

7 THE COURT: But on the other matters that you may
8 have stipulated to, that have already come into evidence,
9 what is it that you -- think about it. Give me what you want
10 me to do with Susan Lee. Do you have that stipulation almost
11 ready?

12 MR. MOOMAU: Yes.

13 MR. STARR: Judge, how should we mark the
14 stipulation?

15 MR. COHEN: It's the State's.

16 MR. STARR: Oh, it's going to be the State's.

17 THE DEPUTY CLERK: State's Exhibits 100 and 101
18 marked for identification.

19 (State's Exhibit Nos. 100 and 101
20 were marked for identification.)

21 THE COURT: Mr. Moomau, can you come on up for a
22 minute, please.

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

25 MR. MOOMAU: Here's the thing with the stipulation.

1 I mean, I trust Mr. Starr. He's a wonderful attorney.

2 THE COURT: Everybody in this has been great.

3 MR. MOOMAU: I just saw it this morning. I looked
4 through it and signed it. What he's trying to do with this
5 is so, when Susan Lee testifies, it will be clear to the jury
6 what clothing items are Robert White's and what clothing
7 items are Brandon Clark's. I don't have a problem with that.
8 I put little notes on the pictures just so they'll know.
9 He's told me that if something on here is wrong, that I
10 missed --

11 MR. STARR: If it's wrong, it's an error.

12 THE COURT: I will say it again. I have been in a
13 lot of trials over the years, but everyone has been
14 exceptional in bringing everything to everybody's attention.

15 MR. STARR: It's basically just in response the way
16 things have come in.

17 THE COURT: Usually what I say is, ladies and
18 gentlemen, there's an agreement between the parties that
19 should a certain witness be called to testify, they would
20 testify in the following manner, and then -- but that's not
21 in this, so I'm not quite sure how to do this one. This is
22 basically --

23 MR. MOOMAU: Can't we just attach to it a copy of
24 the evidence report too?

25 MR STARR: I guess we don't have a problem with

1 that.

2 MR. MOOMAU: I know what he's -- and I want that
3 too. We want the jury to know that, on the crime scene
4 drawings, some clothes relate to --

5 THE COURT: I understand the purpose of it, and I
6 think it's a good purpose so there isn't any confusion.

7 MR. STARR: Believe it or not, it's actually
8 designed to make things move more quickly.

9 THE COURT: I understand that. So your request is
10 what now?

11 MR. STARR: The whole purpose of it is just to list
12 these things, so that there's one place --

13 THE COURT: So if I just read this, I won't say
14 anything about what a stipulation is, because it won't make
15 sense under these circumstances, seemingly. But should I,
16 after I read that, that the items of evidence listed are
17 items of evidence located -- I'll just say the stipulation
18 provides to you a list of the items of evidence recovered
19 from certain specific locations?

20 MR. STARR: Sure. And then the Court will read the
21 body up here?

22 THE COURT: No, I'm going to read the body first,
23 but then I'm going to say what this means is that the
24 attorneys have listed for you specific items of evidenced
25 seized from specific locations.

1 MR. STARR: Correct.

2 MR. MOOMAU: And these numbers do relate to the
3 drawing that's been admitted.

4 THE COURT: Well, I'm not going to get into that.
5 Now, what is this?

6 MR. STARR: Oh. We're also just stipulating that
7 the photos correspond to the evidence numbers we've written
8 on here. Because, otherwise, we'd have to call a bunch of
9 chain of custody witnesses.

10 THE COURT: Are these photos going to be admitted
11 without testimony?

12 MR. MOOMAU: No. I've got the same photos that I
13 was going to show to Susan Lee. If he wants to show these
14 too --

15 THE COURT: Should I say the defense and State
16 agree and stipulate that the attached photos that will be
17 identified by Susan Lee accurately depict --

18 MR. MOOMAU: That's fine.

19 MR. STARR: Yes. And I'm assuming this is going to
20 be moved in, because we're going to use -- those photos are
21 the same photos you have. They'll both be moved in.

22 MR. MOOMAU: Yes.

23 THE COURT: For purposes of the record then,
24 State's Exhibit Number 100 and State's Exhibit Number 101 are
25 items of evidence stipulated to by the parties in this matter

1 and are admitted as a result, and I will read them to the
2 jury. The only thing different will be I say that photos
3 that you're about to see through the testimony of Susan Lee.
4 So I better write that down here before I forget.

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

7 THE COURT: Can I bring the jury in now?

8 MR. MOOMAU: Yes, Your Honor.

9 (The jury entered the courtroom at 10:40 a.m.)

10 THE COURT: Good morning, ladies and gentlemen.
11 Although it may seem like afternoon to you, we bid you good
12 morning.

13 The first question I need to ask you, as I did
14 yesterday, is there any member of this jury panel who may
15 have found themselves in the position either to hear, see or
16 read any accounts by the news media of any circumstances that
17 are alleged to have taken place during this incident?

18 THE JURY: No.

19 THE COURT: And the Court sees no response to that
20 question, no affirmative response.

21 Ladies and gentlemen, as you can see, we didn't
22 finish all of the administrative matters yesterday that we
23 were working on until just recently. That was in an effort
24 by the attorneys involved in this case to assist you to some
25 extent, and they have reached what we call stipulations of

1 physical evidence.

2 "The Defense and the State agree and stipulate that
3 the following list accurately states the item numbers/letters
4 assigned by the State's investigators to the corresponding
5 items of evidence. The parties further agree and stipulate
6 that the listed items of evidence were recovered from the
7 listed places and belong to the listed individuals."

8 So that when you go back into the jury deliberation
9 room, you will have a specific list of the evidence seized
10 from specific locations. So there won't be any confusion
11 about it, and that has been an agreement by the parties.

12 Also, they have reached a stipulation as to certain
13 photographs of physical evidence.

14 "The Defense and the State agree and stipulate that
15 the attached photos fairly and accurately depict the items
16 portrayed in the photos and correspond with the item numbers
17 written on the lower margins of the photographs."

18 Once again, to preclude any confusion that you may
19 have when you're looking at a variety of diagrams -- and
20 they're listed for you -- the photographs that I am
21 mentioning to you are photographs that you will see shortly
22 through the testimony of Susan Lee.

23 These matters are admitted into evidence.

24 (State's Exhibit Nos. 100 and 101,
25 previously marked for

1 identification, were received in
2 evidence.)

3 MR. MOOMAU: The State would call Susan Lee.

4 **SUSAN LEE,**

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

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

9 THE WITNESS: My name is Susan E. Lee, S-u-s-a-n,
10 E., L-e-e.

11 **DIRECT EXAMINATION**

12 BY MR. MOOMAU:

13 Q. Ms. Lee, what's your occupation?

14 A. I am a firearms and tool mark examiner.

15 Q. Who are you employed by?

16 A. I am employed at the Prince George's County Police
17 Department at the firearms examination unit.

18 Q. How long have you been employed there?

19 A. I've been employed there for almost three years.

20 Q. Just tell the jury what you do as a firearms and
21 tool mark examiner.

22 A. In general, I look at firearms and firearms-related
23 items recovered at crime scenes. Specifically, I examine
24 firearms for their safety, whether or not they're functional.
25 I look at the microscopic marks on bullets and cartridge

1 cases to see if it was fired from a particular firearm. I
2 also look at tools and tool marked items, as well as serial
3 number restoration of firearms whose serial numbers have been
4 obliterated, and I also examine garments for gunshot residue
5 to determine a garment-to-muzzle distance testing.

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

8 A. I have a bachelor's degree from the University of
9 Maryland, and I have a masters in forensic science from
10 George Washington University in D.C.

11 Q. Have you had any additional training, after your
12 formal education, that is in line with your current position,
13 being a firearms and tool mark examiner?

14 A. Yes. I have undergone a two-year training program
15 as a firearms and tool mark examiner. That training was
16 based on guidelines set forth by the Association of Firearms
17 and Toolmark Examiners, which is a special organization for
18 the discipline. It included various competency test modules,
19 proficiency tests, and it was about two years long.

20 Q. Have you ever testified as an expert witness in the
21 field of firearms and tool mark examination, including the
22 muzzle-to-garment type of examination that you do?

23 A. Yes.

24 Q. In what courts?

25 A. In the State of Kansas and also here in Prince

1 George's County.

2 Q. You say the State of Kansas. Did you have any
3 relevant work experience there?

4 A. Yes.

5 Q. What was that?

6 A. I was also a firearms and tool mark examiner, and I
7 worked at the Kansas Bureau of Investigation.

8 MR. MOOMAU: Your Honor, the State would move that
9 Ms. Lee be permitted to testify as an expert witness in the
10 field of firearms and tool mark examination as she has
11 described.

12 MR. COHEN: No separate voir dire, Your Honor. We
13 do not object.

14 THE COURT: She is so accepted.

15 BY MR. MOOMAU:

16 Q. Ms. Lee, did there come a time that you received
17 some evidence relevant to this case?

18 A. Yes.

19 Q. And what evidence did you receive, I guess in order
20 first, relevant to this case?

21 A. I received a firearm with magazine, some fired
22 bullets and bullet fragments, fired cartridge cases, and some
23 live cartridges, live ammunition.

24 Q. Ms. Lee, I'm going to show you some items of
25 evidence that have already been admitted, starting with

1 State's Exhibit Number 71, State's Exhibit 67, 68, 58, 69,
2 57, 56, and 59. Do you recognize these items?

3 A. Yes, I do.

4 Q. And what are they?

5 A. Can I take it out of the bag?

6 Q. Please.

7 A. The State's Exhibit 71 is a Beretta semiautomatic
8 pistol, model 92FS. It's a nine millimeter caliber pistol.

9 State's Exhibit 67 is a magazine that is used with
10 the Beretta pistol.

11 State's Exhibits 56, 57, 58, 59, and 68 are fired
12 nine millimeter caliber Luger cartridge cases.

13 Q. Ms. Lee -- go ahead, continue.

14 A. And the last item, State's Exhibit 69, are
15 now-fired cartridge cases, but they were once live ammunition
16 that was received in the lab.

17 Q. Now, Ms. Lee, could you show the jury how that
18 particular firearm operates?

19 A. Sure.

20 Q. You can step down to do that.

21 A. Okay. Well, this is a magazine that fits in the
22 firearm, and the ammunition or the live cartridges are loaded
23 into the magazine. There's a spring in here, and you can
24 load the magazine this way.

25 Once they're loaded, they're placed into the butt

1 or the hand -- the grip of this pistol. So once it's fully
2 loaded, you're able to see the topmost round in this opening
3 here.

4 At this point, when I release the slide, which is
5 this part, this moving part up at the top, using this slide
6 release, it's going to strip the topmost cartridge in the
7 magazine and put it into the chamber. But right now there is
8 a yellow tag here, so I'm not able to completely close this
9 slide.

10 At this point the hammer is cocked and it's ready
11 to fire. So all I have to do is pull the trigger, and it
12 will release this hammer and discharge the cartridge.

13 Q. What happens inside the gun when the hammer comes
14 down?

15 A. I have models -- can I use those -- of a cartridge
16 case and a bullet?

17 MR. MOOMAU: Let me show them to the defense. Just
18 for the record, the witness has shown the jury a plastic fake
19 cartridge, enlarged.

20 BY MR. MOOMAU:

21 Q. Go ahead.

22 A. We use this for court purposes such as this, just
23 so you can see all the detail.

24 So, anyway, this is a cartridge that includes the
25 cartridge case, the bullet, the propellant powder or the

1 gunpowder that's in here, and also the ignition component,
2 which is the primer.

3 So at this point -- if you will again indulge me --
4 this cartridge will be seated in the chamber. When the
5 trigger is pulled and the hammer drops, the firing pin then
6 strikes the primer, and this primer will ignite. There will
7 be a spark or a flame, and it will burn this gunpowder.

8 This powder converts into a gas, and there's
9 tremendous pressure that is pushing this bullet down the
10 barrel. And then, after the bullet leaves the barrel, the
11 slide will continue to move back. That's this part here.
12 The slide will continue to move back and -- it's held on by
13 an extractor, and it goes all the way back until it hits the
14 ejector, which kicks it out of the firearm itself.

15 Q. This particular handgun, is there a safety on it?
16 If there is, describe what that is.

17 A. There are a couple of safeties on this firearm.
18 The first one is a manual safety or a decock lever. Can I
19 cut this off? Is there a pair of scissors I can use to
20 demonstrate to the jury?

21 Q. I don't think you'll be permitted to do that. But
22 if you could just walk a little closer and just show them
23 where it's located and how it works.

24 A. Well, this is the safety or the decock lever. And
25 what this does is, once the firearm is in battery, which is

1 ready to fire, it allows you to safely come down, where you
2 can't pull the trigger at all, the firearm won't work, and it
3 also will decock the hammer safely, so it will not discharge
4 the cartridge.

5 And there's also an internal safety where the -- if
6 the firearm was cocked, the hammer is down and I drop it, the
7 firearm will not go off because there's a firing pin blocked.
8 So that means the trigger has to be pulled for this lever to
9 come up and remove that block and that firing pin to strike
10 the primer.

11 Those are the three safeties.

12 Q. This particular handgun, you were talking about the
13 magazine. How many cartridges can you put in the magazine?

14 A. Fifteen.

15 Q. And when you fire the weapon, do you have to pull
16 the trigger each time you fire it?

17 A. Yes. For each shot fired, the slide will come
18 back. One pull of trigger for each shot fired, and a
19 cartridge case will be expended from this firearm upon each
20 shot being fired.

21 Q. What are the factors that affect how the casings
22 come out of the weapon?

23 A. It varies, because it depends on how the firearm is
24 held. You know, if you hold it this way -- well, generally,
25 it's fired over to the right. But depending on how you

1 pulled it, it could be dispelled in different directions.

2 Q. After they come out and they hit the ground, is
3 there an adhesive attached to them so that they stay where
4 they lay?

5 A. No, I wish, but they kind of bounce around.

6 Q. Ms. Lee, as part of your examination, did you also
7 receive some projectiles that had been, I guess to your
8 knowledge, recovered from the bodies of Brandon Clark and
9 Robert White?

10 A. Yes.

11 THE DEPUTY CLERK: State's Exhibits 102 through 104
12 marked for identification.

13 (State's Exhibit Nos. 102 through
14 104 were marked for identification.)

15 BY MR. MOOMAU:

16 Q. Now, Ms. Lee, there was some testimony that one of
17 the cartridge casings was inside the particular weapon when
18 it was recovered. Was it like that when it came to you?

19 A. No, it was not.

20 Q. Are you familiar with circumstances that can cause
21 that to happen?

22 A. Yes.

23 Q. And what are the circumstances that can cause that
24 to happen?

25 A. Well, like I said before, once the bullet leaves

1 the barrel, the cartridge case is still in the chamber and
2 the slide -- because of that equal and opposite pressure will
3 move this slide back and, when it comes back, it's going to
4 hit an ejector. But there are certain cases where, if this
5 movement of the slide is impeded, where it can't move back
6 fully for that cartridge case to hit that ejector, it,
7 obviously, won't eject; it will stay in the chamber.

8 There's also something called "limp wristing"
9 where, if you hold the firearm really loosely in your hands,
10 for some reason -- and I don't know why -- sometimes; not all
11 the time, the cartridge case will not eject.

12 Q. Showing you what's been marked as State's Exhibit
13 Numbers 102, 103 and 104. Do you recognize those?

14 A. Yes, I do.

15 Q. What are those?

16 A. State's Exhibit 102 is a fired bullet; State's
17 Exhibit 103 is a fired bullet jacket and some lead-like
18 fragments; and State's Exhibit 104 are some bullet fragments.

19 Q. Now, the circumstance you just described, where a
20 cartridge casing, for whatever reason, because something
21 impedes it from getting out or limp wristing, will that then
22 prevent the firearm from being fired after that?

23 A. Yes, it will.

24 Q. Did you do any comparison testing to see if the
25 casings were fired from that gun?

1 A. Yes.

2 Q. What was your conclusion?

3 A. My conclusions were that the fired cartridge cases
4 were identified as having been fired from the pistol in
5 question.

6 Q. Now, did you take a look at the projectiles that
7 had been recovered from the bodies of both Robert White and
8 Brandon Clark?

9 A. Yes.

10 Q. Were you able to make any type of conclusion with
11 that?

12 A. Yes.

13 Q. And what was your conclusion you made?

14 A. My conclusions are that the fired bullet, State's
15 Exhibit 102, and the jacket fragment from State's Exhibit
16 104, were identified as having been fired from the pistol.

17 The fragments from State's Exhibit 103 were so
18 mutilated and so damaged that they weren't able to be
19 identified.

20 And then the lead-like fragments, they didn't have
21 any individual detail for an identification.

22 Q. You had mentioned earlier garment-to-muzzle
23 distance testing. Explain to the jury how that's done, how
24 you can reach conclusions for that type of test. And you can
25 use the weapon to illustrate your testimony, if you need to.

1 A. Okay. Well, the tests are conducted where garments
2 are received in the lab, and they are photographed and
3 documented, diagrams are drawn, extensive notes are taken.
4 We look for holes in the garment that could be a bullet hole.

5 The first examination that's conducted is a
6 microscopic examination. So we look in a microscope, and we
7 look for the holes and the typical things that you would find
8 around a bullet hole, such as burning and singeing of the
9 fibers, maybe some soot and smoke and some gunpowder
10 particles.

11 And then they are processed chemically, using
12 various chemical techniques, and it's -- these are color
13 forming or color changing, so we can see the residues a lot
14 better.

15 Once I do that, I take the firearm in question, and
16 I shoot it at different distances, individually, in our
17 range. So I hang up a sheet and I shoot it at, you know,
18 this distance and then at this distance and then the next
19 distance, and I keep doing that. And then I process the same
20 fabric chemically, with the same chemicals that I used to
21 process the garments. And then what I do is a side-by-side
22 comparison of the standards, the controls from what I shot in
23 the lab to the questioned items on the garment.

24 Q. Did you examine some clothing items in this case
25 that were identified with Robert White?

1 A. Yes.

2 Q. I'm going to show you some photographs marked as
3 State's Exhibit Number 90, 91, 93, and 92.

4 MR. COHEN: Your Honor, may I approach with the
5 State just to look at the exhibits?

6 THE COURT: Okay.

7 BY MR. MOOMAU:

8 Q. Can you identify these items?

9 A. Yes, I can.

10 Q. What are those items? Let's just start, first,
11 with State's Exhibit 91.

12 A. Should I show it to the jury?

13 Q. That's fine with me, yes.

14 A. State's Exhibit Number 91 is a photograph, a series
15 of photographs of a white T-shirt.

16 Q. The next T-shirt?

17 A. State's Exhibit Number 93 is a photograph of a
18 black T-shirt with some screen printing on it.

19 Q. State's Exhibit Number 92?

20 A. State's Exhibit Number 92 is a blue sweater, knit
21 type of shirt, long sleeves.

22 Q. And State's Exhibit Number 90?

23 A. State's Exhibit 90 is a pair of blue jeans.

24 Q. As well as a belt that was associated with them?

25 A. And there was also a belt that came with the blue

1 jeans.

2 Q. Let's start with the shirts, the two T-shirts. Did
3 you find any evidence of residue on those?

4 A. No, none were found chemically.

5 Q. What about the sweater?

6 A. Yes, there were some gunshot residues found on this
7 sweater.

8 MR. COHEN: Your Honor, can I make a request that
9 the exhibit numbers are at least used so I can follow?

10 MR. MOOMAU: Apologize. State's Exhibit Number 92.

11 BY MR. MOOMAU:

12 Q. This particular handgun, at what distance does it
13 leave, I guess, a discernible pattern that you can actually
14 analyze?

15 A. Up until 48 inches, and then, after that, it does
16 not leave any residue.

17 Q. The sweater then, just tell the jury how you
18 examined it and what you found.

19 A. Well, once again, what I did with the sweater was I
20 took extensive notes and diagrams. I noted where the medical
21 people cut the shirt. I noted the location of the possible
22 bullet holes, or defects as I call them. And then I place
23 them under the microscope, and I look for things, you know,
24 that I couldn't see with my naked eyes. And then what I do
25 is chemical tests, to see if I can find gunshot residues, and

1 they form as color-producing tests.

2 Q. Did you find any defects, bullet holes in the
3 sweater?

4 A. I'm sorry. I may have misspoken before but, no,
5 none were found on the sweater.

6 Q. Okay. We're talking about CN8A.

7 A. Yes.

8 Q. I understand no residues were found, but did you
9 find any bullet holes?

10 A. Oh, yes.

11 Q. Where were they located?

12 A. One was located on the upper, right chest, about
13 right here, if you can make this out. Just above the stripe
14 in the shirt.

15 And then there was another one found on the bottom
16 of the shirt, toward the edge.

17 Q. Now, do the other photographs that are in the pile
18 there show the bullet holes you're referring to maybe a
19 little better?

20 A. Well, here's another look, a closer look at the one
21 towards the bottom of the shirt. And this is a better look
22 at the top hole, kind of lighter. It would be right here.

23 Q. So on that particular item, you found no evidence
24 of residue.

25 A. Chemically, no.

1 Q. What about microscopically?

2 A. Microscopically, I was able to see what looked like
3 to be soot or smoke.

4 Q. I'd like to show you what's been marked as State's
5 Exhibit Number 90. Do you recognize that?

6 A. Yes.

7 Q. What is State's Exhibit Number 90?

8 A. It is a pair of Jordan Craig blue jeans.

9 Q. And did you find any -- I'm going to call it
10 defects in those? By defects, I mean what you believe to be
11 a bullet hole.

12 A. Yes.

13 Q. Where was that located?

14 A. That's located on the right leg, on the thigh
15 region.

16 Q. Did you examine the area around that particular
17 defect?

18 A. Yes.

19 Q. What did you see and what were your conclusions, as
20 far as that goes, when comparing it with test fires from the
21 handgun?

22 A. I was able to see, microscopically, some gunshot
23 residue and I processed chemically, and I was able to
24 determine that the muzzle of the Beretta pistol was
25 approximately 3 to 12 inches away from the garment.

1 MR. MOOMAU: Your Honor, at this time, if I haven't
2 done it, the State would move for the admission of 90, 92,
3 93, and 91.

4 Your Honor, can I approach for the purpose of
5 obtaining one of the photographs attached to the --

6 THE COURT: Any objections?

7 MR. STARR: No, Your Honor. And their intention
8 was to be admitted as attached to.

9 THE COURT: I understand that. Ninety, 91, 92, and
10 93 admitted, State, without objection.

11 (State's Exhibit Nos. 90 through 93,
12 previously marked for
13 identification, were received in
14 evidence.)

15 BY MR. MOOMAU:

16 Q. Ms. Lee, you had mentioned something about, on the
17 sweater, you saw some evidence of soot and maybe used another
18 word. What is that?

19 A. Soot or smoke deposited once the firearm is
20 discharged. If you've ever seen a firearm being discharged,
21 there's a lot of smoke and vaporous material and that can
22 be -- if the garment is close enough, that can be placed onto
23 or deposited onto the garment.

24 Q. Now, how does that differ from the
25 muzzle-to-garment testing that you had testified about?

1 A. Well, with muzzle-to-garment testing, we examine
2 particles. So particles are used and the dispersion of the
3 particles are used to determine a distance. However, with
4 vaporous material such as soot and smoke, we're not able to
5 say that it was, you know, a certain distance away.

6 Q. Did you also examine some clothing items which you
7 believe to be associated with Brandon Clark?

8 A. Yes.

9 Q. I'm going to show you a series of photographs
10 marked as State's Exhibits 87, 88, 89, and 96.

11 A. Okay.

12 Q. Do you recognize those?

13 A. Yes, I do.

14 Q. Just going by the number, describe what they are,
15 starting with the number on the red tag.

16 A. Okay, State's Exhibit 87 -- I'll try to start in
17 order -- is a pair of blue Cintas brand pants.

18 Then State's Exhibit 88 is a pair of black
19 sweatpants. Here's an overall view of the pants. Maybe this
20 is a better view.

21 State's Exhibit 89 is a white Adidas, sleeveless
22 T-shirt.

23 And State's Exhibit 96 is a long-sleeve black
24 shirt.

25 Q. I didn't ask you about the first ones, but those,

1 as well as those exhibits, did you notice any evidence of
2 blood on any of the clothing items that you examined?

3 A. Yes, I did.

4 Q. On the trousers or the pants, the sweatpants and
5 the blue pants?

6 A. I'll need to refer to my notes on that one. Well,
7 I noted some residue, but I didn't know if it was blood or
8 not, considering the color of the pants, on both the black
9 and the navy blue pants.

10 Q. On the navy blue, as well as the -- like the
11 sweatpants?

12 A. Correct.

13 Q. Now, did you do any muzzle-to-garment testing on
14 any of the clothing items that you just testified about, that
15 are attributed to Brandon Clark?

16 A. Yes.

17 Q. Just tell us about that.

18 A. I did microscopic analysis on each item and also
19 processed each of these chemically. The only one -- I'm
20 sorry. There's a lot of items here. I don't want to
21 misspeak.

22 The ones that did show positive reaction is the
23 black, long-sleeve shirt, and I compared it to test fires
24 that I conducted and also processed chemically.

25 MR. COHEN: Your Honor, I'm sorry. May I have an

1 exhibit number on that exhibit?

2 THE WITNESS: I'm sorry. State's Exhibit Number
3 96.

4 MR. COHEN: Thank you. Excuse me for interrupting.

5 THE WITNESS: I was able to determine that the
6 muzzle of the Beretta pistol was between 12 to 24 inches from
7 the garment.

8 MR. MOOMAU: Your Honor, the State would move in
9 Exhibit Numbers 89, 96, 87, 88.

10 MR. COHEN: No objection, Your Honor.

11 THE COURT: Eighty-seven, 88, 89, and 96 are
12 admitted, without objection, State.

13 (State's Exhibit Nos. 87, 88, 89,
14 and 96, previously marked for
15 identification, were received in
16 evidence.)

17 BY MR. MOOMAU:

18 Q. Did you prepare written reports of your examination
19 results?

20 A. Yes, I did.

21 Q. I'd like to show you what's been marked as State's
22 Exhibits 94 and 95. I'm showing you State's Exhibits 94 and
23 95. Do you recognize those?

24 A. Yes, I do.

25 Q. And what are they?

1 So we would ask the Court for leave to at least
2 look at her notes, outside of the jury, just to make sure.
3 And, you know, I would go on with my cross once I look at the
4 notes.

5 MR. MOOMAU: I don't have them either. I don't
6 think they were ever asked for.

7 THE COURT: I'm sorry?

8 MR. MOOMAU: I don't have an objection to it
9 though.

10 MR. COHEN: Thank you.

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

13 THE COURT: Mr. Moomau, do you want to inquire of
14 Ms. Lee for counsel?

15 MR. WRIGHT: Your Honor, may we approach while
16 Mr. Moomau is standing here.

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

19 MR. WRIGHT: At this point, Your Honor, can we ask
20 to have the jury go back for 15 minutes while we receive the
21 notes and hand them over to the defense at this point?

22 MR. COHEN: I'd like that, Your Honor.

23 MR. WRIGHT: I guess as opposed to us approaching
24 the witness on the stand and taking them, what she just
25 testified to, and taking a break at that point.

1 THE COURT: Okay.

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

4 THE COURT: Ladies and gentlemen, we're going to
5 take a ten-minute recess.

6 (The jury was excused from the courtroom at
7 11:25 a.m.)

8 (The jury returned to the courtroom at 11:50 a.m.)

9 MR. COHEN: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. COHEN:

12 Q. Good morning, Ms. Lee.

13 A. Good morning.

14 Q. It is still morning, right? You testified that
15 some of the items that you analyzed did not have gunshot
16 residue. Do you remember that testimony?

17 A. Chemically.

18 Q. Chemically. You would agree me that the presence
19 of an intervening object at the instance of discharge could
20 be a reason for the absence of gunshot residue, correct?

21 A. Correct.

22 Q. You would also agree with me that rough handling of
23 evidence by medical personnel, investigators at the scene
24 could be another reason for the absence of residue, correct?

25 A. Correct.

1 Q. And you don't know if Mr. Brandon Clark or Robert
2 White were wearing layers of clothes that evening; do you?

3 A. I don't know for a fact, but I assume so because of
4 the number of items of clothing that I received, and there
5 were two people that were shot.

6 Q. So it's your testimony that you would assume that
7 they were wearing layers of clothing?

8 A. Yes.

9 Q. And you don't know what the scene looked like that
10 evening, correct, with respect to medical personnel being
11 present?

12 A. Absolutely not.

13 Q. And investigators being present?

14 A. No.

15 Q. Regarding the casing remaining in the gun, you said
16 that one of the ways the casing could remain in the gun is
17 through movement of the slide being impeded. Do you remember
18 that testimony?

19 A. Yes.

20 Q. And there was casing remaining in this gun when you
21 analyzed it, correct?

22 A. No, it was not in the firearm when I received it.

23 Q. But you had information that it was in the firearm
24 prior.

25 A. Prior to the examination?

1 Q. Yes.

2 A. No.

3 Q. So you didn't testify earlier that the bullet
4 casing remained in the firearm? Did I hear that correct?

5 A. No, I did not.

6 Q. Did you testify that anything remained in the
7 firearm?

8 A. The prosecution asked me -- or told me that there
9 was a cartridge case found in the firearm, and he asked if I
10 received it that way, and I said that I did not.

11 Q. And your explanation of how a cartridge case could
12 remain in a firearm was that the casing could have been -- or
13 the movement of the slide could have been impeded. Was that
14 your testimony?

15 A. Yes, that was one of the reasons, yes.

16 Q. And you would agree with me that one way that could
17 happen is if someone is holding the firearm in that area, it
18 could impede the ejection of the casing, correct?

19 A. That could be one of many, many ways, yes.

20 Q. But that is one of the reasons, correct?

21 A. Yes, it could be.

22 Q. Can you identify for us all of the items that you
23 analyzed that had soot and smoke on them?

24 A. Okay. I'm going to refer to my notes because I
25 don't want to misspeak. There is item CN8A. I don't know

1 what State's exhibit number that is. I noted what looks like
2 to be soot and smoke but, in my notes, I have a question mark
3 because I wasn't sure. It could be, but I needed a
4 confirming test. So I noted that, that it was a possibility.

5 On exhibit item B/C -- and, again, I don't know the
6 State's exhibit number on that one -- I noted some smoke
7 residue but, again, I have a question mark in my notes
8 because this is just visually. I needed a chemical
9 confirming test.

10 And one more item, CN8C, I did notice some smoke as
11 well but, again, I have a question mark next to them because
12 I needed a confirming test.

13 MR. COHEN: May I approach, Your Honor?

14 BY MR. COHEN:

15 Q. Ms. Lee, I'm going to hand you what has been marked
16 as State's Exhibit Number 100. It is a stipulation to
17 physical evidence. Could you hold on to that, please.

18 A. Sure.

19 Q. From that stipulation, Ms. Lee, can you let the
20 ladies and gentlemen of the jury know what item CN8C is and
21 who it belonged to?

22 A. CN8C is a white "Fruit of the Loom" T-shirt, size
23 3XL, recovered in the bedroom. It says Robert White's
24 clothes.

25 Q. You said recovered in the bedroom?

1 A. It says recovered from second level, angled
2 bedroom, next to bathroom.

3 Q. So that's Robert White's shirt is CN8C, correct?

4 A. Yes.

5 Q. And you testified that there was soot and smoke on
6 that?

7 A. Yes.

8 Q. One moment please. I'm going to show you State's
9 Exhibit -- one of the attachments to State's Exhibit 101.

10 Take a look at that, please.

11 Can you turn that to the ladies and gentlemen of
12 the jury and show them where the soot and smoke, if you see
13 it on that photo, would be?

14 A. Should I approach them? It's kind of hard to see.

15 Q. That would be fine, yes.

16 A. What I noted as possible soot or smoke would be the
17 gray area around where the blood is and some yellow residue
18 is. But just the gray, right here and also right here, how
19 it's -- you know, do you see the discoloration? Here is the
20 grayish discoloration. And up here. This one is a little
21 harder to see.

22 Q. Thank you, Ms. Lee. Ms. Lee, you also testified
23 that you found soot and smoke on CN8A. From the stipulation,
24 can you let the ladies and gentlemen of the jury know what
25 CN8A is and who it belonged to.

1 A. CN8A is a dark-blue "Arrow" brand sweater, size
2 2XL, and it's also under Robert White's clothes.

3 Q. I'm going to show you an attachment to State's
4 Exhibit 101. Can you let the ladies and gentlemen of the
5 jury know what that is and where you viewed soot and/or smoke
6 on that item.

7 A. Well, this one is a little harder to see because
8 it's navy blue. And there's actually two defects on this
9 shirt. One is at the bottom, towards the bottom of the
10 shirt, and one up here, above this gray stripe.

11 But the blowup here, down here, is of the one up on
12 top. And what I noted in my notes as possible soot or smoke
13 is this gray or kind of darkened shadowed area. I'll start
14 down here.

15 Q. Thank you. And another item, Ms. Lee, that you
16 testified where traces of soot or smoke was item B/C. Can
17 you let the ladies and gentlemen of the jury know what item
18 B/C is and who it belonged to.

19 A. B/C is a pair of blue jeans with a brown belt, and
20 it's listed under Robert White's clothes retrieved from the
21 hospital.

22 Q. I'll show you another attachment to State's Exhibit
23 101. Can you let the ladies and gentlemen of the jury know
24 where you saw soot and smoke on that picture as well.

25 A. Here is an overall view of the pair of pants. I'll

1 make my way down there. The defect in question is right
2 here, right above my fingernail. This is a blowup area of
3 it, going this way. And this area right here is suspected of
4 being soot or smoke. I have a question mark next to it
5 because I really couldn't confirm it visually.

6 Let me make my way down here. Here's an overall
7 view of the pants. The hole in question is right above my
8 fingernail. I don't know if you can see that. This is the
9 blowup of it, and this discolored area, right here, I put
10 down as being suspected soot or smoke.

11 Q. Thank you, Ms. Lee. You testified that you were
12 unable to identify the distance the muzzle of the gun was
13 from these items, correct?

14 A. Which items?

15 Q. The three items that we just went over. Court's
16 indulgence. Item B/C, Robert White's pair of blue jeans with
17 brown belt; item CN8A, from Robert White's dark blue Arrow
18 sweater; and Robert White's white Fruit of the Loom T-shirt,
19 3XL.

20 A. I was on B/C, the pair of pants.

21 Q. You were unable to tell the distance?

22 A. No, I was able to tell the approximate distance.

23 Q. And CN8C and CN8A, you were unable to tell the
24 distance, correct?

25 A. Correct.

1 Q. But you would agree with me that, in order for soot
2 and smoke to be deposited on these items, these items would
3 have to be close to the muzzle of the gun, correct?

4 A. Well, I couldn't verify that it was soot or smoke.

5 Q. But my question is, if it was soot or smoke, for it
6 to be deposited on these items, the muzzle would have to be
7 close to the item, correct?

8 A. Yes, if there was smoke.

9 Q. Taking your attention to the stipulation again, the
10 physical evidence. Could you let the ladies and gentlemen
11 know what CN4G is and who it belonged to.

12 A. CN4G is a black Icon Sports T-shirt, size 4XL, and
13 it's listed under Brandon Clark's clothes recovered from just
14 inside the master bedroom.

15 Q. And you found defects of interest on this item,
16 correct?

17 A. Yes.

18 Q. I'm going to show you an attachment to State's
19 Exhibit 101. Is that the item that you analyzed?

20 A. Yes.

21 Q. Is that the item that you found the defective
22 interest on?

23 A. Yes.

24 Q. And on that shirt you found the presence of gunshot
25 residue, correct?

1 A. Yes.

2 Q. And that gunshot residue was from the muzzle of the
3 firearm that you demonstrated or you showed in front of the
4 jury, correct?

5 A. Yes.

6 Q. And your finding was that the test that you did
7 with respect to that item was that the muzzle was 12 to 24
8 inches from that shirt when it was fired, correct?

9 A. Yes.

10 Q. Taking your attention to item B/C. I think you
11 testified that item B/C was Robert White's pants, correct?

12 A. Correct.

13 Q. Could you remind the ladies and gentlemen of the
14 jury where the defect of interest, that you tested for
15 gunshot residue, is on item B/C.

16 A. The area of interest I looked at was in the upper
17 right thigh region, about where my index finger is.

18 Q. Thank you. And your findings regarding that item
19 in your tests was that the muzzle of the firearm, which you
20 demonstrated to the jury, was 3 to 12 inches from item B/C at
21 the time it was fired, correct?

22 A. Correct.

23 MR. COHEN: Court's indulgence. I'm just going to
24 grab the exhibits from you. I'm done, Your Honor. Thank
25 you.

REDIRECT EXAMINATION

1
2 MR. MOOMAU:

3 Q. Ms. Lee, you did not confirm smoke or soot on any
4 of these items?

5 A. Yes, correct.

6 Q. And, Ms. Lee, how does smoke or soot come out of
7 the gun?

8 A. Smoke or soot has a couple of sources. It can come
9 from the primer, which is -- going back to my model, if
10 you'll indulge me again. The primer, which is right here, is
11 the ignition component and, when the firing pin strikes it,
12 it ignites, and there can be soot or smoke from here. And,
13 of course, from the burning gunpowder, as it turns from
14 gunpowder into a gas. So those are two of the ways.

15 Also, on the bullet surface, depending on the
16 material, whether it has a lead base or whether it's all
17 lead, there's a lot of burning that's going on as it's
18 travelling down the barrel. As it melts, that can also
19 produce some soot or smoke.

20 Q. And does the smoke or soot come out -- what part of
21 the gun does it come out of?

22 A. It mostly comes out of the muzzle end of the
23 firearm.

24 Q. So if a person has a close-range shot to their
25 body --

1 MR. COHEN: Objection.

2 THE COURT: Sustained.

3 BY MR. MOOMAU:

4 Q. Hypothetically, in a circumstance where a person is
5 shot at close range and you can document that and you can
6 confirm that, would you also expect to find soot and smoke on
7 their clothing items also?

8 A. Yes.

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

10 MR. COHEN: Nothing further, Your Honor.

11 THE COURT: Ms. Lee, thank you very much.

12 MR. MOOMAU: The State calls Dr. Karen Dixon.

13 THE COURT: How long is this going to be?

14 MR. MOOMAU: Can we approach?

15 THE COURT: Okay.

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

18 MR. MOOMAU: This witness is -- I expect her
19 testimony maybe to last 20 minutes, half an hour. She is
20 hear with her attorney, and they expressed -- they want to
21 testify this morning because the attorney has to leave.

22 MR. COHEN: Your Honor, I believe that we would
23 prefer not to break up the direct and the cross. So we would
24 ask that we do it after lunch. We would prefer to do it
25 after lunch.

1 a witness produced on call of the State, having been
2 previously sworn, was examined and testified further as
3 follows:

4 **DIRECT EXAMINATION**

5 BY MR. MOOMAU:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Please state your name again, please.

9 A. Marilyn Clark.

10 Q. And just for the record, you're the same Marilyn
11 Clark that testified previously in this trial?

12 A. Yes.

13 Q. Ms. Clark, what relation are you to Robert White?

14 A. I'm Robert's cousin.

15 Q. And did there come a time when you hired an
16 attorney or retained the services of an attorney in relation
17 to what happened to Brandon on January 24, 2007?

18 A. Yes.

19 Q. And just for the record again, Brandon Clark is
20 your son, right?

21 A. Yes.

22 Q. Who was the attorney that you hired?

23 A. Michael Winkelman.

24 Q. And who did you hire that attorney for?

25 A. I hired that attorney for Brandon and Rob.

1 Q. And by Rob, you mean?

2 A. Robert, my cousin Robert.

3 Q. And when was that?

4 A. That was January 25th of 2007, when I first
5 contacted Michael.

6 Q. And where were Brandon and Robert at that time?

7 A. In Prince George's County Hospital.

8 Q. Now, are you aware of a lawsuit that has been
9 filed?

10 A. Yes.

11 Q. I'd like to show you what has been marked as
12 Defense Exhibit Number 2. Are you familiar with that
13 document?

14 A. Yes.

15 Q. At some point did you receive a copy of that?

16 A. Yes.

17 Q. And who gave you that?

18 A. Michael Winkelman.

19 Q. And without going into your exact address, where do
20 you live at, the municipality?

21 A. Capitol Heights, Maryland.

22 Q. Do you know where Robert lives?

23 A. Robert live in South Carolina.

24 Q. Now, do you know when you received a copy of this?

25 A. On the 24th of January of this year.

1 Q. And who gave that to you?

2 A. Michael Winkelman.

3 Q. In person, mail or how?

4 A. He brought it to my house, along with some roses.

5 Q. And you're named as a plaintiff in that, correct?

6 A. Yes.

7 Q. Now, looking at the signature pages, does your
8 signature appear anywhere on that document?

9 A. No.

10 Q. Who signed the document?

11 A. Michael Winkelman and David Haines.

12 Q. Do you know Robert White's mother?

13 A. Yes.

14 Q. Did you ever have any conversation with Robert or
15 his mom about the filing of this lawsuit?

16 A. No.

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

18 **CROSS-EXAMINATION**

19 BY MR. STARR:

20 Q. Good afternoon, Ms. Clark.

21 A. Good afternoon.

22 Q. Now, you testified that Robert White is your
23 cousin, correct?

24 A. Yes.

25 Q. And you hired the attorney Michael Winkelman,

1 correct?

2 A. Yes.

3 Q. And you said that was on January 25th of 2007?

4 A. Yes.

5 Q. And at that time -- that's one day after the
6 shooting incident, correct?

7 A. Yes.

8 Q. And at that time both your son Brandon and your
9 cousin Robert were still in the hospital, correct?

10 A. Yes.

11 Q. Now, I'm going to show you what's been marked
12 Defense Exhibit 3 for identification purposes. Now, this is
13 a document that -- it's on letterhead that says law offices
14 of McCarthy and Winkelman, correct?

15 A. Yes.

16 Q. And one of the lawyers listed in the upper, left
17 corner is Michael Winkelman, correct?

18 A. Yes.

19 Q. Now, it's dated January 31, 2007, correct?

20 A. Yes.

21 Q. And you'll agree that that's while your son and
22 your cousin were still in the hospital, correct?

23 A. Yes.

24 Q. From the shooting incident.

25 A. Yes.

1 Q. So this is six days after you hired Michael
2 Winkelman, correct?

3 A. Yes.

4 Q. Now, the letter is addressed to a Ms. Stephanie
5 Anderson. It says acting county attorney. Do you see that?

6 A. Yes.

7 Q. And her address is listed as being in the County
8 Administration Building in Upper Marlboro, correct?

9 A. Yes.

10 Q. Now, it says --

11 MR. MOOMAU: Objection.

12 THE COURT: Come on up, please.

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

15 MR. MOOMAU: I don't mind him summarizing, but I
16 don't think he needs to read it word for word.

17 MR. STARR: This is not the document about him
18 asserting his rights. This is the notice to the county.

19 THE COURT: I think he can do that, or have her
20 read it.

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

23 BY MR. STARR:

24 Q. Now, I just want to ask you what it says here.
25 Does it say, "Please accept this letter as notice under

1 Section 5-304 of the Courts and Judicial Proceedings Article
2 of the Annotated Code of Maryland on behalf of Mr. Brandon
3 Clark and Mr. Robert White"? Does it say that?

4 A. Yes.

5 Q. And it does it say, "The incident that gives rise
6 to this notice occurred on the evening of January 24, 2007,
7 when Messrs. Clark and White were delivering furniture to the
8 home of Keith Washington, a member of the Prince George's
9 County Police Department"? Does it say that?

10 A. Yes.

11 Q. And it's signed at the bottom by Michael Winkelman,
12 the attorney that you hired, correct?

13 A. Yes.

14 Q. Now, this letter, you understand, is Mr. Winkelman,
15 on January 31st of last year, six days after you hired him,
16 providing notice of a lawsuit to be filed based on this
17 shooting incident, correct?

18 A. I don't know.

19 Q. Well, you and Mr. Winkelman discussed the filing of
20 the lawsuit before it was filed, correct?

21 A. Yes.

22 Q. And the lawsuit was filed on January 24th of 2008,
23 correct?

24 A. Yes.

25 Q. And you knew that it was going to be filed, right?

1 A. Yes.

2 Q. And you and Mr. Winkelman had talked about the fact
3 that it was going to be filed before it was filed, correct?

4 A. Yes.

5 Q. Now, Robert White -- well, I'm going to approach
6 you, ma'am, and just show you what's been marked as Defense
7 Exhibit 6 for identification purposes, and just ask you --
8 this is also on the letterhead of the law offices of McCarthy
9 and Winkelman, correct?

10 A. Yes.

11 Q. And Michael Winkelman is listed, as he was in the
12 other document, in the upper left corner, correct?

13 A. Yes.

14 Q. And there's a date in the upper left corner of this
15 document of 2-6-2007, correct? February 6, 2007.

16 A. Yes.

17 Q. Now, Robert White's signature appears on the
18 document, correct?

19 A. Yes.

20 Q. And there's a witness on the document named Carrie
21 Williams, correct?

22 A. Yes.

23 Q. And her signature appears as well, correct?

24 A. Yes.

25 Q. You were not present when Mr. White signed this

1 document, correct?

2 A. Right.

3 Q. And you were not present when Ms. Williams signed
4 it, correct?

5 A. Correct.

6 Q. And Mr. Winkelman has conversations and
7 interactions with Mr. White that you're not present for
8 sometimes, correct?

9 A. Correct.

10 Q. Now, you were in the courtroom watching when Robert
11 White testified, correct?

12 A. Yes.

13 Q. And you heard his testimony about the lawsuit,
14 correct?

15 A. Yes.

16 Q. Now, ma'am, I'm going to approach you with what's
17 been marked as Defense Exhibit 2. You've been shown this.
18 It's a copy of the lawsuit, correct?

19 A. Yes.

20 Q. And you are listed here on the front page as a
21 plaintiff, correct?

22 A. Yes.

23 Q. And Robert White is also, correct?

24 A. Yes.

25 Q. Well, let me ask you this. You said that Robert

1 White lives in South Carolina?

2 A. Yes.

3 Q. Isn't it true that he was living in the District of
4 Columbia at the time of this incident on January 24th of '07?

5 A. Yes.

6 Q. Now, one of the defendants, the first defendant
7 listed here is Keith Washington, correct?

8 A. Yes.

9 Q. I'm going to take your attention to the last page
10 and just show you. That's the signature, on the last page,
11 of your attorney Michael Winkelman, correct?

12 A. Yes.

13 Q. And Mr. Moomau asked you whether Mr. White's
14 signature or your signature appeared on this document,
15 correct?

16 A. Yes.

17 Q. Would you agree with me -- and you can look at it
18 if you'd like, but I'm going to show you the last two pages.
19 Would you agree with me that the only signatures that appear
20 on the document are the signatures of lawyers.

21 A. Yes.

22 Q. Now, I'm going to take your attention to page 10.
23 You see on page 10 where it says count 1?

24 A. Yes.

25 Q. Now, tell me does the document say this:

1 "Wherefore, Robert White demands judgment" --

2 MR. MOOMAU: Objection.

3 THE COURT: Approach.

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

6 MR. MOOMAU: I just don't want -- we've already
7 established there's a lawsuit.

8 THE COURT: Well, what I mentioned at the bench on
9 the last occasion was --

10 MR. MOOMAU: Okay.

11 THE COURT: -- that counsel, in his opening
12 statement, told the jury flat out that there was a \$450
13 million lawsuit involved in this, and there was no objection
14 by the State. That is already before the jury. If the issue
15 relative to knowledge of lawsuits has surfaced, I think they
16 have a right to --

17 MR. MOOMAU: Okay. Withdrawn. One thing then. I
18 believe they've opened the door, to an extent, as to the
19 reason for her getting a lawyer. I'm not going to go into --

20 THE COURT: No, nobody has gone there. Your
21 direction was, in fact, limited that they were just in the
22 hospital, and they have not --

23 MR. MOOMAU: Well, they're bringing in the fact
24 that someone is thinking about suing somebody just within a
25 week afterwards or a number of days afterwards.

1 THE COURT: And how does that relate to --

2 MR. MOOMAU: That gives a reason -- it makes it
3 look like within a week, when someone is fighting for his
4 life in the hospital, she's thinking about suing.

5 THE COURT: Well, number one, I don't know what
6 they're going to do on cross-examination, so I'm going to
7 rule as we go along, and I will rule as we go along about
8 anything that you intend to do and, right now, I don't see
9 that issue having --

10 MR. MOOMAU: I plan to ask her if she felt that she
11 needed a lawyer. I'm not going to ask her what for.

12 THE COURT: You are going to ask Ms. Clark if she
13 felt like she needed a lawyer?

14 MR. MOOMAU: If she felt like she needed to hire an
15 attorney for her and Robert.

16 THE COURT: After she has testified that she did
17 hire an attorney. I think that's a nonissue.

18 MR. STARR: And I just want to make sure, Your
19 Honor, because I'm a little bit surprised that we're up here,
20 because I haven't gone into anything -- I'm not going to go
21 into anything beyond what we went into in the in-camera
22 hearing.

23 THE COURT: I can only rule as we go along.

24 MR. STARR: I want to make sure, since we are up
25 here talking about it again, that we're in the same place we

1 were at the end of that hearing, which is, if I ask these
2 questions about the demand amounts, then that does not open
3 the door to all the factual allegations or anything else.

4 THE COURT: To me, I don't believe it does and I'm
5 making that ruling.

6 MR. STARR: Thank you.

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

9 BY MR. STARR:

10 Q. Now, Ms. Clark, I'm going to take you back to where
11 we were a moment ago. Page 10, see where it says count 1
12 there?

13 A. Yes.

14 Q. I'm going to ask you if, a little bit down that
15 page, it says, "Wherefore, Robert White demands judgment
16 against the defendants, jointly and severally, in the amount
17 of \$20 million in compensatory damages and \$20 million in
18 punitive damages, with interest and costs." Does it say
19 that?

20 A. Yes.

21 Q. Now, do you see on page 11 where it says count 2?

22 A. Yes.

23 Q. Now, underneath of count 2, on the following page,
24 I'm going to ask you does it say, "Wherefore, Robert White
25 demands judgment against the defendants, jointly and

1 severally, in the amount of \$20 million in compensatory
2 damages and \$20 million in punitive damages, with interest
3 and costs." Does it say that?

4 A. Yes.

5 Q. I'm going to show you later, a little bit further
6 down that page, it says count 3, correct?

7 A. Yes.

8 Q. And if your turn over to the next page, underneath
9 of count 3, it says, "Wherefore, Robert White demands
10 judgment against the defendants, jointly and severally, in
11 the amount of \$20 million in compensatory damages and \$20
12 million in punitive damages, with interest and costs." Does
13 it say that?

14 A. Yes.

15 Q. I'm going to take you to the next page and ask do
16 you see where it says count 4 on that page?

17 A. Yes.

18 Q. Now, further down on that page, I'm going to ask
19 you whether it says, "Wherefore, Robert White demands
20 judgment against the defendants, jointly and severally, in
21 the amount of \$20 million in compensatory damages and \$20
22 million in punitive damages, with interest and costs." Does
23 it say that.

24 A. Yes.

25 Q. Let me take you to the next page. Does it say

1 count 5?

2 A. Yes.

3 Q. I'm going to ask you whether, further down that
4 page, it says, "Wherefore, Robert White demands judgment
5 against the defendants, jointly and severally, in the amount
6 of \$20 million in compensatory damages and \$20 million in
7 punitive damages, with interest and costs." Does it say
8 that?

9 A. Yes.

10 Q. Now, on the following page does it say count 6?

11 A. Yes.

12 Q. And I'm going to ask you whether, below count 6, it
13 says, "Wherefore, Robert White demands judgment against the
14 defendants, jointly and severally, in the amount of \$20
15 million in compensatory damages and \$20 million in punitive
16 damages, with interest and costs." Does it say that?

17 A. Yes.

18 Q. Do you see it says count 7 a little further down?

19 A. Yes.

20 Q. And I'm going to turn two pages. I'm going to ask
21 you whether, underneath count 7, it says, "Wherefore, Robert
22 White demands judgment against the defendants, jointly and
23 severally, in the amount of \$20 million in compensatory
24 damages and \$20 million in punitive damages, with interest
25 and costs." Does it say that?

1 A. Yes.

2 Q. Do you see count 8?

3 A. Yes.

4 Q. I'm going to ask you whether, under count 8, it
5 says, "Wherefore, Robert White demands judgment against the
6 defendants, jointly and severally, in the amount of \$20
7 million in compensatory damages and \$20 million in punitive
8 damages, with interest and costs." Does it say that?

9 A. Yes.

10 Q. And I'll ask you about count 9. Do you see count 9
11 on page 21?

12 A. Yes.

13 Q. On the following page, underneath count 9, does it
14 say, "Wherefore, Robert White demands judgment against the
15 defendants, jointly and severally, in the amount of \$20
16 million in compensatory damages and \$20 million in punitive
17 damages, with interest and costs." Does it say that?

18 A. Yes.

19 Q. Show you count 10 on the same page. Do you see
20 that?

21 A. Yes.

22 Q. I'm turning two pages. Does it say, underneath of
23 count 10, "Wherefore, Robert White demands judgment against
24 the defendants, jointly and severally, in the amount of \$20
25 million in compensatory damages and \$20 million in punitive

1 damages, with interest and costs." Does it say that?

2 A. Yes.

3 Q. And I'm just going to turn to the next page. You
4 see count 11 there?

5 A. Yes.

6 Q. I'm going to turn over one more page and ask you
7 whether, under count 11, it says, "Robert White demands
8 judgment against the defendants jointly and severally, in the
9 amount of \$20 million in compensatory damages and \$20 million
10 in punitive damages, with interest and costs." Does it say
11 that?

12 A. Yes.

13 Q. And do you see count 12?

14 A. Yes.

15 Q. I'm going to ask you whether, under count 12, it
16 says, "Wherefore, Robert White demands judgment against the
17 defendants, jointly and severally, in the amount of \$20
18 million in compensatory damages and \$20 million in punitive
19 damages, with interest and costs." Does it say that?

20 A. Yes.

21 MR. STARR: I don't have any more questions.

22 MR. MOOMAU: Yes, Your Honor.

23 **REDIRECT EXAMINATION**

24 BY MR. MOOMAU:

25 Q. Ms. Clark, you're also a party to the lawsuit,

1 right?

2 A. Yes.

3 Q. And you're seeking judgment also, correct?

4 A. Yes.

5 Q. Anything wrong that you know of with hiring a
6 lawyer?

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

8 MR. MOOMAU: Withdrawn.

9 BY MR. MOOMAU:

10 Q. When you received your copy of that, in person,
11 from Mr. Winkelman, did you call Robert up and tell him about
12 it?

13 A. No.

14 Q. Did you call mom up and tell him about it?

15 A. No.

16 Q. When did Robert move back to South Carolina?

17 A. I'm not sure of -- I'm not sure.

18 THE COURT: I'm sorry?

19 MR. MOOMAU: She didn't know that. I'm moving to
20 another question.

21 BY MR. MOOMAU:

22 Q. When the lawsuit was filed, do you know where he
23 was living?

24 A. When the lawsuit was filed on the January 24th of
25 January of this year?

1 Q. Yes, ma'am.

2 A. He was in South Carolina.

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

4 MR. STARR: No more questions.

5 THE COURT: Again, Ms. Clark, thank you.

6 Ladies and gentlemen, we think it's a good time to
7 break for the noon luncheon recess, as we have done on
8 earlier days.

9 Again, I have to admonish you. Please do not have
10 any conversation with anyone with whom you may come into
11 contact over lunch and speak to them about anything that you
12 may have heard in this courtroom. And, please, you are not
13 entitled to speak about anything that may have arisen in this
14 courtroom, even amongst yourselves. If any inquiry is made
15 of you by anyone, you're not entitled to tell them anything
16 about what has transpired in this courtroom, or any of your
17 thoughts in that regard as well.

18 If you see any of the parties, witnesses or lawyers
19 in this case, if you please would remove yourself from their
20 presence so you do not overhear anything that they may be
21 discussing.

22 With those admonitions, I thank you again. I'll
23 see you back at -- we're going to do it at quarter to two, to
24 give you the same amount of time that we've been doing every
25 day. Thank you.

1 (At 12:30 p.m. a luncheon recess was taken.)

2 -oOo-

3 **AFTERNOON SESSION**

4 1:45 p.m.

5 (During the luncheon recess, State's Exhibits
6 Numbers 105 and 106 were marked for
7 identification.)

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

10 THE COURT: Are we ready for the jury?

11 MR. MOOMAU: Yes, we're ready. I was just going to
12 get the easel.

13 THE COURT: Okay.

14 (The jury returned to the courtroom at 1:50 p.m.)

15 THE COURT: All right, Mr. Moomau.

16 MR. MOOMAU: The State would call Dr. Karen Dixon.

17 **KAREN DIXON, M.D.,**

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

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

22 THE WITNESS: Karen, K-a-r-e-n, Dixon, D-i-x-o-n.

23 **DIRECT EXAMINATION**

24 BY MR. MOOMAU:

25 Q. Good afternoon, Dr. Dixon. I'm going to have to

1 ask you just to speak loud so everyone over here can hear
2 you. What's your occupation?

3 A. An emergency physician.

4 Q. Where are you employed at?

5 A. At Fort Washington Hospital.

6 Q. How long have you been employed there as an
7 emergency physician?

8 A. Almost three years.

9 Q. Are you licensed to practice medicine in this
10 State?

11 A. Yes.

12 Q. What are your job duties as an emergency physician
13 at Fort Washington Hospital?

14 A. Attend to whatever patients enter my threshold.

15 Q. And during what hours of the day or night do you
16 work?

17 A. I usually work night shift, which is anywhere from
18 7 p.m. to 10 p.m. until morning.

19 Q. And do you see patients with various ailments,
20 injuries?

21 A. Yes.

22 Q. Just describe some of those?

23 A. I see patients with broken bones, patients with
24 heart attacks, pregnant women with vaginal bleeding.

25 Q. And, ma'am, were you working on the night of

1 January 24, 2007?

2 A. If it says so, yes. I can't remember.

3 Q. I'd like to show you what's been marked as State's
4 Exhibit Number 98.

5 A. Okay.

6 Q. Do you recognize that?

7 A. Yes.

8 Q. What is State's Exhibit Number 98?

9 A. It's an emergency chart.

10 Q. From where you work?

11 A. Yes.

12 Q. Does that refresh your memory as to the
13 particular -- whether or not you were working on that night?

14 A. Yes, this is my chart.

15 Q. And were you working on the night of January 24,
16 2007?

17 A. Yes.

18 Q. On that particular night did you see a patient by
19 the name of Keith Washington?

20 A. Yes.

21 Q. Is the address of the patient reflected on State's
22 Exhibit Number 96?

23 A. Yes.

24 MR. MOOMAU: Your Honor, the State would move for
25 the admission of State's Exhibit Number 96.

1 MR. COHEN: Your Honor, may we approach on that?

2 THE COURT: Yes.

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

5 MR. COHEN: We have refuted that there may be
6 portions of the exhibit that we want redacted before they go
7 back to the jury, but I won't object to its admission with
8 that one caveat.

9 THE COURT: I don't know about any of the
10 redactions. Have you spoken with the state's attorney about
11 that?

12 MR. COHEN: We haven't spoken with them yet, Your
13 Honor.

14 MR. MOOMAU: I'll consider that at the time it
15 would go back.

16 MR. COHEN: That's fine.

17 MR. MOOMAU: I'm not sure what parts he's talking
18 about. I'm just going to ask questions dealing with her
19 exam.

20 MR. COHEN: To refresh her recollection, I assume?
21 Why don't you not move it in, and then we can discuss it.

22 MR. MOOMAU: Just take the motion under advisement.

23 THE COURT: Okay.

24 (Counsel returned to trial tables and the following
25 ensued.)

1 BY MR. MOOMAU:

2 Q. Dr. Dixon, on that night did you see a patient by
3 the name of Keith Washington?

4 A. Yes.

5 Q. And do the records in front of you reflect the
6 address of that patient?

7 A. Yes.

8 Q. And what is that address?

9 A. 1513 Shellford Lane, Accokeek, Maryland 20607.

10 Q. And what time did you see that patient?

11 A. At ten o'clock in the evening.

12 Q. And do you remember if he was accompanied by
13 anybody when you saw Mr. Washington?

14 A. He came in by ambulance. He was accompanied by EMS
15 personnel.

16 Q. Did you have an opportunity to speak with
17 Mr. Washington when you met with --

18 A. Yes.

19 Q. Were there other persons, medical personnel that
20 saw him also at the hospital?

21 A. Yes. The nursing staff would have seen him, and
22 then the EMTs that brought him.

23 Q. Do you know a person that works at the hospital by
24 the name of -- and I may pronounce this wrong Nilda or Nilda
25 Concepcion?

1 A. Nilda, yes.

2 Q. Was she also working there that night?

3 A. Yes.

4 Q. And did she have contact with Mr. Washington also?

5 A. Yes.

6 Q. Did Mr. Washington -- what was his chief complaint,
7 if any, as to his condition?

8 A. He complained of having -- to the triage nurse, he
9 complained of having jaw, face and neck pain after an
10 assault.

11 Q. Did you conduct a physical examination of him?

12 A. Yes.

13 Q. And what is trauma?

14 A. What is trauma?

15 Q. Yes.

16 A. Injury to the body.

17 Q. Like what type of injury?

18 A. Any.

19 Q. Such as swelling?

20 A. Not necessarily.

21 Q. Scratch?

22 A. It could be --

23 MR. COHEN: Objection, Your Honor, to the leading.

24 THE COURT: Sustained.

25 BY MR. MOOMAU:

1 Q. Just include some examples what you mean by injury
2 to the body.

3 A. It could be a fall and having a scratch on your
4 knee. It could be being in a car accident and getting bumped
5 around from the car accident. It could be digital trauma to
6 the nose, which is picking your nose.

7 Q. Did you observe any evidence of trauma to the neck
8 and face of Mr. Washington?

9 A. Based on my chart, I did not see any evidence on
10 his head of trauma.

11 Q. I would like to show you what has been marked as
12 State's Exhibit Number 105. Do you recognize State's Exhibit
13 Number 105?

14 A. Yes, that's my emergency chart.

15 Q. Is this an exact duplicate of the document you're
16 looking at in your hand?

17 A. Yes.

18 Q. Except bigger?

19 A. Bigger.

20 MR. MOOMAU: The State would move for the admission
21 of State's Exhibit 105.

22 MR. COHEN: With the objection that was stated at
23 the bench.

24 THE COURT: Admitted, conditionally, 105, State.

25 (State's Exhibit No. 105, previously

1 marked for identification, was
2 received in evidence.)

3 MR. MOOMAU: Could the witness step down, Your
4 Honor?

5 THE COURT: Yes.

6 BY MR. MOOMAU:

7 Q. Dr. Dixon, looking at State's Exhibit Number 105,
8 starting with the diagram of the face there, what do those
9 marks on the face indicate?

10 A. This is a "T" and a "T," which indicates tenderness
11 to palpation on my exam.

12 Q. Did you notice any evidence at all of trauma in
13 those areas, based on your physical examination?

14 A. Based on my chart, I did not document any bruising
15 or scratches.

16 Q. Thank you. Were x-rays ordered for Mr. Washington?

17 A. Yes.

18 Q. And what were the results of those x-rays?

19 A. They were negative; no fracture.

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

21 MR. COHEN: Court's indulgence.

22 THE COURT: Certainly.

23 **CROSS-EXAMINATION**

24 By MR. COHEN:

25 Q. Good afternoon. The hospital received a radio run

1 call from the EMS personnel working that night, correct?

2 A. Yes.

3 Q. And the EMS personnel stated that they were
4 arriving to the hospital --

5 MR. MOOMAU: Objection.

6 THE COURT: Sustained.

7 By MR. COHEN:

8 Q. There's a priority that EMS gives to their patients
9 regarding transport, correct?

10 A. Yes.

11 Q. And Mr. Washington arrived at the second highest --

12 MR. MOOMAU: Objection.

13 THE COURT: Sustained.

14 BY MR. COHEN:

15 Q. When Mr. Washington arrived at the hospital, he had
16 a neck and collar -- I'm sorry, a neck that was in a collar,
17 correct?

18 A. Yes.

19 Q. And he arrived on a back board, correct?

20 A. Yes.

21 Q. A neck is collared and a back board is used to
22 stabilize a patient, correct?

23 A. Yes.

24 Q. And when Mr. Washington arrived, he described his
25 injuries --

1 A. To me, he complained of having injuries to his face
2 and to his head.

3 Q. But when he arrived, he explained his injuries as
4 jaw, face and neck pain, correct, and that he was assaulted?

5 A. To the triage nurse, yes.

6 Q. And that's to Ms. Concepcion, correct?

7 A. Yes.

8 Q. And is that the first person he sees?

9 A. Yes.

10 Q. And he also gave his pain threshold, on a pain of 1
11 to 10, as a 7, correct?

12 A. Yes.

13 Q. You treated Mr. Washington that night for a neck
14 strain and contusion, correct?

15 A. Yes.

16 Q. And is it your testimony that a contusion cannot be
17 considered trauma?

18 A. No.

19 Q. No, it cannot be considered trauma?

20 A. It can be considered trauma.

21 Q. So you treated him for a contusion that night,
22 correct?

23 A. Yes.

24 Q. And that is trauma, correct?

25 A. Yes, it can be.

1 Q. I'm sorry, Dr. Dixon. Could I ask you to step down
2 again?

3 A. Certainly.

4 Q. Taking your attention to State's Exhibit 105. In
5 the area that you testified to during direct, where you see
6 the diagram and the marks on the diagram in the face area,
7 you found soft tissue injury to Mr. Washington in those
8 areas, correct?

9 A. Based on his exam, based on the tenderness that he
10 had.

11 Q. And those areas were tender after your exam,
12 correct?

13 A. Before my exam.

14 Q. And based on that exam, you prescribed
15 Mr. Washington some prescription drugs, correct?

16 A. I did.

17 Q. And you prescribed -- I'm sorry. You can sit back
18 down. Thanks. You prescribed him 600 milligrams of Motrin?

19 A. I did.

20 Q. And that's a prescription strength of Motrin,
21 correct?

22 A. Correct.

23 Q. And that's not something that you can buy over the
24 counter, correct?

25 A. No.

1 Q. And you also prescribed Mr. Washington Vicodin,
2 correct?

3 A. Correct.

4 Q. And Vicodin is a narcotic?

5 A. Yes.

6 Q. And you prescribe a narcotic, such as Vicodin, for
7 severe pain, correct?

8 A. Moderate pain, yes.

9 Q. And so you prescribed Vicodin for Keith Washington
10 after you took his patient history and based on your
11 examination, correct?

12 A. Yes.

13 Q. Dr. Dixon, do you know whether Mr. Washington was
14 treated with any forms of cold compresses prior to arriving
15 at the hospital?

16 A. No.

17 MR. COHEN: Court's indulgence.

18 THE COURT: Certainly.

19 BY MR. COHEN:

20 Q. I'm going to show you what has been marked as
21 Defense Exhibit Number 10. If you could take a look at that.
22 Can you let the ladies and gentlemen of the jury know what
23 Defense Exhibit 10 is?

24 A. This is a report from the EMS.

25 Q. And is that a report from the EMS personnel that

1 delivered Keith Washington to the hospital that evening?

2 A. I would have to assume so.

3 Q. Well, why don't you take a look at it and see if
4 you can tell.

5 MR. MOOMAU: Your Honor, the State is going to
6 object.

7 THE COURT: Do you want to --

8 MR. COHEN: Yes, we can approach.

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

11 MR. MOOMAU: The State objects to her testifying,
12 reading off of some EMS report.

13 MR. COHEN: I wasn't going to do that, Your Honor.
14 I just want to have her say that she didn't look at that
15 prior to giving medical attention to Mr. Washington.

16 THE COURT: That she did not see it?

17 MR. COHEN: She did not see it.

18 THE COURT: So you're not going to try to have her
19 read off of it?

20 MR. COHEN: No, sir. My worthy cocounsel reminded
21 me of something. I was objected, Your Honor, on two
22 occasions during my cross-examination, and I assume they were
23 hearsay objections. They were sustained by the Court. I
24 just want to make argument very quickly on those two
25 objections.

1 THE COURT: On what witness?

2 MR. COHEN: It was this witness, Your Honor. I
3 believe the first objection was when I tried to elicit
4 statements from the EMS employees.

5 THE COURT: Yes.

6 MR. COHEN: It's our position that that is not
7 being offered for the truth of the matter. It's actually
8 being offered just to show that she was aware of how Keith
9 was coming into the hospital for renderance of medical care.
10 So I don't think it's hearsay.

11 THE COURT: Based on the issue that I believe is
12 being presented, I believe it is hearsay and no foundation
13 questions were asked whatsoever.

14 MR. COHEN: Okay. Thank you.

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

17 BY MR. COHEN:

18 Q. Okay, Dr. Dixon, with respect to Defense Exhibit
19 10, my question is simply did you see Defense Exhibit 10
20 prior to treating Mr. Keith Washington?

21 A. No.

22 Q. Thank you. You gave Mr. Washington a list of
23 instructions when he left the hospital that night, correct?

24 A. When he was discharged?

25 Q. Yes.

1 A. Yes.

2 Q. And one of those instructions was to put a cold
3 compress, which is ice wrapped in a towel, on any areas that
4 were painful to him for 20 minutes, every one to two hours,
5 as needed, for pain and swelling, correct?

6 A. Yes.

7 Q. And if I could refer you back to the State's
8 exhibit that are your medical records. Would you tell us
9 what the number -- the red --

10 A. Ninety-eight.

11 Q. State's Exhibit 98. Taking your attention to the
12 page that's titled "physician orders and notes."

13 A. Yes.

14 Q. At the bottom of that page, do you see the letters
15 "DX"?

16 A. Yes.

17 Q. With an ellipsis next to it. That DX stands for
18 diagnosis, correct?

19 A. Yes.

20 Q. And you wrote next to that after you treated
21 Mr. Washington and after you he gave you his patient history,
22 correct?

23 A. Yes.

24 Q. And next to that you wrote, as a diagnosis,
25 assault, correct?

1 A. Yes.

2 MR. COHEN: Thank you, Dr. Dixon. Nothing further.

3 BY MR. MOOMAU:

4 Q. Dr. Dixon, was that diagnosis based on what Keith
5 Washington told you?

6 A. Yes.

7 Q. Were the "T's" on the chart, tender, was that based
8 on what he told you?

9 A. Yes. When I palpated, that's where he told me he
10 had tenderness.

11 Q. Now, Mr. Cohen asked you if contusion can be
12 considered trauma. What was your answer to that?

13 A. Yes, it can be.

14 Q. Again, did you find any evidence of trauma during
15 your physical exam?

16 A. I did not see -- according to my chart, I did not
17 comment on any bruising or scratching.

18 Q. Is that normally something that you do?

19 A. Yes.

20 MR. MOOMAU: That's all I have.

21 MR. COHEN: Court's indulgence.

22 THE COURT: Certainly.

23 MR. COHEN: No further questions, Your Honor.

24 Thank you.

25 THE COURT: Doctor, thank you.

1 MR. MOOMAU: Your Honor, the State would call
2 Lieutenant Charles Walls.

3 **CHARLES WALLS,**

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: Lieutenant Charles Walls. First name
9 is C-h-a-r-l-e-s; last name W-a-l-l-s, Prince George's County
10 Police Department.

11 **DIRECT EXAMINATION**

12 BY MR. MOOMAU:

13 Q. Sir, how long have you been employed by the Prince
14 George's County Police Department?

15 A. Twenty-one years.

16 Q. Were you on duty the night of January 24, 2007, and
17 I guess the morning of January 25, 2007?

18 A. Yes, sir.

19 Q. On that night, sir, did you happen to have --
20 excuse me. Do you know Keith Washington?

21 A. Yes, sir.

22 Q. The person you know as Keith Washington, is he
23 present in the courtroom?

24 A. Yes, sir.

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

1 MR. MOOMAU: I'll accept that.

2 THE COURT: Alright.

3 BY MR. MOOMAU:

4 Q. Are you aware of his address?

5 A. Yes, sir.

6 Q. What is that?

7 A. 1513 Shellford Lane, Accokeek, Maryland.

8 Q. What county and state is that in?

9 A. Prince George's County, Maryland.

10 Q. At some point that night did you take photographs
11 of the defendant Mr. Washington?

12 A. Yes, that following morning, yes, sir.

13 Q. And where was that at?

14 A. At the Oxon Hill station, District 4.

15 THE DEPUTY CLERK: State's Exhibits 107 through 109
16 marked for identification.

17 (State's Exhibit Nos. 107 through
18 109 were marked for identification.)

19 BY MR. MOOMAU:

20 Q. I'd like to show you what's been marked as State's
21 Exhibit 107 through 109. Do you recognize those?

22 A. Yes, sir.

23 Q. What are they?

24 A. This is three photographs that I took of Corporal
25 Washington, Mr. Washington.

1 Q. Are those an accurate depiction of what he looked
2 like?

3 A. For the most part, yes.

4 Q. Now, the one, State's Exhibit Number 108, the
5 eyes -- how was that picture taken? I mean, was it taken
6 during a blink or what was that?

7 A. I believe I caught him blinking, yes.

8 MR. MOOMAU: Your Honor, the State would move for
9 the admission of State's Exhibit 107, 108 and 109.

10 MR. STARR: No objection.

11 THE COURT: 107, 108 and 109, State, no objection.

12 (State's Exhibit Nos. 107 through
13 109, previously marked for
14 identification, were received in
15 evidence.)

16 BY MR. MOOMAU:

17 Q. Sir, do you know where Mr. Washington had been
18 before you took these pictures?

19 A. Fort Washington Hospital.

20 Q. Do you know about what time it was when you took
21 these?

22 A. About 2 a.m. or a little after.

23 MR. MOOMAU: Ask to publish to the jury, Your
24 Honor?

25 THE COURT: Okay.

1 BY MR. MOOMAU:

2 Q. Do you know approximately what time it was that you
3 took those pictures?

4 A. It would have been -- my recollection is at about
5 2 a.m.

6 Q. And, sir, as part of your investigation, did you
7 obtain a certified copy of the 911 calls made in this case?

8 A. Yes, sir.

9 Q. Did you do anything to try to get those enhanced?

10 A. Yes, sir.

11 Q. And why was that?

12 A. Why was that?

13 Q. What were you trying to enhance?

14 A. I was trying to see if you could hear any of the
15 conversation in the background. The 911 communications
16 between the dispatcher and Mr. and Mrs. Washington on the
17 telephone, you could hear the subjects in the background, and
18 I was trying to see if I could hear any of that conversation,
19 if there was any of that conversation.

20 Q. Subjects. What do you mean subjects?

21 A. Mr. White and Mr. Clark.

22 Q. And did you send it off any place to try to get it
23 enhanced?

24 A. Yes, sir.

25 Q. Where did you send it to?

1 A. The DEA in Houston, Texas.

2 Q. Did you receive anything back from them?

3 A. Yes, sir.

4 Q. And did you provide a copy of that to anybody?

5 A. To you.

6 MR. MOOMAU: That's all the questions I have of
7 this witness, Your Honor.

8 MR STARR: May we approach?

9 THE COURT: Okay.

10 MR. MOOMAU: Okay, we'll go ahead and play it now
11 then. Can Ms. Engel help, Your Honor?

12 THE COURT: Certainly.

13 MR. MOOMAU: Can we say what this is for the
14 record, Your Honor?

15 THE COURT: Yes.

16 MR. MOOMAU: Just for the record, you're going to
17 be hearing the enhanced 911 calls that were made that
18 particular night.

19 (Audio tape plays.)

20 BY MR. MOOMAU:

21 Q. Does that cover the period of time from when the
22 call was made until when the patrol officers arrived on the
23 scene?

24 A. Until the first officer arrived on the scene, yes.

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

1 for the record, Your Honor, I did stop it. I think it was
2 9:19.

3 **CROSS-EXAMINATION**

4 BY MR. STARR:

5 Q. Lieutenant Walls, good afternoon. It's lieutenant,
6 correct?

7 A. Yes.

8 Q. The tape was stopped by Mr. Moomau, as he just
9 said, at about nine minutes and 19 seconds, correct?

10 A. The recording, yes.

11 Q. And I mean his playing of the recording was
12 stopped, correct?

13 A. Yes.

14 Q. And it was stopped before the entire recording was
15 played, correct?

16 A. Correct.

17 Q. There's more of Mr. Washington and his wife on the
18 tape, interacting with the dispatcher, that we haven't heard,
19 correct?

20 A. Correct.

21 Q. Now, I'm going to ask you some more questions about
22 the 911 call in a moment. First, I want to ask you about the
23 pictures that you talked about. You're aware that the photos
24 you took were taken after Mr. Washington had been to the
25 hospital, correct?

1 A. Correct.

2 Q. And you were not present when he was at the
3 hospital, correct?

4 A. Correct.

5 Q. So you don't have any knowledge of what medical
6 treatment he received there or any injuries he may have been
7 diagnosed with, correct?

8 A. At that time, no.

9 Q. At the time that you were taking the photos,
10 correct?

11 A. Correct.

12 Q. And while you were taking the photos of
13 Mr. Washington, you would agree he was cooperative with you,
14 correct?

15 A. Yes.

16 Q. Now, you also don't know, do you, Lieutenant Walls,
17 whether Mr. Washington was treated with any ice or any cold
18 compress prior to you taking the photos, correct?

19 A. That is not correct. I am aware that he had an ice
20 pack when he was still at his house, prior to going to the
21 hospital.

22 Q. So you do know that.

23 A. Yes, sir.

24 Q. When you were asked by Mr. Moomau whether the
25 photos accurately depicted Mr. Washington, you said for the

1 most part?

2 A. Yes.

3 Q. Were you talking about the blinking thing, or were
4 you talking about something else?

5 A. Actually, I was talking about three things. The
6 blinking. The one photograph that didn't turn out. I must
7 have inadvertently taken it off -- there's dial on the camera
8 where you switch to auto to action shot or portrait. I was
9 taking portrait shots, and it inadvertently had slipped off
10 the dial. That's why it's not focussed, the digital image.

11 And then the other one, it doesn't show, in my
12 recollection, the redness that I saw on the right side of his
13 face.

14 Q. Now, you didn't take a photograph of the back of
15 his head or the back of his neck; did you?

16 A. No, sir.

17 Q. And the photographs that you took, you said were
18 taken at either 2 a.m. or after, correct?

19 A. I believe so.

20 Q. Now I'm going to ask you some questions about the
21 911 call that we just listened to. The voice you hear of the
22 first caller is Stacy Washington, correct?

23 A. Correct.

24 Q. And that's Mr. Washington's wife, correct?

25 A. Correct.

1 Q. And when you hear a voice -- just to be clear, I'm
2 going to ask you some questions about what it is that we just
3 heard. You hear Ms. Washington, after the dispatcher answers
4 the phone, she's asked, "What's your name," and she replies:
5 Stacy Washington," correct?

6 A. Yes, I believe so.

7 Q. And then she was asked by the dispatcher, right
8 after she gave her name, "Ms. Washington, what's your phone
9 number," and the response that we heard was, "3012832296. My
10 husband's a police officer. I think someone's been shot.
11 They were beating him upstairs in my house." That's what she
12 said on the tape, correct?

13 A. I believe so, yes.

14 Q. And then, shortly after Mrs. Washington tells the
15 dispatcher that they were upstairs beating him in my house,
16 you hear the sound of telephone buttons being pushed,
17 correct?

18 A. I believe about 33 seconds in, yes.

19 Q. And it sounds like it's three in a row, 911, 911,
20 correct?

21 A. 911, two times, yes.

22 Q. And then you hear Mr. Washington's voice on the
23 call, correct?

24 A. Correct.

25 Q. And around that time you hear Stacy Washington

1 saying, "Hurry up, hurry up," correct?

2 A. Yes, I recall hearing that, yes.

3 Q. And Keith Washington -- after you hear the 911
4 being dialed twice, you hear on the tape Keith Washington
5 say, "Hello; is this 911," correct?

6 A. Yes.

7 Q. And after the operator says yes, he says --
8 Mr. Washington says on the tape that we just heard, "This is
9 Officer 1790. I'm at my house. We had a departmental
10 shooting. I was jumped by two guys in my house," correct?

11 A. Correct.

12 Q. And he asked for units, correct?

13 A. That's correct.

14 Q. And Mr. Washington asks for ambulances, correct?

15 A. Yes.

16 MR. MOOMAU: Your Honor, I'm going to object to
17 just repeating the --

18 THE COURT: Sustained.

19 BY MR. STARR:

20 Q. I just want to ask you, for clarification purposes,
21 you've listened to this call prior to coming to court,
22 correct?

23 A. Yes.

24 Q. Do you hear, at approximately four minutes and 43
25 seconds into the call, Mr. Washington say, "The ambulance is

1 on the way"?

2 MR. MOOMAU: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: I don't recall specifically hearing
5 that phrase at this time.

6 MR. STARR: One moment, please, Your Honor.

7 THE COURT: Okay.

8 MR. STARR: May I have this marked, please?

9 THE DEPUTY CLERK: Defense Exhibit 11 marked for
10 identification.

11 (Defense Exhibit No. 11 was
12 marked for identification.)

13 BY MR. STARR:

14 Q. Lieutenant Walls, I'm showing you what's been
15 marked now as Defense Exhibit 11. It says on the front
16 "Transcript of 911 call of Stacy Washington and Keith
17 Washington." Do you see that?

18 A. Yes, sir.

19 Q. Can you just take a minute, read this to yourself
20 and tell me if it matches up with your recollection of what
21 we heard on the tape.

22 MR. MOOMAU: Your Honor, objection. Well, I'll
23 save that.

24 THE COURT: Okay.

25 BY MR. STARR:

1 Q. You can read it. Does that look correct to you?

2 A. Yes. So far, as far as I've read.

3 Q. Now, I'm just going to have you read page 11, line
4 1 to line 4. Can you read that to yourself, please.

5 MR. MOOMAU: Objection.

6 THE COURT: Sustained.

7 BY MR. STARR:

8 Q. Would reading the transcript -- remember when I
9 asked you whether you recalled hearing Keith Washington say
10 the ambulance is on the way, and you said you didn't recall?
11 Do you remember that a moment ago?

12 A. Yes, sir.

13 Q. Would looking at the transcript help to refresh
14 your memory as to whether or not that's on the tape?

15 MR. MOOMAU: Your Honor, objection.

16 THE COURT: Grounds?

17 MR. MOOMAU: May we approach?

18 THE COURT: Grounds?

19 MR. MOOMAU: The tape speaks for itself. It's an
20 exhibit the jury heard.

21 THE COURT: Sustained.

22 MR. STARR: Then, Your Honor, I'd like to play that
23 portion of it.

24 THE COURT: Okay, that's fine.

25 MR. STARR: We're going to need some technical

1 assistance here.

2 BY MR. STARR:

3 Q. Now, Lieutenant Walls, the tape is going to be
4 played. Please listen, and then I'm going to ask you some
5 questions after we hear this portion, okay?

6 A. Yes, sir.

7 (Audio tape plays.)

8 MR. STARR: Stop.

9 BY MR. STARR:

10 Q. Did you hear that?

11 A. Yes, sir.

12 Q. That was Keith Washington saying the ambulance is
13 on the way, correct?

14 A. Yes, sir.

15 MR. STARR: No more questions.

16 **REDIRECT EXAMINATION**

17 MR. MOOMAU:

18 Q. Lieutenant, of course, you also heard him talking
19 about his carpet too; didn't you?

20 A. Yes, sir.

21 Q. And what did he say about his carpet?

22 A. My recollection that he commented that they were
23 bleeding on his carpet.

24 Q. Now, Lieutenant, Mr. Washington -- you said you
25 took those pictures at the Oxon Hill station?

1 A. That's correct.

2 Q. Do you know how he got from the hospital to Oxon
3 Hill station?

4 A. Yes, sir.

5 Q. How did he get there?

6 A. He was transported by an FOP representative.

7 Q. And FOP is?

8 A. Fraternal Order of Police.

9 MR. STARR: Objection, Your Honor. May we
10 approach?

11 THE COURT: Yes.

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

14 THE COURT: What relevance does that have on who
15 transported him?

16 MR. MOOMAU: He said FOP. I just wanted him to say
17 what it meant. I was going to end it there.

18 THE COURT: Why? What's the relevance?

19 MR. MOOMAU: The doctor didn't see any redness.
20 Then, when he gets to the Oxon Hill station, he's got
21 redness.

22 THE COURT: I don't follow. Do you intend to call
23 any other witnesses about this?

24 MR. MOOMAU: About the transportation? No.

25 THE COURT: About any observation made in-between

1 the transportation and the --

2 MR. MOOMAU: No. You mean from the hospital to
3 Oxon Hill?

4 THE COURT: Right. Because I'm trying to figure
5 out what the relevance of who transported him.

6 MR. MOOMAU: Never mind. Never mind. We're not
7 going to go there.

8 MR. STARR: Are there any more questions?

9 MR. MOOMAU: Yes, I might have a couple more
10 questions.

11 THE COURT: I just wanted to make sure I understood
12 so I knew how to rule; that's all.

13 MR. MOOMAU: What I was trying to get at is he said
14 FOP transported him. Okay, we got that out. Why can't I ask
15 what role did they have?

16 THE COURT: And what relevance is it to -- what
17 relevance is it? What does it have relevance to?

18 MR. MOOMAU: Never mind. Withdrawn.

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

21 BY MR. MOOMAU:

22 Q. Lieutenant, you were also at the residence that
23 night?

24 A. Yes, sir.

25 Q. And when you were there, Mr. Washington was there?

1 A. Yes.

2 Q. Did he have his badge on when you were there?

3 A. I don't recall seeing him with a badge on.

4 Q. During what times were you there?

5 MR STARR: Your Honor, I'm going to object to this.
6 Beyond the scope.

7 THE COURT: Grounds?

8 MR. STARR: Scope.

9 MR. MOOMAU: Can I address that?

10 MR. STARR: Well, I'd like to approach if we're
11 going to have argument.

12 THE COURT: Okay.

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

15 THE COURT: They just said it's beyond the scope of
16 cross-examination.

17 MR. MOOMAU: Well, he testified under cross that he
18 was --

19 THE COURT: You just tell me.

20 MR. MOOMAU: No, he saw him at the house with the
21 ice pack on, and I'm going to get into what else he was
22 doing.

23 MR STARR: Well, wait a minute. I'd like a proffer
24 as to what that means, what else he was doing.

25 MR. MOOMAU: Was he walking around? Was he talking

1 to people?

2 MR. STARR: Your Honor, we're in a place where I
3 think the State has tried to take us a couple of times during
4 the trial, which is they want to make an argument that
5 Mr. Washington is corrupting the process or is doing
6 something to kind of corrupt the medical treatment, the
7 investigation, and there's no basis to say that.

8 It's beyond the scope of the cross-examination, and
9 it's not relevant, and it's very prejudicial, and there's no
10 basis, no evidentiary basis to say that he was doing those
11 things.

12 THE COURT: I need to know where you're going.

13 MR. MOOMAU: You mean my ultimate goal?

14 THE COURT: I understand he asked him simply the
15 question about an ice pack in the house, and that was the
16 only setting that was opened in terms of cross-examination
17 about the house. So what is it that you are intending to
18 have this officer testify to through your questioning?

19 MR. MOOMAU: I was trying to get from the officer
20 the actions that he saw Washington take --

21 THE COURT: I understand that. What are those
22 actions? That's what I'm trying to get at. What actions?

23 MR. MOOMAU: Well, I was going to see if the
24 witness could tell us. He wasn't handcuffed. He wasn't
25 restrained. He was standing, walking.

1 THE COURT: There's no testimony that he wasn't.
2 There's no testimony that he wasn't handcuffed. There's no
3 testimony that he was being restrained, right?

4 MR. MOOMAU: Right.

5 THE COURT: And there's been no --

6 MR. STARR: That was not the subject of
7 cross-examination.

8 THE COURT: And there's been no inquiry, on
9 cross-examination, about that. Now, if your questions are
10 directed to treatment or injuries, I mean I understand that,
11 from the ice pack, but nothing else.

12 MR. MOOMAU: Okay.

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

15 MR. WRIGHT: No more redirect, Your Honor.

16 MR. STARR: Brief recross, Your Honor.

17 **RECROSS-EXAMINATION**

18 BY MR. STARR:

19 Q. Mr. Moomau asked you a question about
20 Mr. Washington saying something about his carpet. Do you
21 recall that?

22 A. Yes, sir.

23 Q. Now, isn't it true that what the tape shows is that
24 Mr. Washington was asked by the 911 operator, "Where are they
25 shot at," and that his answer was --

1 MR. MOOMAU: Objection.

2 THE COURT: Sustained.

3 MR. STARR: Can we approach?

4 THE COURT: Certainly.

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

7 MR. STARR: When Mr. Moomau asked that question --

8 THE COURT: I would have objected had you objected.

9 You didn't. He testified. The evidence speaks for itself.

10 It's a tape.

11 MR. STARR: Well, then we have to find --

12 THE COURT: Then that's the way we do it.

13 MR. COHEN: Your Honor, I think we're trying to
14 save some time.

15 THE COURT: I understand that. I can only rule on
16 the objections as they come.

17 MR. STARR: If I may make an appeal here to my
18 esteemed opponent. When the question was asked, I didn't
19 object because we don't have any kind of -- I'm speaking
20 through the Court to Mr. Moomau, if I may.

21 We don't have any transcript that has the times,
22 you know, so that we can easily access them on the tape. So
23 when Mr. Moomau asked that one question, I knew it was going
24 to be about a finite area and I didn't object, and I assumed
25 that that courtesy would be extended to me.

1 THE COURT: You're talking to the Court. If you
2 want a couple of minutes to talk to Mr. Moomau, all I can do
3 is rule on objections as they come.

4 MR. MOOMAU: Here's my objection. I object to just
5 having the lieutenant just repeat what they've already heard
6 on the tape. That's why I was objecting.

7 THE COURT: I've ruled. If you can work out a way
8 you both wish to do it, that's fine. If you can't, I rule on
9 the objections as they come.

10 MR STARR: Then I think we need a very short
11 recess, because we need to either work it out or we need to
12 que the tape. We don't know where it is. We have to find
13 it.

14 MR. MOOMAU: I object to replaying it. They heard
15 it. If they want to replay portions of it during their case,
16 fine.

17 THE COURT: Well, no. Based on what has been going
18 back and forth in terms of direct and cross, if they want to
19 que the tape, they can que the tape to that spot.

20 MR. MOOMAU: What spot do you want?

21 MR. STARR: The bleeding on the carpet is in
22 response to the question "where are they shot at." That's
23 what I want.

24 MR. MOOMAU: Start over when Washington comes on.

25 MR. STARR: No, it's not right where he comes on.

1 I'm going to ask if we can do this outside the presence of
2 the jury, so we can get it queued up.

3 THE COURT: Just take your time. They don't know
4 even know what we're discussing.

5 MR. STARR: I was just talking about queuing up the
6 tape.

7 THE COURT: Well, I don't want to have them to come
8 back in one minute. As long as the tape can be queued to the
9 frame that you believe --

10 MR. MOOMAU: I can't say exactly. I got it pretty
11 close the last time with their help.

12 MR. STARR: Well, I told them the exact, down to
13 the second, where it was located.

14 THE COURT: Okay. What would you both suggest? Do
15 you want me to have the jury go back into the deliberation
16 room?

17 MR. COHEN: Mr. Moomau, I believe this is going to
18 be the one area of recross. We're trying to save time by
19 just having him do it by transcript, instead of queuing up the
20 tape. If you have the transcript with the times, that would
21 help us.

22 MR. MOOMAU: Let's play the tape.

23 THE COURT: You want me to send them back?

24 MR. MOOMAU: Yes.

25 THE COURT: Ladies and gentlemen, we're going to

1 take a five-minute recess. It won't be long at all. I
2 think.

3 (The jury was excused from the courtroom at
4 3:00 p.m.)

5 THE COURT: Are we ready to go?

6 MR. STARR: Aside from one very brief issue, this
7 will only take a moment. So if we may approach?

8 THE COURT: Okay.

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

11 MR. STARR: Your Honor, I don't -- while the tape
12 was being played, a number of people who have been sitting in
13 the front row for the trial, who I know to be family of
14 Mr. White and Mr. Clark, and crying, making --

15 THE COURT: I observed that directly, and I would
16 have to tell you that they comported themselves very well.
17 All they did was quietly stand up, turn around and walk out
18 the door. They made no demonstrations that I saw.

19 One had a handkerchief in her hand and that was --
20 I took a very careful look at that. I understand the
21 potential, I do, but based on what I saw, they -- and the
22 jury was wrapped up in listening to the tape, and I can tell
23 you that, at least from my observations, they weren't aware
24 of anything that took place in the first row, and there was
25 nothing really --

1 MR. STARR: Well, what I can say for the record is
2 that my attention was drawn by crying-type noises, and that's
3 what caused me to turn around, and when I turned around, I
4 saw them -- I'm closer to them than the Court is. When I
5 turned around, you could hear a number of people getting up
6 and leaving the courtroom at once, and I believe it was a
7 distraction.

8 We've heard from the decedent's mother twice.
9 She's been -- despite the fact that she's a witness, she's
10 been in the courtroom for the whole trial, and now we're
11 having a display that I think is --

12 THE COURT: Number one, I don't believe that's a
13 fair characterization of what I saw take place, and what I
14 saw was almost nothing other than two people standing up, one
15 with the handkerchief or a tissue, standing up very quietly
16 and going toward the door.

17 So I don't agree with the characterization you made
18 for purposes of the record, and it appeared to me that they
19 are comporting themselves very well, and I did not note any
20 juror taking notice of that. I know there's the potential,
21 but I haven't seen it.

22 (Counsel returned to trial tables, the jury
23 returned to the courtroom at 3:10 p.m., and the
24 following ensued.)

25 BY MR. STARR:

1 Q. Okay, now, Lieutenant Walls, we're going to play a
2 portion of the tape, and then I may ask you a question or two
3 after we play it.

4 (Audio tape played.)

5 BY MR. STARR:

6 Q. Now, did you hear that, Lieutenant Walls?

7 A. Yes, sir.

8 Q. And when Mr. Washington, on the tape, when you
9 heard him say one in the -- I'm assuming one is holding his
10 stomach, one is on the ground, I've got them on the ground,
11 they're in my house, they're bleeding over my carpet, and
12 I've got some injuries to myself, he said that in response to
13 the question "where are they shot at," correct?

14 MR. MOOMAU: Objection.

15 THE COURT: Sustained. The tape speaks for itself.

16 MR. STARR: No more questions.

17 MR. MOOMAU: No follow up on that.

18 THE COURT: Lieutenant, thank you.

19 MR. MOOMAU: The State would call Nilda Concepcion.

20 **NILDA CONCEPCION,**

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

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

25 THE WITNESS: It's Nilda, N-as in Nancy-i-l-d-a,

1 Concepcion, C-o-n-c-e-p-c-i-o-n.

2 **DIRECT EXAMINATION**

3 BY MR. MOOMAU:

4 Q. Good afternoon, ma'am.

5 A. Good afternoon, sir.

6 Q. I'm going to have to ask you to speak up so
7 everyone over here can hear you, okay?

8 A. Sure.

9 Q. What is our occupation?

10 A. I'm a registered nurse.

11 Q. And where do you work at?

12 A. I work at the emergency department at Fort
13 Washington Hospital.

14 Q. And how long have you worked there?

15 A. I worked there for 15 years.

16 Q. Do you work in the emergency room or emergency
17 department or trauma unit?

18 A. We don't have a trauma unit in the emergency room
19 at Fort Washington, but I do work at a trauma unit in another
20 hospital.

21 Q. And maybe I'm just using the wrong medical
22 language. Is there an emergency department or an emergency
23 room there?

24 A. Yes, there is.

25 Q. And do you work in that department, or do you work

1 all over the hospital?

2 A. No, I work in that department.

3 Q. And what hours of the day or night do you work?

4 A. I work from 7 p.m. to 7:30 a.m.

5 Q. And what are the duties of your job?

6 A. I work as a -- most of the time, I'm assigned as a
7 charge nurse in the emergency room. I guess I help out the
8 other nurses if there is a need for help. My responsibility
9 is to make sure that the emergency department is in order and
10 work with the doctors, the same thing as -- I work as a staff
11 nurse too. I give out medications and resuscitate patients
12 if patients need resuscitation.

13 Q. Do you see patients that come into the emergency
14 department?

15 A. Yes, yes, I do. As a charge nurse, usually if --
16 we have a triage nurse that is assigned at the front of the
17 lobby, that takes, you know, takes in patient that walks in.
18 And as a charge nurse, it is my responsibility to triage
19 patients that come in by ambulance, that is brought in by
20 ambulance.

21 Q. And what does triage mean?

22 A. Triage is, I guess, is a process of initial care.
23 Like we evaluate the patient initially, take the complaints.
24 Like we have a form that we fill out, that we write in the
25 complaints of the patients coming in. Like, for example, if

1 they come in with chest pains. We take down their family
2 history and, I guess, their names and their complaints and --

3 Q. Do you make observations of the patient?

4 A. Yes, yes, we do the initial observation.

5 Q. And do you write down your findings?

6 A. Uh-huh.

7 Q. I'd like to show you what has been marked as
8 State's Exhibit Number 98. Well, first, let me -- were you
9 working on the night of January 24, 2007?

10 A. Yes, sir.

11 Q. Did there come a time that night when you were
12 brought into contact with an individual by the name of Keith
13 Washington?

14 A. As the record show, I did.

15 Q. I'd like to show you what's been marked as State's
16 Exhibit Number 98, and you can --

17 MR. COHEN: Objection, Your Honor. May we
18 approach?

19 THE COURT: Okay.

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

22 MR. COHEN: She has no independent recollection of
23 this evening. Mr. Moomau just came up to her and gave her
24 some notes to review. It's improper.

25 THE COURT: I'll wait for foundation questions and,

1 if he doesn't lay the proper foundation --

2 MR. COHEN: The objection is there is no foundation
3 for her to review her notes.

4 THE COURT: Have you marked that and ask her if she
5 could identify it?

6 MR. MOOMAU: It's already marked State's Exhibit
7 98.

8 THE COURT: Did you ask her if she can identify it?

9 MR. MOOMAU: I will.

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

12 BY MR. MOOMAU:

13 Q. Ms. Concepcion, do you recognize any of the papers
14 within State's Exhibit 98?

15 A. Yes.

16 Q. And what is it that you recognize in State's
17 Exhibit Number 98?

18 A. This is the triage form that we fill out at the
19 hospital.

20 THE COURT: Ma'am, you're going to have to speak up
21 a little bit, please.

22 THE WITNESS: This is the medical record, and this
23 is the patient's medical records and the triage form that I
24 did fill up on the night of the 24th of January, 2007.

25 THE COURT: Thank you.

1 BY MR. MOOMAU:

2 Q. In referring to State's Exhibit Number 98, is the
3 page you're referring to the fifth page?

4 A. Yes, sir.

5 Q. And, specifically, do you recognize that form?

6 A. Yes, sir.

7 Q. Who completed that form?

8 A. I did.

9 Q. How many patients -- I know it varies but, on the
10 average, how many patients do you see a night?

11 A. A lot. It depends. The emergency room is always
12 very busy. We see as much as 120 to 150 patients a day. So
13 I guess on night shift we take half the load of it.

14 Q. And that form, when do you generally complete that
15 form, that particular form that you're looking at there?

16 A. This form is completed when the patient arrive
17 inside the emergency room. We do the initial assessment
18 before the doctor sees the patient.

19 Q. So when did you complete that particular form?

20 A. This was completed, I guess, on the night that
21 Mr. Washington came into the emergency room. That was on the
22 24th of January, 2007.

23 Q. And was that form completed at a time when your
24 observations of Mr. Washington were fresh in your memory?

25 A. Yes, sir.

1 Q. Ms. Concepcion, I've been referring to
2 Mr. Washington. What was the name of the patient you saw,
3 based on that form?

4 A. Last name Washington, first name Keith. We always
5 get their last names first, before their first names.

6 Q. I would like to show you an exhibit which is marked
7 as State's Exhibit Number 106.

8 MR. COHEN: Your Honor, may I review that?

9 (Document is shown to defense counsel.)

10 MR. COHEN: Thank you.

11 BY MR. MOOMAU:

12 Q. Could you compare State's Exhibit Number 106 with
13 the item that you're -- the document that you've identified,
14 that you're looking at?

15 A. They're the same.

16 MR. MOOMAU: Your Honor, the State would move for
17 the admission of State's Exhibit 106.

18 MR. COHEN: No objection, Your Honor.

19 THE COURT: 106 admitted, State, without objection.

20 (State's Exhibit No. 106, previously
21 marked for identification, was
22 received in evidence.)

23 MR. MOOMAU:

24 Q. Ms. Concepcion, what time was it that you saw Keith
25 Washington that night at the emergency room?

1 A. According to the record here, at 2200. That was at
2 ten in the evening.

3 MR. MOOMAU: Can the witness step down, Your Honor?

4 THE COURT: Certainly.

5 BY MR. MOOMAU:

6 Q. You can come out of the witness stand, ma'am. What
7 I would like for you to do, Ms. Concepcion, just starting at
8 the top of the form, under where it says "triage," let's just
9 go through the form and explain what your writing on there
10 means.

11 A. Okay. First of all, there is like five numbers
12 here above the triage paper. It is 1, 2, 3, 4, and 5. This
13 are the, I guess, the level of -- like the level of care that
14 we have to give a patient. For example, in level 1, if a
15 patient comes in as a code or if a patient comes in not
16 breathing, this is level 1.

17 Level 2, they have life-threatening injuries of an
18 emergency type. They can breath, but they're still awake and
19 talking. That is level 2.

20 Level 3 is like we do some blood work, x-rays, but
21 they needed care within one to two hours before they come
22 into the emergency room. We put them as level 3.

23 Level 4 is like minor injuries, like scrapes, you
24 know, bruises, lacerations that need some sutures, that needs
25 x-rays, and five is just a normal exam.

1 We put the name of the patient, the last name and
2 the first name. We take all the information that needs to be
3 put in the computer, the middle initial, the sex, which is
4 male, the age, and the date of birth. And then the date that
5 the patient comes in, the arrival time. And then the triage
6 time, the time that we write the information. And the
7 patient's private doctor or private insurance we put on the
8 side.

9 Most of the time we would, you know, we either
10 check the mode of arrival, if they come in by ambulance or
11 they come in by wheelchair or they walk in, they're carried
12 by their parent, if pediatric or children, or if they're
13 brought in by the ambulance crew, if they're collared, they
14 come in with a neck collar or on a back board, if they're in
15 an accident. And if the emergency -- the EMS have put in
16 oxygen, IVs and sometimes splints, we'll put it on this mode
17 of arrival slot.

18 Then we put in the chief complaint, which is a
19 status post, which means it's a post assault, alleged
20 assault, and then, if it's complaint of an assault, and then
21 what the patient complained about. If he's complaining of
22 like jaw pain, pain in the face, neck pain. We also put here
23 if they pass out, if they had LO, which means loss of
24 consciousness, if there was any loss of consciousness, which
25 there was none.

1 And the family history, medical history, the
2 patient, you know, gives us. If he doesn't have any family,
3 he puts there denies.

4 And medications. If he's on medications at home or
5 regular medication prescribed by the doctor.

6 And allergies. If he has any allergies to
7 medication or to food.

8 And we also take the social history. It says here
9 he doesn't smoke but he drinks; doesn't take any drugs. And
10 who does he live with; with his wife. And who gave the
11 information, if it was the patient or a family member, we put
12 it here. Apparently, the patient gave the information.

13 Below that are the current vital signs, the
14 temperature, which was normal. Blood pressure, we put it
15 there. And the pulse, the respirations and the pulse ox.
16 Oxygen saturation is the pulse ox. And if the patient's
17 tetanus shot is up to date. We take the weight if we need
18 it. And immunizations for children, and the LM is last
19 menstrual period for female patients.

20 And below that we rate the pain on a scale from 1
21 to 10, and then we write where the pain was located at. It
22 says here jaw and the neck. It says 7 out of 10 pain rate.

23 Below it are what are called the initial
24 assessments. We check the side where the patient, if he is
25 alert, oriented times 3, if his speech is slurred or if it's

1 clear, and if he is steady. And if he has any chest pains,
2 we also check there. If it's not applicable, we check in the
3 box where it's not applicable.

4 And then the last, we initial the -- listened to
5 the breath sounds, if it's okay, if it's clear or not.

6 And OB/GYN, this is for female patient, so it is
7 not applicable.

8 The skin, if there is any rash. We put there is no
9 rash. We put there normal.

10 And this is the gastrointestinal, which is if there
11 is any nausea, vomiting, pain in the abdomen or rectal
12 bleeding or anything. If there is no complaint, then it is
13 not applicable. If there is any urinary problems, we check
14 off whatever complaints the patient has. If it's not
15 applicable, we check the box where the "N/A" is.

16 This is for pediatrics also. You know, kids come
17 in and if they're acting normally, if they're development is
18 normal, we usually check if it is yes or no and --

19 Q. Ms. Concepcion, as far as the orientation for
20 Mr. Washington, what were your findings as far as that goes?

21 A. Here. This is the neurological exam. He was
22 steady, he wasn't wobbly or anything. He was alert and awake
23 and oriented to time, place, person, and events.

24 Q. Let's go to the part of the form "injury
25 laceration." What does that mean?

1 A. Injury laceration, we check the boxes here if we
2 find any signs of abrasions to the patient's body. We
3 initially examine them if they have any bruises on the face
4 or on the neck or if they have any bleeding or if there's any
5 puncture wound or if there is any reddened area. And
6 according to this, to my assessment, I did not find anything.
7 It says not applicable because there was no obvious abrasion
8 or injury when the patient came in.

9 Q. Did that include swelling as well?

10 A. Yes. It has everything there, bleeding, swelling,
11 reddened, puncture, laceration, hematoma, foreign body,
12 ecchymosis, deformity, burns, avulsions, and abrasions.

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

14 THE COURT: Certainly.

15 THE WITNESS: And, lastly, the extremities.

16 MR. COHEN: Objection, Your Honor.

17 THE COURT: Ma'am, there is no question pending.

18 BY MR. MOOMAU:

19 Q. The extremities part of the form, go ahead and
20 explain what that is.

21 A. Yes. Extremities, if they can move their legs, if
22 there is full movement from any type of injury, if there's
23 weakness or anything, we usually check here. We check the
24 process. Here, it was not applicable because it was normal.

25 Q. Now, I see on down there, below the pain level,

1 down toward the bottom, on the right-hand side, you have some
2 numbers there.

3 A. Right here?

4 Q. Well, there and here.

5 A. Oh, yes. This was a vital signs, I guess, that was
6 taken of the patient after the patient came from x-ray. His
7 pain level was still 6 to 7 out of 10, which was the same
8 when he came in. And his vital signs, additional vital signs
9 were taken. It was normal. Blood pressure was 138 over 76.
10 Heart rate was 84. Respirations was 18.

11 Q. And the pain level, where does that come from? Is
12 that from the patient?

13 A. Yes. He rates his pain between a scale of 1 to 10,
14 10 most painful; 1 least painful.

15 MR. MOOMAU: Court's indulgence. That's all the
16 questions I have.

17 **CROSS-EXAMINATION**

18 MR. COHEN:

19 Q. Good afternoon, Ms. Concepcion. I'll just be
20 asking you a few questions.

21 In the triage section that you referenced in
22 response to Mr. Moomau's questions, just so I have it
23 correct, during the initial assessment, Mr. Washington told
24 you that he was assaulted and that he had jaw, face and neck
25 pain, correct?

1 A. Yes, sir.

2 Q. And taking your attention to the area in that same
3 box, that said mode of arrival, you see those boxes across,
4 horizontally across?

5 A. Um-hmm.

6 Q. Is there a box for collar?

7 A. (No audible response.)

8 Q. The same place that you testified to earlier, do
9 you see that area?

10 A. Uh-huh.

11 Q. Can you point to that please?

12 A. Right here.

13 Q. Is there a box for collar there?

14 A. There is.

15 Q. What does that mean? A neck collar?

16 A. A neck collar.

17 Q. Does that mean -- that identifies whether or not
18 Mr. Washington came in with a neck collar, correct?

19 A. Yes.

20 Q. And that box is not checked, correct?

21 A. No.

22 Q. And the one next to that, it says board.

23 A. Yes.

24 Q. And the board says whether or not Mr. Washington
25 came in on a back board, correct?

1 A. Yes.

2 Q. And that box is not checked, correct?

3 A. (No audible response.)

4 Q. Let me have you go back to the witness chair. I'm
5 going to ask you about the State's exhibit. I'm going to
6 show you what's been marked as State's Exhibit Number 98. I
7 believe you testified regarding the page that was titled
8 "Emergency Department Multidisciplinary Record," correct?

9 A. Um-hmm.

10 Q. And on the next page, can you let the ladies and
11 gentlemen of the jury know what that is.

12 A. This is the emergency physician's record.

13 Q. And on that emergency physician's record, doesn't
14 it show that Mr. Washington was brought in with a collar and
15 on a back board?

16 A. It said here.

17 Q. What does it say there?

18 A. It says "see collar."

19 Q. What does that mean?

20 A. It's cervical collar.

21 Q. What does that mean, in terms of whether
22 Mr. Washington was brought in with a cervical collar or not?

23 A. He has a cervical collar.

24 Q. And that's when he arrived, he had a cervical
25 collar on, correct?

1 A. According to the doctor's papers here. Because
2 ours is different.

3 Q. And then, next to that, it says back board,
4 correct?

5 A. Yes.

6 Q. And does that say he was brought in on a back board
7 on the doctor's form?

8 A. Yes.

9 Q. May I have that back, please? Ms. Concepcion, were
10 you aware that Mr. Washington received a cold compress prior
11 to coming to the hospital that evening?

12 A. No.

13 Q. You were not informed of that fact?

14 A. (Witness shakes head.)

15 MR. STARR: I'm sorry, Your Honor. The witness
16 shook her head, without --

17 THE COURT: I'm sorry, ma'am. If you could please
18 respond verbally.

19 THE WITNESS: No, sir.

20 BY MR. COHEN:

21 Q. Were you aware that Mr. Washington was prescribed
22 Vicodin for his pain that evening?

23 MR. MOOMAU: Objection.

24 THE COURT: I think it's --

25 THE WITNESS: Prescribed --

1 BY MR. COHEN:

2 Q. Vicodin.

3 THE COURT: Ms. Concepcion, were you aware --

4 THE WITNESS: No, sir.

5 BY MR. COHEN:

6 Q. And were you aware that Dr. Dixon treated
7 Mr. Washington for a neck strain and a contusion that
8 evening?

9 A. Yes, because she gave the orders. She wrote the
10 orders for the x-ray. But I was the initial -- because I was
11 the charge nurse, but I didn't read the -- I did not read the
12 whole record, because there was another nurse that took care
13 of her, the nurse that was assigned -- I mean to say assigned
14 to him.

15 Q. Just so I can get it clear. Were you aware or were
16 you not aware that Dr. Dixon treated Mr. Washington that
17 evening for a neck strain and a contusion?

18 A. He came in for a complaint of neck pain and jaw
19 pain, and the doctor went in the room.

20 Q. My question to you is were you aware that the
21 doctor actually treated him for a neck strain and contusion,
22 yes or no?

23 A. No.

24 MR. COHEN: Thank you. No further questions.

25 MR. MOOMAU: No redirect, Your Honor.

1 THE COURT: Ms. Concepcion, thank you very much,
2 ma'am.

3 MR. MOOMAU: Your Honor, we have some matters we
4 need to attend to. Can we approach?

5 THE COURT: Certainly.

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

8 MR. MOOMAU: That's our last witness. We might
9 want to check the exhibits to see what else I want to move
10 in.

11 THE COURT: Why don't you get an updated exhibit
12 list. That's going to be your last witness, you're saying?

13 MR. MOOMAU: Yes; case in chief.

14 THE COURT: Okay. You want to check your exhibit
15 list and make sure, and then we'll come back --

16 MR. MOOMAU: You going to keep the jury in the box?

17 THE COURT: I don't have to. Is that what you're
18 asking me?

19 MR. COHEN: There's a number of exhibits. I think
20 we're up to 110, Your Honor.

21 THE COURT: Right, but I think you're going to see
22 that nothing is missing.

23 MR. MOOMAU: One thing about the -- like the 911
24 recording. I mean, I know moving it in, but there's a lot of
25 radio talk on there that should have no -- at some point the

1 people stop talking, right?

2 MR. COHEN: I assume.

3 THE COURT: That's a whole other issue. What are
4 you saying about that?

5 MR. MOOMAU: I'm moving that in.

6 THE COURT: Yes, they get to hear it.

7 MR. MOOMAU: But they should not be able to listen
8 to conversation between police officers --

9 THE COURT: I don't disagree with you, so we have
10 to figure out what is going to be done. What I have done in
11 the past, if you all are interested or not --

12 MR. STARR: We are. The defense is very
13 interested.

14 THE COURT: But we can find a manageable way to do
15 it. What we've done in the past is either bring them back
16 into the courtroom, exclude everybody from the courtroom,
17 because it's, obviously, part of the deliberation process,
18 and they can listen to it up to a certain point.

19 Otherwise, I have no other way to know when the
20 demarcation point from that is. Or wait to see if they even
21 want to hear it.

22 MR. STARR: May I just inquire of the State,
23 inquire as to whether there's a way to just redact it, to
24 just make a copy and cut it off after the end of the call?

25 MR. MOOMAU: Not that I know of.

1 THE COURT: I don't know of a way. That's never
2 come up. I don't think -- on the disk, I don't think so. I
3 don't have the technical skills to know that, to be honest
4 with you.

5 MR. MOOMAU: You've got to copy the whole thing.

6 THE COURT: So I'm saying let's wait to see if
7 there is a problem at some point, and then figure out,
8 amongst us, what's the best way to handle it.

9 MR STARR: If anybody wants to make a bet, I'm
10 going to take bets that they're going to want to hear it.

11 THE COURT: And then we'll just have to -- maybe we
12 can talk about that after and then -- because right now -- do
13 you want me to send them out?

14 MR. COHEN: We would appreciate it.

15 THE COURT: Ladies and gentlemen, we're going to
16 take another ten-minute break. It won't be too long.

17 (The jury was excused from the courtroom at
18 3:40 p.m.)

19 MR. MOOMAU: Want me to just make an announcement
20 about the exhibits?

21 THE COURT: Have you had an opportunity to review
22 your exhibit list?

23 MR. MOOMAU: Yes, I have, Your Honor. Your Honor,
24 prior to resting, the State would be moving in State's
25 Exhibit Number 85, the toxicology report of Brandon Clark;

1 State's Exhibit 97, subject to discussions we've had at the
2 bench. That's the CD, the 911 enhanced --

3 THE COURT: Okay.

4 MR. MOOMAU: And by moving it in, it's not my
5 intention nor understanding; that I'm just agreeing that the
6 whole thing, including all this police talk and all that
7 would come in, because that would be hearsay. We can deal
8 with that later.

9 We're going to be moving in State's Exhibit Number
10 98, the medical records for the defendant, the Fort
11 Washington Hospital. And I do understand that Mr. Cohen may
12 want parts of those redacted, or if there's some information
13 on there that he feels is irrelevant or prejudicial, we can
14 deal with that.

15 THE COURT: What's the number of the toxicology
16 report?

17 MR. STARR: That's 57, Your Honor.

18 MR. MOOMAU: Eighty-five.

19 MR. STARR: Oh, 85. I'm sorry.

20 THE COURT: And 98 is the CD?

21 MR. MOOMAU: Well, no. Ninety-eight are the
22 records from Fort Washington Medical Center for
23 Mr. Washington. Mr. Cohen had made reference that there
24 might be parts of them that he might want to be removed or
25 redacted. I have no problem with looking at that and dealing

1 with that.

2 THE COURT: Okay.

3 MR. MOOMAU: If it wasn't relevant to the
4 treatment.

5 We would also be moving in State's Exhibits 102,
6 103, 104, which were bullets and bullet fragments that Susan
7 Lee did as part of her examination.

8 MR. COHEN: No objection, Your Honor.

9 THE COURT: Okay, 102, 103, 104 admitted, State,
10 without objection. Ninety-eight admitted, subject to
11 agreement and conditions by the parties that, if unresolved,
12 I'll make a determination on.

13 (State's Exhibit Nos. 98, 102, 103,
14 and 104, previously marked for
15 identification, were received in
16 evidence.)

17 THE COURT: And, likewise, with Exhibit Number 85,
18 correct?

19 MR. COHEN: Court's indulgence.

20 MR. MOOMAU: Well, 85 is the toxicology report for
21 Brandon Clark.

22 MR. COHEN: I think it was called a toxicology
23 report, Your Honor, but I think he meant the autopsy report,
24 which is 80.

25 THE COURT: Well, you have to talk about it.

1 Somebody gave me the number 85. Let's make it clear for the
2 record.

3 MR. COHEN: We don't have a problem with the
4 toxicology report, Your Honor, coming in.

5 THE COURT: All I need to know is what number it
6 is.

7 MR. MOOMAU: Eighty-five.

8 THE COURT: Eighty-five, admitted without
9 objection, State.

10 (State's Exhibit No. 85, previously
11 marked for identification, was
12 received in evidence.)

13 MR. MOOMAU: Also, Your Honor, we had talked about
14 80, and there's going to be a redaction made on that. That's
15 the autopsy report. I recognize that has to be done.

16 THE COURT: And 80 admitted, without objection,
17 with redaction, State.

18 (State's Exhibit No. 80 was received in evidence in
19 Volume 4, page 111.)

20 THE COURT: So does that complete all of the items,
21 after review of your list?

22 MR. MOOMAU: Yes. Just for record, what is not
23 coming in is 4, which is the CAD report; 77, which was a
24 one-page medical record. The blowup of it is admitted.

25 There were some stipulations that were signed by

1 counsel and filed, but we've kind of rendered those moot,
2 because a lot of the evidence came in, and it would be kind
3 of confusing to be reading it now. That's 83 and 84.

4 And then there's State's 99, which was a form that
5 Brandon Clark signed when his mom retained counsel.

6 THE COURT: Did you reference 97?

7 MR. MOOMAU: That's the CD that we are going to be
8 moving in, subject to --

9 THE COURT: Okay.

10 MR. MOOMAU: And Mr. Wright informs me that maybe
11 our office can do something about cutting it off at a certain
12 point.

13 MR. WRIGHT: But I'm not sure about that.

14 MR. COHEN: Your Honor, there's a piece of evidence
15 that I don't see there, and I just want to make sure I'm not
16 getting confused. It's Michael Robinson's phone records.

17 THE COURT: So 97 is admitted without objection,
18 subject to whatever form of redaction or extraction from it
19 can be done. Or if there needs to be some Court
20 determination, that will be subject to it.

21 MR. COHEN: Correct, Your Honor.

22 (State's Exhibit No. 97, previously
23 marked for identification, was
24 received in evidence.)

25 THE COURT: So is that the breadth of it?

1 MR. COHEN: There's just one more issue we're
2 trying to figure out, Your Honor; the phone records.

3 THE COURT: On evidence?

4 MR. COHEN: Yes. Your Honor, with the
5 understanding that some of the irrelevant phone calls will be
6 redacted at some point, there is no objection to State's
7 Exhibit 5 coming in.

8 MR. MOOMAU: That's correct, Your Honor. I think
9 there was only two or three phone calls that were testified
10 about on that bill.

11 THE COURT: Five is admitted, State, without
12 objection, condition upon redaction of unrelated phone calls.

13 (State's Exhibit No. 5 was received in evidence in
14 Volume 3, page 136.)

15 THE COURT: Now, for purposes of these proceedings,
16 we're bringing the jury back in and the State is going to
17 rest?

18 MR. MOOMAU: That's correct, Your Honor.

19 THE COURT: And then you want me to release them to
20 go home?

21 MR. MOOMAU: That's fine.

22 MR. COHEN: Yes, Your Honor.

23 THE COURT: 8:30 Tuesday morning, right?

24 MR. COHEN: Yes, Your Honor. There's one issue we
25 need to discuss before we leave today.

1 (The jury returned to the courtroom at 4:15 p.m.)

2 THE COURT: Mr. State's Attorney.

3 MR. MOOMAU: Your Honor, the State rests.

4 THE COURT: Ladies and gentlemen, the State has
5 rested it's case in chief, and we're going to excuse you for
6 the long three-day weekend, and we hope that you enjoy it, as
7 we hope to as well.

8 And, again, I need to admonish you that you are not
9 entitled to speak to anyone about anything that has
10 transpired about this case with whom you may come into
11 contact over that three-day period, including your spouses
12 and significant others or friends.

13 You are also, as I've told you before and I'm sure
14 you're well aware of it, but you're also not to expose
15 yourself to hear, see or read any news media accounts that
16 may come about as a result of the proceedings in this case.

17 You are not entitled to speak, even amongst
18 yourselves, about anything about this case, and you're not
19 permitted to conduct any of your own investigation in those
20 ways that I have mentioned to you before, of any sort.

21 We're going to ask you to return on Tuesday at 8:30
22 in the morning, as you have been doing. Report to the main
23 jurors lounge, please. And, again, we'll bring you right
24 into the courtroom shortly thereafter.

25 We all want to thank you very much for your

1 attention and patience to date. We know that it is difficult
2 time away from work and business and family. We understand
3 that and appreciate all of your efforts very much in this
4 case.

5 (The jury retired at 4:15 p.m.)

6 THE COURT: All jurors have left this portion of
7 the courtroom and are downstairs.

8 MR. STARR: Should we approach for this, Your
9 Honor?

10 THE COURT: That would be fine, sure.

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

13 **MOTION FOR JUDGMENT OF ACQUITTAL**

14 MR. STARR: Okay. Your Honor, at this time, on
15 Mr. Washington's behalf, the defense moves for judgment of
16 acquittal on all counts. Some of my bases are general and
17 applicable to all counts and others are specific.

18 Generally, Your Honor, it is our position that the
19 evidence does not support any rational inference from which
20 the jury could be fairly convinced beyond a reasonable doubt
21 that Mr. Washington is guilty of any of the offenses.

22 The only witness who says that Mr. Washington is
23 guilty of any offense is Robert White, and Mr. White's
24 testimony has been impeached by prior inconsistent statement,
25 by criminal conviction. I think that he has -- it has been

1 indicated and demonstrated that he has committed acts that
2 were admissible because they were probative of his
3 untruthfulness; specifically, misstating his criminal record
4 in the grand jury and denying that he's ever used cocaine, in
5 the face of a screening test that indicates that he has.

6 He is biased in a number of ways; specifically, by
7 the filing of the lawsuit and several other ways, but the
8 lawsuit is powerful bias that applies to Mr. White and his
9 testimony.

10 Based on the direct and cross-examination in its
11 entirety, it's not credible enough to support the
12 inference -- to be relied on to support an inference of guilt
13 on any of the offenses.

14 Regarding, Your Honor, the homicide offense in the
15 indictment, the first count is second degree felony murder,
16 and the indictment does not specify what the felony is, and
17 there hasn't been testimony of a specific felony being
18 committed by Mr. Washington that would form the basis of the
19 felony murder count.

20 The second count, Your Honor, which is second
21 degree, specific intent to kill murder, I think that there
22 has been no testimony from which a jury could infer that
23 there was an intent to kill. The medical evidence, combined
24 with Mr. Washington's 911 call, combined with the manner in
25 which they were shot, does not evidence any intent to kill.

1 Likewise, I think the third count, the State has
2 not satisfied its burden, even applying the standard for
3 MJOA, establishing a specific intent to inflict such serious
4 bodily harm that death would likely result.

5 As to the fourth count, Your Honor, the evidence
6 has not established Mr. Washington having acted with an
7 extreme disregard for human life.

8 And I believe, specifically, Your Honor, and I can
9 say as to all of the homicide counts and assault counts, that
10 the intent elements have not been met. Given the evidence
11 that's in the record, it does not satisfy any of the intent
12 elements, that Mr. Washington had criminal intent with any of
13 the homicide or assault charges.

14 Also, Your Honor, with the depraved heart charge,
15 which is the fourth count, it is our contention, as I've
16 stated, that Mr. Washington did not and that the State has
17 not shown, even by the standard that the Court applies at
18 this stage, that there is depraved heart under the law.

19 We move for judgment of acquittal on all of the
20 counts, and reserve the right, if these motions are not
21 granted, to renew them later, based on any evidence that may
22 come out. But at this time, based on the totality of the
23 record, it is our position that the State has failed as to
24 each and every count. We move for judgment of acquittal on
25 all counts.

1 MR. MOOMAU: Your Honor, in response, the State
2 opposes the motion. We have the testimony of Robert White.
3 Although he was impeached -- attempted to be impeached by the
4 defense, his testimony alone is sufficient, should the jury
5 choose to believe him, to convict the defendant of all
6 counts.

7 Now, Brandon Clark, the evidence was through the
8 testimony of Dr. Khan and Dr. Locke that he died as a result
9 of complications from the gunshot wounds. He did sustain two
10 gunshot wounds, one to the leg, one to the abdomen area.
11 Dr. Khan talked about the organs that it damaged. Dr. Locke
12 also testified about how the infection from those gunshot
13 wounds, I guess, caused or contributed to his death, which
14 was directly attributed to the gunshot wounds.

15 Robert White testified that he was shot, basically
16 without any reason, by the defendant while he was leaning
17 over his friend. The gunshots corroborate that he was shot
18 behind the chest, in a downward path, and it ended up, I
19 guess, down towards his abdomen someplace. But that
20 testimony is all in the record as far as the various counts,
21 the second degree felony murder.

22 The eighth count of the indictment is first degree
23 assault, which would be the underlying felony. For that, as
24 far as the second degree, specific intent or the death likely
25 result, Robert White testified the manner in which he was

1 shot, and the medical evidence bears it out, how serious it
2 was, how his life was threatened, at least Robert White's --
3 excuse me; Robert White testified how Brandon Clark was shot
4 and the manner that it happened. That goes for all of these
5 counts, Your Honor.

6 Now, the defendant has said that -- I don't know if
7 they haven't raised that yet, but you've heard the testimony
8 about his lack of injuries, and then, from the photograph,
9 really, you can't even see any injuries. So from the State's
10 case, what we have is really an unjustified shooting,
11 unjustified killing. The way the wounds hit the body, it's
12 indicative of a specific intent to kill, as all testified to
13 by Robert White.

14 So we oppose the motion.

15 MR. STARR: Your Honor, I just want to say in
16 response, with more specificity, that the way that the
17 bullets struck the body is actually one of the reasons why
18 the State has failed on the intent element. They're not shot
19 in the head; they're not shot in the heart. One of them is
20 shot twice, the decedent shot twice. The surviving
21 complainer, Robert White, is shot three times. They're not
22 shot so many times and in locations on their body that would
23 indicate a specific intent to kill or that Mr. Washington had
24 the requisite mens rea for any of the offenses with which
25 he's charged.

1 THE COURT: Viewing all of the testimony and
2 evidence in the light favorable to the State, I believe they
3 have met their burden of proving a prima facie case and, with
4 respect, deny your motion with respect to all counts.

5 MR. COHEN: Thank you, Your Honor.

6 MR. MOOMAU: Do you want to bring up those other
7 things?

8 MR. COHEN: Yes. Your Honor, there's one more
9 issue, not about this. A witness issue for the defense.
10 Ms. Leanora Conti, and I can spell it for Your Honor. The
11 last name is C-o-n-t-i. She's a witness that was on the
12 State's list to be called. We found out that she was not
13 going to be called today or --

14 MR. MOOMAU: I told Mike earlier on that I wasn't
15 going to call her but that -- I mean, before the trial
16 started, but that I would make her available if you needed
17 her.

18 MR. COHEN: Well, Mr. Moomau did say he would make
19 all the witnesses available if he didn't call them. We've
20 attempted to contact her. My paralegal has run out of the
21 room frequently to try and call her today. We have not been
22 able to get in contact with her.

23 Our concern is that Tuesday comes, and she may be
24 gone already for the long weekend and we won't be able to get
25 in contact with her before Tuesday. We just want to put it

1 on the record so we can have some leave or whatever the Court
2 can do to try and work it out. Because, again, we're just
3 finding out that -- my understanding was that she was going
4 to be called in the government's case. She is the forensic
5 examiner who will testify to fiber transfers.

6 MR. STARR: Your Honor, I may not have received it
7 properly, or there may have been a miscommunication. I'm not
8 questioning Mr. Moomau's representation at all. I don't want
9 to say that.

10 But the reason that we're in this position is
11 either I missed it or there was a miscommunication. We were
12 expecting her to be called. There was a lot of talk between
13 the State and the defense about, well, we're going to
14 stipulate to this, so maybe the State will call this witness;
15 maybe we won't --

16 MR. MOOMAU: I said you got to be available for two
17 weeks, whether we call you or they call you. She is local.
18 She's Amendale. Where's that? A-m-e-n-d-a-l-e.

19 MR. COHEN: I don't know where that is.

20 THE COURT: I've never heard of that.

21 MR. MOOMAU: It's a new town in Maryland.

22 MR. COHEN: We're just requesting that the
23 government attempt to -- we will continue to attempt to
24 contact her, but if the State could try and call her. I
25 think she may be more receptive to receiving a call from the

1 State than the defense.

2 THE COURT: Just for my purposes, how long do you
3 think your case may last, assuming that -- I mean just your
4 case in chief.

5 MR. COHEN: I wouldn't think more than two days,
6 Your Honor.

7 MR. STARR: And it may not be that long. One to
8 two days.

9 MR. MOOMAU: Would we be safe in having -- because
10 we've got to plan too. I think we're going to have our
11 rebuttal, if we need him here, Wednesday then.

12 MR. STARR: They won't need him, but okay.

13 THE COURT: Yeah, I didn't think you were going to
14 open up that door.

15 MR. MOOMAU: There's other doors we got to be
16 prepared for.

17 THE COURT: Just for purposes to give me some idea,
18 assuming all of the best for both of your cases, have you
19 been able to put together instructions, at least so that I
20 can get them into a computer? I'm not saying they're -- just
21 for our administrative purposes.

22 MR. MOOMAU: Can I have them e-mailed to you?

23 THE COURT: Yes, that's fine.

24 MR. STARR: We can do that.

25 THE COURT: I'll be in this weekend. If you could

1 give me, like, tell me when it is or what day, and then I'll
2 know when I go into work. Because I don't know whether I'm
3 coming in on Saturday or Sunday, so it will help me out if I
4 know.

5 MR. STARR: We can make it easy and just give them
6 to you on Monday.

7 THE COURT: I have to come in. I have another one
8 after this one.

9 MR. MOOMAU: I'd rather like to give them to you
10 Sunday at some time.

11 MR. STARR: That's fine.

12 THE COURT: That will make my administrative aide
13 very happy, so at least she'll have the rough.

14 MR. STARR: We'll get you something, some raw data.

15 And there's one last thing I wanted to put on the
16 record. Everyone is smiling and happy, but I have to bring
17 us back down a little bit. I just want to put on the record
18 that I've been observing, and Mr. Kevin King has been here
19 for every second of testimony today.

20 THE COURT: Okay. Thank you.

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

23 THE COURT: I will see everybody at 8:30 on
24 Tuesday, and I will hear from everybody at some point in time
25 on Sunday.

1 MR. MOOMAU: Are we starting testimony at 8:30?

2 THE COURT: No. I'm just bringing the jury back in
3 at 8:30 in case -- I notice that a lot of things come up
4 before --

5 MR. MOOMAU: I understand.

6 (The trial was recessed at 4:35 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 15, 2008, before the Honorable Michael P. Whalen, Associate Judge.

I further certify that the page numbers 1 through 181 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 16th day of June, 2008.

Cindy S. Davis, RPR

Official Court Reporter